

# PUBLIC REASON

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Public Services on the Market

# PUBLIC REASON

## Journal of Political and Moral Philosophy

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Special issue edited by Rutger Claassen

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## Introduction

### Public Services on the Market: Issues and Arguments

Rutger Claassen  
Leiden University

This special issue brings together a variety of scholars to reflect on the question of the marketization of public services. In the last two or three decades most Western countries have adopted large-scale programs towards liberalization, deregulation, privatization and the use of market mechanisms within the public sector. The boundaries between public and private have shifted in favour of the latter. State provision of essential public services (such as health care, policing, education, public broadcasting, public transport and housing, energy and water) is no longer as self-evident as it had become in the aftermath of the Second World War, when Western countries built up extensive welfare states. At the same time the formerly communist countries of Central and Eastern Europe have made the transition from command-style economies to largely privatized economies. In the developing world too, partly under pressure from the IMF and the World Bank, privatization and deregulation held sway.

This movement towards marketization, which is the topic of this special issue, has received insufficient attention in analytical – moral and political – philosophy. In the 1970s and 1980s philosophers intensely debated the merits of capitalism from the viewpoint of general theories such as libertarianism, (analytical) Marxism and liberal egalitarianism. Since then however, many philosophers turned to non-economic issues (such as identity politics, multiculturalism, citizenship and democratic theory). Others, who kept on working on social justice, argued over increasingly sophisticated ideal-typical distributive schemes, often however without showing what that would mean in the messy practice of actually existing institutions.<sup>1</sup>

This special issue seeks to contribute to a reversal of this trend. Philosophical reflection on the role of markets and states in our economies is again urgently needed; we need to think only of the current global financial crisis, and how many have judged this to be caused by a 'moral', not just an economic crisis. Whether or not that is correct, philosophical reflection can help us to gain a clearer understanding of the normative concerns underlying socio-economic problems. But it can only do so if it connects philosophical reflection to actually-existing (and of course potentially worthwhile) institutional arrangements. Other disciplines (most notably, economics, but also public administration, sociology, etc.) do give definite analyses and judgments about such matters, but they do

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1] For a similar diagnosis of the state of the field, see Heath et al. 2010, 429-30. There are exceptions, of course, of philosophers who did engage with the details of the institutional consequences of their normative theories. Just to mention two examples, think of Philippe van Parijs' endorsement of a basic income scheme (Parijs 1995), or Thomas Pogge's defense of a global health care fund (Hollis and Pogge 2008).

so from perspectives which are often only implicitly normative. For moral and political philosophers, who think of themselves as experts in normative theory, it would be strange not to engage in the same type of normative evaluations as authors from other disciplines do (especially given the fact that practical philosophers do engage in exercises of applied ethics in many other fields).

Arguably, there has been a debate in moral and political philosophy which does aim for such a creation and application of normative theories to the central institution of the market; i.e. the debate over “commodification” or the “limits of the market” (Anderson 1993; Radin 1996; Satz 2010; Sandel 1998). In this debate, however, there has been very little systematic attention paid to the commodification of public services, compared to, especially, the commodification of body parts (organs, blood), children (commercial surrogacy) or sexual services (prostitution).<sup>2</sup> This may be due to the focus on finding examples where what is at stake is whether a certain market should be prohibited or not; inspired by Michael Walzer’s famous list of “blocked exchanges” (Walzer 1983). For public services, however, whether to create a market for a good or prohibit its provision altogether is a poor description of the choice at hand. Rather, it is about market versus state provision, or some third or intermediate alternative, or some combination of these. As the contributions in this issue attest, the commodification debate is an important source of inspiration. It does, however, need to be extended to the public services which every citizen consumes throughout her life time.

In this introduction, I will discuss the main questions and themes that need to be addressed when debating the marketization of public services from a philosophical viewpoint. While doing so, I will introduce the main arguments and topics of the papers that are included in this special issue. I will first discuss the normative questions at stake and then turn to questions of institutional design.

### I. THREE NORMATIVE THEORIES

A natural way to start is by asking which normative theories can help us making decisions about questions of marketization. Joseph Heath’s paper “Three Normative Models of the Welfare State” provides a very helpful starting point. He approaches the issue of marketization from the angle of the welfare state literature, which is concerned with defending the public provision of certain goods and services.<sup>3</sup> Following this starting point, the market should provide all those goods for which no case for public provision can be made.

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2]For some exceptions, most of which not written by professional philosophers, see Leys 2001, Anton, Fisk, and Holmstrom 2000, Kuttner 1999, and Shipman 1999.

3]In this section I do not distinguish between goods that the state should care about (i.e. public interests), and goods that the state should provide itself (public provision), assimilating the former to the latter. This is purely for the sake of simplicity. The distinction is crucial and will be introduced in the next section.

Heath distinguishes three different models of welfare state provision. First, there is the redistributive (or social justice) model, which takes the welfare state to be about redistribution. The market distributes goods unequally, and the goods and services of the welfare state correct for this. While there is a Marxist version of this model, the currently dominant version of it is (Rawlsian) liberal egalitarianism. A related version captures the same egalitarian intuition in terms meeting people's 'basic needs'. Second, there is the communitarian (or anti-commodification) model, which explains and defends the welfare state because it shields certain goods and services from the logic of the market. On this model the state has to provide these goods in kind, so as to make sure that citizens cannot trade their rights away (non-fungibility). Third there is the public goods (or economic) model. In this model the welfare state is meant to provide those goods and services for which the market produces inefficient outcomes. The normative standard here is Pareto-efficiency: state involvement is welcomed when this leads to Pareto-superior outcomes. Heath provides an extensive discussion of the strengths and weaknesses of each of these models and strongly defends the economic model as superior to the others.

Seen from the perspective of this tripartite division, the other papers engage in in-depth discussions of each of these three possible justifications for removing goods from the market.

Tsilly Dagan and Talia Fisher, in their paper "The State and the Market: A Parable on The State's Commodifying Effects," mainly engage with the commodification model. They take as their starting point the central argument in this literature, that commodification may have "corrupting effects" on the goods being commodified, transforming their meaning and alienating people from themselves and those with whom they interact. Instead of bringing yet another version of this argument, however, they make the innovative move of discussing state regulation through the same lens. State intervention, they argue, can have the same or similar corrupting effects as the market. It may reduce persons to certain of their attributes just as much as markets do, imposing an "objectifying attitude" which treats citizens as instruments in the hands of the state. Applying Elizabeth Anderson's plural theory of value, Dagan and Fisher argue that the commensurating and reductive tendencies of the market can also be found in certain forms of state regulation. This can undermine people's autonomy, when the latter is understood in a wider sense than mere freedom of choice.

David Levine, in his paper "Freedom of Choice and Freedom from Need," approaches the issue from a political economy perspective. He takes as his normative point of departure the idea that the welfare state should guarantee that human beings are "free from need." He understands freedom as self-determination, which is only possible where demands of subsistence (whether natural or social) do not dominate. He considers freedom from need in connection to group life and group identity. He contrasts freedom from need both to freedom from want, and freedom of choice. In his view, only freedom from need gives us the capacity to make meaningful choices in the first place. Levine's argument is that welfare institutions should be understood as securing this personal capacity,

while the market tends to undermine it. He illustrates this argument with an analysis of health care provision and income subsidies.

Julian Le Grand, in his paper “Quasi-Market versus State Provision of Public Services: Some Ethical Considerations” is concerned with a moral assessment of so-called “quasi-markets,” i.e. markets in which providers compete with each other as on a normal market, but in which the financial resources come from the state. This form of organized competition within the public sector provides an important intermediate category between pure market provision (where consumers have to pay out of their own pockets) and pure state provision (where there is no competition between providers). A moral assessment of this market form, Le Grand maintains, has to take into account different sets of issues. One is the expansion of individual choice on quasi-markets, which he considers (unlike Levine) a welcome development. Another issue is whether quasi-markets lead to a higher quality of services and more efficient allocation of resources. Here Le Grand argues that the answer largely depends on empirical considerations. Finally, he maintains that in terms of social justice quasi-markets may actually perform better than classical systems of public provision.

Russell Keat, in his paper “Political Philosophy and Public Service Broadcasting” discusses the justification for state provision of broadcasting, taking as the leading example the activities of the BBC in the UK. The normative case will be different, he maintains, according to the type of programming concerned. Keat’s contribution therefore discusses justifications for programmes bringing news and current affairs, arts and sciences, and entertainment (soaps and the like). Normatively, he rejects both the commodification and the social justice approaches as irrelevant for this topic, but neither does he think the economic approach (which explains public involvement in terms of positive externalities) sheds much light on the issue. Instead, he defends a liberal perfectionist viewpoint (following Martha Nussbaum and Joseph Raz), at least for the arts and entertainment categories. High quality programmes may enlarge our understanding and increase our autonomy in a way that low quality programmes don’t. The market may fail to deliver high quality and this is where the state has to step in.

Similarly, in his paper “The Commodification of the Public Service of Water,” Adrian Walsh argues that perfectionist considerations are indispensable when discussing the commodification of water. These include the integrity of the environment as well as several aesthetic and spiritual values associated with lakes, springs and rivers. These perfectionist concerns stand next to more conventional social justice concerns over the distribution of water (making sure that each citizen has access to at least a basic quantity of water) as well as concerns for the historical rights over water held by landowners. Traditionally, landowners often had a right of use of the water that passes through or falls on their lands (so-called “riparian rights”). The commodification of water requires an ‘unbundling’ of rights, such that this right is revoked. Unbundling may be unjust, Walsh argues, when the traditional arrangement goes back many generations.

In his contribution “The Marketization of Security Services,” Rutger Claassen discusses functions traditionally associated with public police: surveillance and protection against crime. The rise in commercial security companies makes this a pertinent issue. He rejects Nozick’s invisible hand explanation for thinking that security functions must necessarily be monopolized by one protective agency (which then becomes a state). Instead, he argues that the state’s role here, as for other public services, must be defended in normative terms. He considers two essential ones in tandem. The first is the symbolic contribution of public security provision towards sustaining a sense of (national) community, which is inextricably entwined with an egalitarian concern for equal provision to all citizens. The other has to do with a transformation of the good involved: ideal-typically, the focus of the state is on doing corrective justice instead of the commercial aim of (merely) preventing and managing risk. Claassen shows how both of these concerns do not stand in the way of a market for security services additional to what the state provides, if certain conditions can be met.

All in all, the papers show that the tripartite division in normative concerns (commodification, justice, efficiency) proposed by Heath is reasonably stable. We can discern in almost all of the papers a concern with these three as the major alternatives. Nevertheless, several questions are open for further debate.<sup>4</sup>

## II. EXTENSIONS AND COMBINATIONS

One question is whether the list is exhaustive. To this extent, Keat’s introduction of liberal perfectionism as a normative theory in the context of the media is especially interesting. The perfectionist may be close to the egalitarian, in the sense that both start from an objective theory of the good (e.g. in the early Rawls’s case, a thin theory of the good) and argue that certain goods (like Rawlsian primary goods) are necessary to realize that theory’s demands. But perfectionists tend to have a more expansive theory of the good than most egalitarians. This will probably lead them to define a broader range of services as public. They also direct our attention to objective standards of quality that we want providers to maintain (in the context of health care or education this may be highly relevant). This makes it interesting to explore perfectionism (liberal or not) as a separate theory.<sup>5</sup> David Levine’s normative framework is similar to this. His expansive understanding of our capacity for self-determination brings him close to some (e.g. Razian) forms of per-

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4] I continue to treat these three models as coherent theories, while of course strictly speaking they are families (or directions) of theorizing, with an enormous internal variety within each model.

5] My own understanding would however be that most of the concerns discussed by authors in the commodification literature can be classified as 1) either perfectionist in the sense discussed here (defending the development of certain valuable individual traits), or 2) communitarian, in the sense of using public goods provision to create and express a sense of community amongst citizens, or 3) egalitarian, or 4) a mix of the previous three.

fectionism. And as mentioned earlier, the concern for environmental integrity that Walsh mentions in the context of water supply moves in the same perfectionist direction.

As for exhaustiveness, it deserves special mention that there may still be other theoretical alternatives in thinking about the issue of public services that have not been included in this issue. One obvious candidate, which (unfortunately) does not receive much discussion here, is libertarianism, both in its left-wing and right-wing guises. In a way, all of the theories mentioned so far can be seen as providing a challenge to the (right-) libertarian view that in principle (almost) *all* public services should be marketized (for a libertarian view on public services, see Narveson 2001; Shapiro 2007).

A second question that remains up for debate is whether these competing normative theories are really as mutually exclusive as may appear at first sight. There seems a more or less clear-cut dichotomy between the economic model and the social justice model. The former is subjectivist in focusing on the utilitarian standard of individual preference satisfaction (whether the criterion is Pareto or some other concept of efficiency or optimality). The latter is objectivist in arguing for a preference-independent view of what is (morally) required: the provision of some goods is, to use Scanlon's language, a matter of urgency (Scanlon 1975). To put it bluntly, the economic model essentially sees the state as being in the same business as the market: satisfying preferences. It then becomes a matter of expediency whether the state or the market is better at satisfying preferences for a certain good. If markets are subject to significant market failures, the state steps in. The social justice model is different, and not just in the usual sense that it is concerned with (a certain measure of) equality in distributive outcomes. Underlying many forms of egalitarianism is a good-specific concern. Egalitarian intuitions make us differentiate between goods to which people should all have a certain level of access (e.g. health care or education) and goods whose distribution is of purely individual concern (caviar and speed boats).<sup>6</sup> The role of the state here is qualitatively different than that of the market. Given the deep divide between subjectivist and objectivist starting points, I can see no easy way of combining these two types of theory. By contrast, anti-commodification theories often tend towards an objectivist theory of the good, which may or may not be combined with egalitarian intuitions. Indeed, in many anti-commodification texts we find egalitarian objections. For example, in the debate about prostitution or surrogate motherhood, the unequal social position of women performing these roles is one of the key concerns which leads to judgments about the degrading nature of the work. Commodification and social justice arguments are often not easy to separate.<sup>7</sup>

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6] Admittedly, some forms of social justice theorizing are not goods-specific, but formulate all their required entitlements in monetary terms.

7] This may lead one to give up on the separate commodification argument and argue that if social positions of men and women were equal, there would be nothing to object to in these kinds of transactions. E.g. see Satz 2010. For my own view on the relation of commodification concerns with egalitarianism, see my Claassen forthcoming, 2012.

This is all at the general level of theory. But, as some of the contributions attest, when thinking about specific cases it may be useful to combine various normative considerations. Thus, Le Grand uses both intrinsic and outcome oriented arguments in favour of quasi-markets. Claassen also argues that communitarian and corrective justice considerations reinforce each other in thinking about the state's role in security provision. Keat uses different normative arguments for news provision (mainly taken from democratic theory) compared to the perfectionist case for arts and entertainment. Walsh similarly provides several objections to the commodification of water. There is a danger of eclecticism, of course, in taking normative criteria from otherwise conflicting normative approaches and combining them. On the other hand, too strict a separation may leave one with a normative repertoire that is insufficiently rich to deal with intuitively important concerns surrounding a certain public service.

Important work remains to be done on getting a clear grasp of the alternative theories guiding our thinking on the role of the state and the market in providing public services and the relations between them. But, as I will now discuss, there are also several institutional issues that deserve attention from philosophers.

### III. INSTITUTIONAL ISSUES

In making the transition to institutional issues, it is useful to change the vocabulary used so far. The normative models discussed up to this point I will henceforth call "moral" models. They are a response to the moral question whether or not a certain good *must* be provided (whether it is a moral requirement to do so). This question should be separated from the institutional question whether the market or the state can best take care of this. The moral question is *what* should be done, the institutional question *who* should do it (or *how* it should be done). As I will argue below, the institutional question is also a normative question.

The three models described by Heath do not only differ in their stance about the moral question. They also differ in the extent to which they follow this distinction between the moral and the institutional question. As a first approximation, we can say that the economic model is clearest in its distinction between these two questions.<sup>8</sup> Within both other models there is a tendency to conflate the two. If it is established that the provision of a certain good is required – let's say its provision represents a "public interest" – then quasi-automatically it is supposed that the state should provide this good itself. That however, could also be treated as a wholly separate matter. The social justice model in principle seems open to this thought. While egalitarians in practice often conflate the

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8] The weight of the economic model is on the second question. It often tacitly assumes that people have preferences for a certain good, then to argue that providing it would lead to an inefficient market structure. But strictly speaking these preferences should be revealed before we know this. And if they are revealed in the political process, they aren't preferences in the same crude sense as we find in the market (but transformed into deliberate reasons to vote for a certain party or person).

public interest in having a (minimum quantity and quality of a) good provided with the claim that this good should be provided by the public sector, their moral concern is only with the interest being met. If the market can do the job better, there is no principled objection to using it for egalitarian aims. The commodification model, by contrast, often rejects the distinction on purpose, suggesting that every institutional setup has a moral character of its own. This is especially clear for the different versions of the corruption argument, where it is argued that markets by their very nature mould the exchanges of goods and the interactions between people in ways that undermine valuable personal and social attributes.

There is a tendency, both on the side of philosophers and on the side of empirical scientists, to use this distinction to mark their field of expertise. This has led to a sometimes rigid academic division of labor between philosophical expertise on moral questions and economic and other expertise on institutional questions. Keat, in his contribution, exemplifies this when he states that “concrete issues of institutional design clearly go beyond the remit of political philosophers.” At the same time, he also recognizes that “issues of institutional design [...] should be addressed with ethical purposes in mind.” The division of labor should never become too rigid. At the very least those with primarily moral interests and those with primarily institutional interests must understand the issues and problems that arise on the other side of the divide. But I think that philosophical interest in the institutional question should go beyond mere understanding. The institutional question is itself a normative question, not a “merely technical” one. Rather, different institutional arrangements raise normative questions of their own. A specific institutional set-up may score well on some moral theories and bad on others. So here these theories can be helpful in a way that goes beyond the work they do in identifying whether or not the provision of a certain good is a matter of concern for the state, or a public interest.

Both Le Grand and Heath in their papers point us to the fact that the institutional question cannot be treated in simple “market or state” terms. If anything has happened over the last two decades, it is that market mechanisms are used within the public sector, leading to intermediate forms which share features of a “pure” market and of classical “public provision.” The state retreats, but only with respect to its role as the *provider* of goods. It retains an important role in financing them, and carries the responsibility for final output. Not coincidentally, states are heavily regulating markets for services previously provided by the state. Some theorists have gone so far as to interpret this as marking a new age of capitalism: we do not live in the age of neoliberalism (with markets left unrestrained), but of “regulatory capitalism” (Braithwaite 2008). In public management language, the state is now “steering,” not “rowing.” Le Grand has contributed to this movement in theorizing what he calls “quasi-markets.” Heath similarly believes an important role is to be given to institutional setups which realize a “purchaser-provider split.”

Too much of philosophical theorizing has missed these developments towards more fine-grained institutions, and still frames the debate in simple “market or state” terms.<sup>9</sup> But if these mixed private-public institutions are now important in the practical realities of many countries, normative attention should be directed towards their specific (de)merits. For example, Le Grand argues that quasi-markets, by giving every consumer publicly financed purchasing power, can put to rest concerns about unequal access that are at the heart of the social justice model. If he is right, this would be a significant improvement. So that is an important topic for normative assessment (questions may arise over effective rather than formal access, over the admissibility of additional private money in these arrangements, over the influence of private capital investors in these markets etc.). Similarly, both Le Grand and Heath largely dismiss concerns over the erosion of the public sector ethos (or altruistic motivation) of workers in these mixed markets. This too, is an area where more debate is needed.

A very different way of going beyond “market or state” is when markets and states both provide more or less the same good simultaneously. An example of this is Claassen’s discussion of security, provided by public police and private security companies. This kind of arrangement also raises distinctive normative questions, e.g. about the sort of regulation adequate for these additional markets (should security companies be allowed to stimulate market demand by increasing anxiety about the risk of crime?); about cooperation between private and public sector organizations (how far should security companies cooperate when confronted with breaches of criminal law?), and also, again, about inequality. The latter concern now emerges in a different shape, namely where commercial provision of security services may tend to undermine the willingness to pay taxes for the public service or lower the quality of the public service. All of this is by no means confined to the area of security. In health care, the media, education and other areas private and public organizations also compete for clients, raising similar questions (Claassen 2009).

Finally, we should be aware that answering the normative question of which institutional setup best satisfies our moral interests always requires a *comparative* focus. We cannot judge the performance of the market or the state (or any mixed set-up) in isolation. Rather, we must comparatively judge which institution performs better. This point, brought home effectively in the context of justice by Amartya Sen (2009), also applies to the marketization debate. As Dagan and Fisher show in their contribution, it is pointless to condemn markets for having commodifying effects when state regulation has the same effects. To the extent that these effects are morally problematic, the normative question would be which institution would have the *least* commodifying effects. While Dagan and Fisher focus on the commodification concerns, similar comparative exercises may need to be made when judging the relative performance of market and state in terms of equality or efficiency. For example, in the economic literature, the identification of a market failure for, let’s say, health insurance, is inconclusive without having looked at possible ‘government failures’ if the state would take over.

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9] For an exception in the commodification debate, see Radin’s idea of “incomplete commodification” in Radin 1996.

## IV. CONCLUSION

The present special issue will hopefully contribute to discussions, both within and outside of moral and political philosophy, about the marketization of public services. With many welfare states being under severe pressure because of the financial crisis that began in 2008, we can expect more and more political calls for relieving the state from some of its long-standing obligations and shifting responsibilities to the market. To what extent this is a good idea remains to be debated.

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## REFERENCES

- Anderson, Elizabeth. 1993. *Value in ethics and economics*. Cambridge Massachusetts: Harvard University Press.
- Anton, Anatole, Milton Fisk, and Nancy Holmstrom, eds. 2000. *Not for sale. In defense of public goods*. Boulder, Colorado: Westview Press.
- Braithwaite, John. 2008. *Regulatory capitalism*. Cheltenham, UK: Edward Elgar.
- Claassen, Rutger. 2009. Institutional pluralism and the limits of the market. *Politics, Philosophy, and Economics* 8 (4): 420-47.
- . forthcoming, 2012. Inequality as a limit to the market (review of Debra Satz's *Why some things should not be for sale*). *Business Ethics Quarterly*.
- Heath, Joseph, Jeffrey Moriarty, and Wayne Norman. 2010. Business ethics and (or as) political philosophy. *Business Ethics Quarterly* 20 (3): 427-52.
- Hollis, Adain, and Thomas Pogge. 2008. *The health impact fund. Making new medicines accessible for all*. Incentives for Global Health. [http://www.yale.edu/macmillan/igh/hif\\_book.pdf](http://www.yale.edu/macmillan/igh/hif_book.pdf) (accessed November 10, 2011)
- Kuttner, Robert 1999. *Everything for sale. The virtues and limits of markets*. Chicago: The University of Chicago Press.
- Leys, Colin. 2001. *Market-driven politics. Neoliberal democracy and the public interest*. London: Verso.
- Narveson, Jan. 2001. *The libertarian idea*. Ontario: Broadview Press.
- Parijs, Philippe van. 1995. *Real freedom for all. What (if anything) can justify capitalism?* Oxford: Oxford University Press.
- Radin, Margaret. 1996. *Contested commodities. The trouble with trade in sex, children, body parts, and other things*. Cambridge Massachusetts: Harvard University Press.
- Sandel, Michael. 1998. What money can't buy: The moral limits of markets. *The Tanner Lectures on Human Values, Delivered at Brasenose College, Oxford*.
- Satz, Debra. 2010. *Why some things should not be for sale: The moral limits of markets*. New York: Oxford University Press.
- Scanlon, Thomas. 1975. Preference and urgency. *The Journal of Philosophy* 72 (19): 655-69.
- Sen, Amartya. 2009. *The idea of justice*. Cambridge, Massachusetts: The Belknap Press.
- Shapiro, Daniel. 2007. *Is the welfare state justified?* New York: Cambridge University Press.
- Shipman, Alan. 1999. *The market revolution and its limits*. London: Routledge.
- Walzer, Michael. 1983. *Spheres of justice. A defense of pluralism and equality*. New York: Basic Books.

## Three Normative Models of the Welfare State

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**Abstract.** In order to work out an appropriate division of labor between the public and the private sector, we need a normative standard that tells us what the state *ought* to be doing. In order to be credible, this standard needs to be more than just prescriptive, it must provide the basis for a broader reconstructive theory of the welfare state. The problem, however, is that even among supporters of the welfare state there are several different theoretical reconstructions of the normative commitments that are taken to underlie it, all of which are in tension with one another. In particular, the three normative purposes most commonly cited as providing a justification for the scope of welfare state activity are equality, community, or efficiency. These give rise to a corresponding set of models, which I refer to as the redistributive, the communitarian, and the public-economic models of the welfare state. My objective in this paper is to show that the public-economic model of the welfare state, although the least popular among political philosophers, is actually the most plausible. Not only does it provide a superior account of the existing configuration of welfare-state activities, but it alone is able to explain why, in all Western democracies, state spending rose almost continuously over the course of the 20th century as a fraction of GDP.

**Key words:** communitarianism, distributive justice, efficiency, equality, public goods, welfare state, Wagner's law.

The basic picture of the federal government you should have in mind  
is that it's essentially a huge insurance company with an army.  
Paul Krugman

The current political climate across the Western world is marked by a general presumption against state involvement in the economy. This does not mean that the state should have no involvement in the economy at all, or that one cannot make for case for an extension of the state's role. It simply means that, for any particular good or service, the default assumption is that it should be provided by the private sector. By contrast, public provision, or even public involvement, is something that must be argued for. One must show why the private sector cannot do something, or cannot do it well enough, in order to even begin to make the case for having the state do it. This allocation of the burden of proof is well summed-up in the German Social-Democratic Party slogan adopted in 1959: "markets whenever possible, the state when necessary." There is however something misleading about this slogan, insofar as it suggests that the proper demarcation between public and private can be determined in a purely technical, or value-free fashion, based upon when state involvement is "necessary." What sort of "necessity" is being invoked here? Obviously it is not a metaphysical sense of the term, but rather a normative one. State involvement will sometimes be necessary in order to achieve the type of social outcomes that we aspire to achieve. But according to what standard?

This is where the need for a normative model of the welfare state arises. In order to work out an appropriate division of labor between the public and the private sector, we need a normative standard that tells us what the state *ought* to be doing. In order to be

credible, however, this standard needs to be more than just prescriptive, it must provide the basis for a broader reconstructive theory of the welfare state. It must provide an account of how the welfare state came to assume the economic role that it currently assumes. After all, the most compelling response to the question of what the state *should* be doing would be grounded in a perspicuous understanding of what it currently *is* doing, and why it is doing it. A purely prescriptive approach runs the risk of producing little more than a wish-list of things that we would like the state to do. A more sophisticated approach would be constrained by an empirically-informed understanding of what the state is capable of accomplishing, as demonstrated by its track record over the course of its development. Hence the need for a normative *model* of the welfare state; one that offers a reconstructive account of the normative purposes that are already implicit in the practices of the welfare state.

For the purposes of this paper I focus my attention on views that are widely taken to provide sound justification for the scope and nature of welfare-state activity, held by people who might loosely be described as “friends” of the welfare state.<sup>1</sup> In adopting this approach, I am clearly assuming that certain normative purposes have efficacy – that the nature and scope of welfare state activity is at least in part a consequence of the fact that these activities serve the purposes posited by the model. The relationship could be quite direct (e.g. some significant segment of the population might vote for a political party that supports a particular welfare-state program because they are committed to the moral purpose that it serves), or it could be more attenuated (e.g. a program might be adopted for reasons having nothing to do with a higher moral purpose, but subsequent governments might find it difficult to abolish because the way that it serves this purpose has created a constituency prepared to defend it).

The central problem, as I see it, is that even among the most enthusiastic supporters of the welfare state there are several *different* theoretical reconstructions of the normative commitments that are taken to underlie it, all of which are in tension with one another. In particular, the three normative purposes most commonly cited as providing a justification for the scope of welfare state activity are equality, community, or efficiency.<sup>2</sup> These give rise to a corresponding set of models, which I refer to as the redistributive, the communitarian, and the public-economic models of the welfare state. The first sees the central function of the welfare state to be the redistribution of resources, with the goal of making the outcomes produced by the market economy less unequal. The second considers the

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1] Thus I will be ignoring purely “realist” views, which consider normative vocabulary to be epiphenomenal – at best irrelevant, more often obfuscatory, concealing the true forces underlying the emergence and reproduction of the welfare state. I will also be ignoring normative theories that attach negative valence to the posited purpose – such as those that consider the welfare state to be the expression of purely paternalistic moral concern (i.e. “the nanny state”), or a form of creeping totalitarianism (i.e. “the road to serfdom”).

2] For a clear articulation of the difference between “equality” and “community,” as values, see Cohen 2009.

central function of the welfare state to be that of imposing limits on the scope of the market, in order to resist the commodification of certain domains of interaction. The last model regards the welfare state as playing a role essentially complementary to that of the market. According to this view, the welfare state corrects market failure, either through regulation, subsidization and taxation, or the direct provision of goods and services.

Each of these models has some plausibility, insofar as each provides an intuitively natural account and defense of certain features of the welfare state. Yet when it comes to explaining the major set of welfare-state programs – health, education, and the social safety net – the three models provide accounts that are completely at odds with one another. This has a number of pernicious consequences. Most obviously, normative confusion can lead to a weak or inconsistent defense of these programs in the public political sphere. More troubling, however, is that it can generate confusion in the sphere of public policy, leading to reform efforts that have no chance of success, or resistance to reform based on misguided notions about why the programs are the way they are.

Determining which model provides the more plausible reconstruction presents something of a challenge. As Robert Goodin has observed, there is an enormous range of activities currently undertaken by modern welfare states, and any normative reconstruction will necessarily have to divide these up into ones that are considered essential, or “core,” and ones that are considered peripheral (1988, 5). But since the core activities will simply be the ones that best fit the normative model in question, each model will tend to be self-validating. (This is in part why Goodin adopts the purely prescriptive aim of providing “reasons for welfare,” i.e. arguments that can be given in defense of the welfare state, but not necessarily those that explain its configuration.) There is, however, one aspect of the welfare state that any plausible model should be able to explain, viz. its spectacular growth over the course of the 20th century. Unfortunately, many of the normative models are quite static in their orientation – they seek to explain why the state does what it does, but have no account of how it came to be that way. In particular, they have difficulty explaining the seeming inexorability of welfare-state growth, and in particular, why the political ideology of governing parties has had relatively little impact on this growth trend during the major period of welfare-state expansion (Lindert 2004, 11-15). My objective in this paper is to show that the public-economic model of the welfare state is the most plausible on these grounds. Not only does it provide a superior account of the existing configuration of welfare-state activities, but it alone is able to explain why, in all Western democracies, state spending rose almost continuously over the course of the 20th century as a fraction of GDP.

### I. THE REDISTRIBUTIVE MODEL

The redistributive model is probably closest to what might be considered the received view of the welfare state among political philosophers. The market economy, according to this view, is extremely successful at producing wealth. The problem is that

this wealth winds up being very unequally distributed – or winds up being distributed in a way that violates widely shared intuitions about social justice. Thus the state intervenes, redistributing a certain amount of the wealth, in order to make the overall results of the economy palatable to a sufficiently large number of the people that the system remains stable. There are more or less egalitarian versions of this view, but what they all share in common is the idea that the central defect of the market economy is that it produces distributive outcomes that are in some way unacceptable (either because it creates too much inequality, or because it leaves some segment of the population unable to meet its basic needs, etc.)

This view has a prestigious lineage, from R. H. Tawney (1931) and Harold Wilensky (1975) to John Rawls (1999) and Ronald Dworkin (2000). In the background one can see the influence of Marx, with his insistence that distributive conflict – class conflict – is the central fault line in the capitalist mode of production, and that the pacification of this conflict is the central reason for the existence of the state. Indeed, before the triumph of “liberal egalitarian” theories in the 1980s, the dominant tendency was to regard “the welfare state compromise” as largely a concession in the direction of greater equality, on the part of a bourgeoisie seeking to stave off the threat of revolution from a restless working class. According to this view, the true interests of the proletariat lie in the creation of a classless society. The bourgeoisie, knowing this, have an incentive to “buy off” or “co-opt” segments of the working class, by providing them with enough of a payoff to motivate them to defend the existing order. This leads to the emergence of the welfare state: the bourgeoisie agrees to tolerate some seizure and redistribution of its wealth, while the working class agrees to tolerate ongoing exploitation and alienation, in return for the satisfactions of the consumer lifestyle. The state then winds up committed to a range of economic – in the broadest sense of the term – activities:

1. The working class must be given enough of a stake in the existing order that its members come to regard any sort of radical economic reform or seizure of property as an undesirable risk. This is achieved mainly through transfer payments (with perhaps state pension benefits being the best example), funded through a progressive income tax (O’Connor, 1971).
2. The state transfers just enough resources to those *outside* the labor-market (through welfare, workers’ compensation, health care, subsidized tuition, etc.) to forestall any sort of radical political action on the part of those actors. As a result, the centrality of the market in determining the fate and fortune of individuals becomes more tolerable, and the radicalization of women, students, the disabled and the unemployed is forestalled (Piven and Cloward 1971, xiii).
3. The rate of exploitation must be limited, in order not to motivate radical resistance to the corporate system on the part of the population. Thus the state engages in regulation, and sometimes ownership, of natural monopolies. The state also imposes consumer protection, environmental, workplace safety, and similar forms of legislation, in order to protect the public from some of the sharper edges of marketplace competition.

4. Finally, there is the post-Keynesian idea that the state must engage in various forms of demand management, in order to maintain the stability of the system in the face of endogenous crisis tendencies. Without constant growth, the (moderately) positive-sum character of the economy becomes zero-sum, which then exacerbates all forms of latent distributive conflict. (For example, during the cold war, it was often claimed that the state engaged in wasteful military expenditure in order to keep the economic pump primed, and that this was ultimately motivated by a need to pacify class conflict [e.g. Habermas (1975, 35)].)

The Marxian version of the model focuses very much on the interests of the parties involved, and tends to assume therefore that the bourgeoisie, through the medium of the welfare state, accepts the minimum level of redistribution needed to stabilize the capitalist system. The model is, of course, still organized around a conception of social justice – viz. the ideal of a classless society – it simply does not regard the welfare state as the *embodiment* of that ideal, but treats it rather as a *concession* in the direction of that ideal, adopted for largely prudential reasons on the part of the ruling class.<sup>3</sup>

There are, however, a variety of more moralized versions of this model, which share the focus on redistribution as the central activity of the welfare state, but claim that the objective of this redistribution is not merely to modify individual incentives in such a way as to preserve the stability of the system, but rather to satisfy a moral criterion required for political legitimacy. “Liberal egalitarian” views, in particular, consider the welfare state to be the institutional embodiment of a particular conception of justice along these lines (e.g. Dworkin 2000, 102-4).

The most persuasive foundation for this view can be found John Rawls’s work, particularly in his analysis of society as a “cooperative venture for mutual advantage.” According to Rawls, any such system of cooperation “is typically marked by a conflict as well as by an identity of interests” (1999, 4). This leads naturally to the suggestion that a theory of justice should contain two principles: first, an efficiency principle, which ranks the various possible social arrangements along the “common interest” axis, and second, a principle of distribution, which ranks the arrangements along the “conflict of interest” axis. This is complemented by the widespread intuition that, all things being equal, we should seek to *maximize* efficiency while *equalizing* with respect to distribution. The follow-up suggestion, which many people find irresistible, is that the market and the state are the institutional embodiment of these two different principles: that the market promotes efficiency, while the state renders the entire arrangement more equal, by reallocating initial endowments and adjusting final outcomes (in order to maintain what Rawls called “background justice,” which in turn confers a presumption of legitimacy upon all private contractual arrangements entered into by individuals). Thus the normative “logic” of the state is completely different from the “logic” of the market.

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3] One can find a recent, particularly stark – although non-Marxian – formulation of this claim in Daron Acemoglu and James A. Robinson 2006, 23-31.

The most obvious evidence that supporters of this view can point to is the progressivity of the income tax system, combined with the fact that this progressivity is typically justified through appeal to some notion of “fairness.” The benefits that are then provided using this tax revenue are either available to all citizens equally (roads, postal service, national broadcasting, policing and fire services, public education, national defense, etc.), available in a way that is progressive with respect to income (welfare, unemployment and workers’ compensation), or else targeted at those who are subject to some disadvantage (health care, pensions, etc.). Ability to pay is almost never a criterion for the receipt of government services. The net result is a dramatic enhancement in the achieved level of distributive justice (e.g. because the state promotes greater equality among citizens, or because it sets a “social minimum” below which no individual is allowed to fall).

Finally, it should be noted that the so-called “rent-seeking” model of the welfare state is actually a variant on this view, insofar as it regards the power of the state to achieve redistributive transfers as its most important characteristic (Tullock 1981, 904-6). It is, of course, not a “normative model” of the welfare state in the sense that I have been using the term, since it encourages a view of the welfare state as a parasitic accretion on the otherwise healthy market economy. I mention it, however, because it shares with the social justice perspective an understanding of the welfare state as primarily redistributive in function, and has therefore tended to enhance the plausibility of the idea that the “logic” of the state is different from that of the market. The central characteristic of the state, on this view, is that it has the power to impose transactions on private parties. Thus the two views share an understanding of the primary institutional characteristic of the state, the disagreement arises only at the normative level: is the redistribution that goes on mainly good or mainly bad?

## II. THE COMMUNITARIAN MODEL

According to the redistributive model, the economic role of the welfare state is organized around a set of core tasks that are fundamentally *different* from those that are carried out by the market. While the private sector produces, and is therefore concerned with efficiency, government redistributes, and is therefore concerned with equality. The most obvious difficulty with this view is that the state does many things that do not appear to be redistributive, and which seem in fact to be quite productive. States in various parts of the world own and operate oil companies, universities, police forces, hospitals, automobile insurance schemes, airlines, nuclear power plants, railroads, statistics bureaus, liquor stores, along with literally hundreds of other departments, bureaus, enterprises and agencies, all of which have employees doing work that is productive, and in many cases not all that different from what similarly situated employees in the private sector are doing. (Compare the case of a police officer patrolling the streets to a private security guard sitting at the front desk of a condominium or office tower [Heath 2008, 87-88].) Thus many theorists feel the need to provide some explanation for why the state is engaged in

the provision of so many goods and services. If the goal was merely redistributive, this could be achieved more efficiently through the economist's preferred method of taxation and cash redistribution; it is not necessary to have the state actually deliver the goods. Furthermore, state provision in certain cases has regressive consequences (such as subsidized higher education, where the benefits flow disproportionately to those in the upper-middle and upper classes), and so cannot be motivated entirely by distributive concerns.

One particularly prominent response to this line of criticism has been to suggest that the state is engaged in producing these goods and services out of a desire to impose limits on the scope of the market. This is why it is important that the state provide the goods, and not merely finance their provision through, for example, a voucher or transfer scheme. Michael Walzer (1983) has provided perhaps the most rigorous defense of this view, arguing that basic human needs should be satisfied through communal provision, in which everyone is guaranteed a share. The moral imperative to ensure the satisfaction of needs has the effect of blocking the "free exchange" (89) of the goods that satisfy them. Thus "needed goods are not commodities" (90) – or more precisely, they ought not be treated as such. The reason for communal provision, in Walzer's view, is not that it achieves greater equality. He states quite clearly that, although communal provision is likely to have distributive consequences, it is not *justified* through appeal to any particular conception of distributive justice (85). What determines the question of whether a particular economic activity should be discharged by the private or the public sector, according to this perspective, is whether commodification of that good or service is morally permissible.

I refer to this as the "communitarian" model of the welfare state.<sup>4</sup> The central idea, as Michael Sandel articulates it, is that "certain moral and civic goods are diminished or corrupted if bought and sold for money" (1998, 94), and should therefore be provided by the state. In this way, the central function of the welfare state is to impose "moral limits on markets." It is able to do so because it constitutes a *nonmarket* institution capable of producing and delivering particular goods and services. Thus its function, as Goodin describes it, is "to supplant ordinary market mechanisms for certain limited purposes" (1988, 27). Consider the following, fairly typical articulation of this view (presented by Joel Bakan in his book *The Corporation*):

The twentieth century was unique in modern history for the widely held belief that democracy required governments to protect citizens' social rights and meet their fundamental needs. Essential public interests, and social domains believed to be too precious, vulnerable, or morally sacred to subject to corporate exploitation, were inscribed by law and public policy within protective boundaries. Human beings could not be owned and children could not be exploited, either as workers or as consumers. Institutions essential to human health and survival (such as water

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4] There is some risk of confusion here, since Goodin uses the term "communitarian" in a different way (1988, 70). I might have referred to it as the "anticommodification" model instead, although that makes it sound less attractive.

utilities and health and welfare services), human progress and development (such as schools, universities, and cultural institutions), and public safety (such as police, courts, prisons, and firefighters), were deliberately placed beyond the corporation's exploitative grasp, as were precious natural domains, which were turned into parks and nature reserves (2004, 112-13).

Note the analogy to slavery contracts and child labor. The issue is not one of distributive justice, or of welfare *per se*. The standard view of slavery contracts is that they are prohibited, regardless of how much benefit both parties might derive from them, on the grounds that they are incompatible with human dignity. Or consider the case of organs for transplant. There is widespread agreement that the sale and purchase of human organs should be prohibited, not just because of the problematic incentive effects of such a market, but because treating parts of the living human body as commodities constitutes an affront to the dignity of the person. The moral stigma associated with buying and selling has very deep roots (recall Immanuel Kant's contrast between things that have a *price* and those that have *dignity* [1785 (1990), 51-52]).

The communitarian understanding of the welfare state is essentially an application of this moral intuition to the distinction between public and private sectors. One can see it quite clearly in the extension of rights discourse to include "social rights" (Marshall 1950). The most prominent line of defense of traditional negative liberties is that they are central to the dignity of the individual – that freedom of conscience, freedom of association and freedom of speech are preconditions for the exercise of our rational faculties. Many theorists have been inclined to extend this list to include the material conditions necessary for the exercise of these same faculties: food, shelter, clothing, and medical care, and to argue therefore that the core set of entitlement programs run by the welfare state should instead be understood as the articulation of a set of social rights possessed by the individual, the denial of which constitutes an affront to the dignity or autonomy of the person (Braybrooke 1987; Anderson 1993, 143-44; Copp 1998, 126; Hamilton 2003), or which undermine the values of democratic citizenship (Sandel 1998, 119).

As with the redistributive model, there are some "paradigm cases" where this intuition is quite plausible. In the case of police services, for instance, there is a very strong intuition that provision should occur entirely outside "the cash nexus." Not only is there an egalitarian intuition, which says that all citizens should be afforded equal protection, there is also what one might call the "anticommodification intuition," which says that the relevant service should not be charged for. Even if everyone had the ability to pay, it seems preposterous to suggest that people should be billed for calling the police in cases where they are assaulted or their property is stolen. Indeed, the ubiquitous police slogan, "to serve and to protect," is intended to suggest that officers are motivated by a sense of duty, rather than some lowly pecuniary interest.

Yet despite some clear cases such as this, the extension of the same intuition to other domains quickly becomes problematic. Insofar as there is a cogent defense of the communitarian view, the strongest argument no doubt hinges on the observation that

welfare-state benefits are typically provided in-kind, and that citizens are not entitled to “cash them in” for something else. This is a feature of the system that appears most incompatible with the liberal egalitarian distributive justice view (Satz 2010, 76). For example, a person cannot renounce his or her right to government health insurance in return for a one-time cash payment (even though this would not be difficult to administer in many jurisdictions with socialized medicine). The food stamp program in the United States takes this even further – beneficiaries of the program are typically cut off if they are caught trying to exchange these stamps for cash or other non-food items. One way of interpreting this is simply as paternalism (in the case of food stamps, for instance, a central objective is to stop people from purchasing alcohol). Another interpretation, central to the communitarian view, is that non-fungibility is central to the logic of state provision, and that this sort of “cashing in” is morally odious, comparable to a transaction on the “black market” for transplant organs.

It should be noted that, in the realm of political debate, this normative model of the welfare state is usually based upon fairly brute moral intuitions about which things should and should not be bought and sold. When the issue is pressed, the specter of people being denied access to the service because of an inability to pay is often invoked. Yet this confuses the issue of commodification with that of distributive justice. The communitarian is committed to the view that certain things should not be provided on a commercial basis even if everyone could afford them. Thus the question “what’s so bad about commodification?” (or perhaps “what’s so abhorrent, such that the state must control entire sectors of the economy?”) becomes extremely pressing.

Although several political philosophers have offered sophisticated responses to this question (see discussion in Satz, 2010), the standard argument in the public political sphere simply taps into a general unease with the role that pecuniary motives play in the private sector (either with respect to the profit orientation of corporations or the role that self-interest plays in motivating individual economic actors). The thought is that the public sector is able to neutralize these incentives: first, because the state as a whole is non-profit, and is explicitly committed to promoting the public interest, and second, because of an organizational culture, sometimes referred to as the “public sector ethos,” that encourages dedication to the public interest on the part of public-sector employees. Here is Walzer again:

Needed goods cannot be left to the whim, or distributed in the interest, of some powerful group of owners or practitioners. Most often, ownership is abolished, and practitioners are effectively conscripted or, at least, “signed up” in the public service. They serve for the sake of the social need and not, or not simply, for their own sake: thus, priests for the sake of eternal life, soldiers for the sake of national defense, public school teachers for the sake of their pupils’ education. Priests act wrongly if they sell salvation; soldiers, if they set up as mercenaries; teachers, if they cater to the children of the wealthy (1983, 89-90).

Thus the issue, for communitarians, often comes down to one of motive. In its crudest form, individuals in the private sector are regarded as acting egoistically, while those in the public sector are thought to act altruistically. The scope of the welfare state is determined by moral abhorrence at the thought that the provision of essential needs should be instrumentalized and subjected to the corrupting influence of ultimately self-interested actors.

### III. EXCURSUS ON “BASIC NEEDS”

There has been considerable discussion in the philosophical literature about the role that the welfare state plays in securing the “basic needs” of citizens, and of the justificatory role that the concept of “need” can play in defending state provision of certain goods and services. (Frankfurt, 1984; Thompson, 1987; Braybrooke, 1998; Goodin, 1998) I have not, however, chosen to treat the “basic needs” framework as a distinct normative model of the welfare state, simply because it is not usually presented as a stand-alone argument, but is typically an indirect way of presenting one of the other normative models. Indeed, Goodin has shown very effectively that there is no stand-alone link between the concept of basic need and that of state provision, such that the former necessitates the latter. (1998, 27-50) State provision of basic needs, in-kind, is usually endorsed because it serves to promote greater equality or community.

*Prima facie* the basic needs framework lends itself to a communitarian reading. Goods are provided in-kind because the alternative, of giving people money and letting them purchase what they need, is morally prohibited. It is also sometimes felt that, before individuals can enter into the market on an equal footing, they must first be autonomous, but in order to secure this autonomy their basic needs must be met. (Panitch 2008, 177) Thus basic needs cannot be commodified because the type of instrumental interpersonal relations associated with the commodity form only become permissible once basic needs are met. There are, however, many reasons why someone who is concerned primarily with distributive justice might also think that the state should be in the business of providing for basic needs in-kind. First of all, it is important to recognize that a concern over distributive justice and even a commitment to the principle of equality often interacts with other normative commitments (or practical considerations) in such a way as to produce a commitment to “prioritarianism” (give greater weight to the welfare of the worst-off) or “sufficientarianism” (raise everyone to a certain minimum threshold) at the political level. (White, 2003) Rawls, for instance, was concerned to maximize the welfare of the worst-off representative individual. Philip van Parijs moves from egalitarian premises to a commitment to ensuring that no one is “dominated” in his or her endowment. (1995, 72-76) Elizabeth Anderson derives a commitment to meeting basic needs out of combined concern for equality and a certain form of neutrality. (1999, 317-18) Thus the desire to ensure a “social minimum” is a natural consequence of a very wide range of views on distributive justice, even those that might superficially seem committed to a

more strictly egalitarian outcome. A plausible specification of this social minimum is the point at which the basic needs of individuals are satisfied. Thus there is nothing odd about egalitarians focusing on basic needs, the only real question is where the commitment to in-kind provision comes from. Here there are several responses available. The first is simply a paternalistic concern that the beneficiaries of a transfer not spend it unwisely. The second is a concern about the incentive effects of tax-and-transfer schemes, and therefore a desire to isolate certain goods from the market so that they can be distributed more equally. (Tobin 1970, 264-65) Either way, the basic needs framework is simply a way of articulating what amounts to an egalitarian concern.

#### IV. THE PUBLIC GOODS MODEL

This brings us finally to what is often called the “public economic” or “public goods” view of the welfare state, according to which the basic role of the state is to resolve collective action problems. The “classical liberal” state creates the market economy through the institution of property rights and civil contract. The “welfare state” then emerges in those areas where liberal markets fail to produce optimal outcomes. This can take the form of regulatory agencies (in cases where the rules of marketplace competition need to be adjusted), state-owned enterprises (typically in sectors where efficient competition cannot be organized), and public services (in cases where a system of effective property rights cannot be instituted, or where the transaction costs associated with a system of voluntary exchange would be prohibitive). According to this view, the welfare state essentially does the same thing as the market – both are in the business of enabling mutually beneficial forms of cooperation to emerge – it merely organizes the transactions under somewhat different terms (Stiglitz, 1989; Barr 1998, 68-85). There is another reason this view is referred to as the “economic” model of the welfare state, which is that it is almost universally subscribed to by economists, yet receives only tepid endorsement from theorists in other disciplines.<sup>5</sup> Political philosophers are not particularly enthusiastic about it for two reasons. First of all, the general objective of resolving collective action problems is often articulated in terms of a commitment to promoting “Pareto efficiency.” Efficiency was for a long time touted by the economics profession as a purely technical, value-free standard for measuring the performance of economic systems, not as a moral principle.<sup>6</sup> This is rather self-evidently false, as Rawls and others took some pains to show (Rawls 1999, 59-63). Nevertheless, there is still a residual sense that Pareto efficiency is

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5] Indeed, the neglect of this view among political philosophers is rather striking. Daniel Schapiro, for instance, in a survey of the literature, identifies three principles that are usually appealed to in defense of the welfare state: equality, basic needs, and community (2007, 32). Efficiency does not appear on the list.

6] As my undergraduate economics textbook stated (approvingly), back in 1988, “Because it is possible to talk about efficient and inefficient allocations, but not about better or worse distributions of income without introducing normative considerations, much of economics concerns efficiency and neglects effects on the distribution of income.” (Lipsey, Purvis, and Steiner 1988, 478)

simply not “moral enough” to count as the core of an acceptable normative model of the welfare state. Goodin, for instance, adopts a very common way of speaking when he presents an invidious contrast between “*unfairness*” and “*mere inefficiency*” (1998, 170). He makes it clear that he considers the former a much more serious matter, from the moral point of view, than the latter. Yet it is not obvious that this should be so. The Pareto principle states that the transition from one social state to another constitutes an improvement if it does not make anyone worse off and makes at least one person better off. There are a variety of more “moralizing” ways of redescribing this. For example, violations of the Pareto principle create outcomes in which at least one person is made worse off, without anyone else receiving any sort of benefit. We might refer to this as “*gratuitous suffering*.” One way of formulating the Pareto principle would therefore be to say that it recommends the elimination of gratuitous suffering. From this perspective, inefficiency seems much worse than “*mere inequality*.” With redistributive transfers, even regressive ones, the loss to one individual is at least offset by the gain to some other. It is a win-lose transformation. Inefficient outcomes, on the other hand, are lose-lose. Thus inequality has a silver lining; inefficiency has none (Davis 1998, 65). The second barrier to the more widespread endorsement of the economic model of the welfare state is that it is often identified with view that the state should provide “*public goods*” in the very narrow sense that Paul Samuelson used that term (viz. goods that are “*nonrival*” and “*nonexcludable*” [1954]). Samuelson’s adoption of this definition, however, was driven by his desire to provide what he called a “*pure theory*,” it was not intended as a realistic description of what states actually do. Rightly so, because there are almost no public goods in the sense in which Samuelson used the term, and providing such goods constitutes an almost imperceptibly slight component of the actual activities of the welfare state. Samuelson’s influential formulation, however, has made it difficult to appreciate the generality of the “*market failures*” perspective, and how it can provide a unifying explanation for a superficially heterogeneous set of state activities. A better framework for understanding the economic theory of the welfare state is the transaction cost perspective, developed by Ronald Coase (1937) and further refined by Oliver Williamson (1985). This analysis begins by positing two elementary institutional forms that can be used to organize “*transactions*,” understood here as cooperative interactions between two or more individuals. There are markets, or more generally, private contracts, and there are hierarchies, or interactions governed by an authority. The benefits of these transactions take the form of collective action problems that are resolved. Thus, for example, two parties are able to achieve the advantages that stem from a division of labor if they are able to institute an orderly system of property rights and contract, which will permit them to exchange the fruits of this labor. They can achieve the same advantages in a “*command and control*” system if a superior authority assigns them each a specialized task, then distributes the goods that are produced. Coase initially drew this distinction in order to explain the success of corporations within the market economy. “*Outside the firm*,” he observed, “*price movements direct production*, which is co-ordinated through a series of exchange transactions on the market. Within a

firm, these market transactions are eliminated and in place of the complicated market structure is substituted the entrepreneur-co-ordinator, who directs production” (1937, 388). The reason this arrangement makes sense is that, although each different mode of organization generates transaction costs, these costs differ depending upon the nature of the transaction. Sometimes markets have the advantage, other times hierarchies do. When firms are able to purchase generic inputs from suppliers, for instance, it is fairly easy to organize a competitive market, and so the transaction costs associated with the market form of organization will be relatively low. When firms try to purchase highly specialized inputs, production of which would require suppliers to make asset-specific investments (e.g. purchase of specialized equipment), they set themselves up as potential monopsonists (Williamson 1985, 32-35). This raises the cost of market transactions (a cost that includes the potential deadweight losses associated with suppliers not being willing to make such investments). Under these circumstances, it may make sense for the firm to produce these inputs “in-house,” or to take over the supplier and then simply direct its managers to make the needed investments. One way of describing this theory would be to call it a “market failures” theory of the firm (Shipman 1999, 290). Hierarchies are generally an inefficient way to organize production. Markets are often better. However, sometimes markets fail, in the sense that they do not correct all collective action problems. Of course, if the benchmark is Pareto-optimality, then markets always fail (because there are always transaction costs). What matters for practical purposes is that this failure is sometimes so egregious that it is possible to achieve a better outcome using a hierarchy to organize the transaction. Thus hierarchical organizations, like the corporation, succeed in precisely the areas where markets fail (and conversely, markets succeed in precisely the areas where hierarchies fail, because it is all about the *relative* effectiveness of different organizational forms). There are a variety of causes of market failure, but the four most important are incompleteness in the system of property rights (and hence the presence of externalities, both positive and negative), information asymmetries (and hence principal-agent, moral hazard and adverse selection problems), economies of scale (and hence varying degrees of imperfect competition), and finally difficulties in drawing up and enforcing contracts. Corporations are able to resolve some but not all of these problems. Their central limitation is that, while they can exercise great power over their members, ultimately they are voluntary organizations. This means that there are certain sorts of free rider problem that they will be unable to resolve. What distinguishes the state, in this context, is that it is the only organization in society that has the ability to impose its authority on anyone found within the scope of its territory. (This is a variation on Max Weber’s definition of the state as the agency “that (successfully) claims the monopoly of the legitimate use of physical force within a given territory” [Weber 2004, 33]. Joseph Stiglitz articulates this idea by saying that membership in the state is “universal” and “compulsory” [1989, 21] within the scope of its territory.) This characteristic – and this characteristic alone – gives the state a unique role to play in the economy, because it gives it the capacity to organize *certain* transactions in a way that will be much less costly than voluntary contracting, whether it

be on the market or within a firm. Of course, in the case of voluntary transactions, there is a strong presumption that the transaction will be efficiency-promoting for the parties involved (otherwise why would they agree to it?). In the case of state-imposed transactions, on the other hand, there is no such presumption. And indeed, state power can be used to effect redistributions, as proponents of the egalitarian model of the welfare state correctly observe. None of this changes the fact, however, that the state can use its authority to coerce free riders, and thereby eliminate some of the more recalcitrant collective action problems, in ways that have significantly lower transaction costs than any private remedy.

The economic model of the welfare state should therefore be interpreted as the view that the state should strive to resolve collective action problems in cases where it can do so more efficiently than other institutional forms. This analysis has considerable explanatory power, providing an intuitively natural account of at least the following set of state activities:

1. Control of natural monopolies. In cases where it is inefficient to have more than one supplier of a particular service (typically because of economies of scale or network externalities), then private markets will not be competitive. Examples include roads, sewers, ports and electricity distribution grids. The state can avoid the social costs associated with monopoly pricing either by assuming ownership of the supplier, or by regulating it (in particular, controlling the prices it can charge). It is important, in this context, to realize that the state sometimes has limited power to control its own managers (as Stiglitz [1989] observes). Because of this, regulated private ownership sometimes translates into more effective state control.
2. Control of imperfections in existing markets. The state takes a very active role discouraging production of negative externalities and encouraging the production of positive ones. This involves regulation of existing markets (e.g. banning leaded gasoline, imposing food safety requirements, regulating pharmaceutical products, etc.), imposing Pigovian taxes (e.g. carbon taxes), and subsidizing activities that produce useful spillover effects (e.g. education, public transit, scientific research, vaccination, weather forecasting, etc.). The provision of free or subsidized public education is probably the most significant program undertaken under this rubric. Beyond externalities, the state also tries to limit information asymmetries, particularly between producers and consumers (by imposing product warranties, regulating advertising, etc.).
3. Public provision. When the private sector is left to its own devices, many markets will simply be “missing,” in the sense that particular goods or services will not be provided at all (or not in particular areas, not to particular consumers, etc.), despite the presence of consumers who would be, in principle, willing to pay for them, and producers who would be, in principle, willing to provide them. In this case, the state can achieve efficiency gains by imposing taxes or fees, then using the revenue to provide these missing goods. Examples include pest control, national defense and certain types of police services, along with various types of insurance. Also, although public provision is the norm, there are cases where a private firm does the providing (e.g. prisons, military aircraft, mercenaries), in which case the state acts like a “market maker” in the private sector – raising revenue on one side, then making the (collective) purchase on the other. Finally, it should be

noted that the state sometimes opts for public ownership with the goal of controlling externalities – ownership of nuclear power plants and liquor stores is a good example.

4. Social safety net. A set of welfare-state programs, including health care, old-age pensions, unemployment insurance and welfare are often grouped together and referred to as “the social safety net”. These are often described as “transfer programs,” which is potentially misleading, since they could just as easily be described as universal, state-run insurance programs (Moss, 2002). This is particularly obvious in the case of “single-payer” health care systems, where health care *provision* remains primarily private, but the state exercises a monopoly in the market for health *insurance*. It is also sometimes forgotten that both life annuities and defined benefit pension schemes are both essentially insurance products, and that most state-run pension schemes amount to the provision of this type of insurance on a national scale. The social safety net is, from this perspective, just a special instance of state provision in the face of missing or inefficient private markets. It merits its own heading, however, because it is often misclassified as a redistributive transfer scheme, rather than a risk-pooling arrangement.

The previous four points are what might be thought of as “bread and butter” public economics claims. There are a couple of other ways, however, in which the state can use its organizational resources to resolve collective action problems, which have received considerably less discussion:

5. Minority public goods. The most important “public goods” – in the non-Samuelson sense of the term – that the welfare state delivers are ones that benefit pretty much everyone in the society. There are certain goods, however, which stand to benefit only a relatively small number of people, but where the group is difficult to identify and for various reasons is unlikely to self-identify (Davis 1998, 83-84). Examples would include hosting the Olympics and sponsoring athletes, having national parks, funding art galleries, and promoting cultural heritage events. Partisans of state involvement often try to posit subtle externality effects that enhance the welfare of those who are not the primary beneficiaries of these subsidies, in order to defend against the charge of rent-seeking. A more forthright defense would simply be to admit that the state is catering to a minority taste in these cases – a taste that would otherwise not be satisfied, because of contracting problems among private parties – but that because the state caters to a very wide range of such minority tastes over time, everyone is likely to benefit at some point from some such activity. Thus the overall activity of “providing minority public goods” can be seen as a public good (Miller 2004, 142).

6. Governance failures. When discussing “markets and hierarchies” in the private sector there is a strong tendency to equate “hierarchies” with “corporations.” Private hierarchies are, however, organized under a surprisingly large number of governance structures. There are, of course, different types of corporations (most importantly, partnerships and limited liability corporations). There are also different types of cooperatives, along with “special purpose” corporate forms, such as condominiums, which are essentially consumer cooperatives. And finally there are non-profits. Part of the reason for this proliferation of governance structures is that the standard business corporation is sometimes not the most efficient *ownership structure* for a particular economic activity. (Hansmann, 1996) This is why certain types of economic activity are often undertaken by cooperatives (e.g.

insurance) and non-profits (e.g. universities, daycares). In many cases, however, state intervention is required in order to guarantee adequate levels of supply. This is particularly so in the case of non-profits, where private individuals typically lack any economic incentive to create them, but where, once created, they are able to resolve certain collective action problems caused by the governance structure of investor-owned firms.

These examples are intended to show that the characterization of the public-economic model that one finds in the literature is often too narrow, especially when it takes the Samuelson definition of public goods as its point of departure. When presented in its full generality, using a transaction-cost analysis, it is an exceedingly robust theory, in that it provides a unified account of regulation, state ownership and the social safety net.

## V. ASSESSING THE MODELS

All three of these normative models are “reconstructive,” in Jürgen Habermas’s sense of the term (1996, 287), in that they try to articulate the norms and ideals that are implicit and play a structuring role in our practices. Thus the standard by which they should be assessed is that of expressive adequacy:

1. With respect to the major set of welfare state programs and activities, to what extent can the activities plausibly be described as serving the posited normative purpose?
2. Can a plausible story be told about the efficacy of these normative concerns, in leading to the emergence of the relevant institutional forms?
3. Does the model create the conditions for what Charles Taylor calls a more “clairvoyant” practice (1985, 111), i.e. does it enhance our normative self-understanding in a way that would allow us to more effectively achieve the goals that are implicit in our practices?

### *5.1 Problems with the communitarian model*

As I have already suggested, the communitarian model is the weakest from this perspective, since it is not able to describe or capture much of the fine grain of how the welfare state works. For example, from the mere fact that a particular good is, as Bakan puts it, “too precious, vulnerable, or morally sacred” (2004, 112) to be subject to commercial exchange, not much seems to follow about the way it should be provided or consumed. One can see the problem quite clearly in the quotation from Walzer, cited above, where he lists a set of professionals who, in his view, are prohibited from engaging in market contracting for their services. Priests are supposed to work “for the sake of eternal life,” which prohibits them from “selling salvation” (1983, 90). Yet for some reason this does not require that they be employed in the public sector. Indeed, the only consequence that the focus on salvation seems to have is that priests must be paid flat salaries, rather than working on a fee-for-service basis. Soldiers, on the other hand, are obliged to work in the public sector. If they work in the private sector, even on flat salaries, they become “mercenaries” and

are condemned. With teachers, on the other hand, there is no prohibition on working in the private sector, or even on a fee-for-service basis (presumably tutoring is permitted). Walzer's only constraint is that public school teachers must not confine their attention to "the children of the wealthy" (1983, 90).<sup>7</sup>

One can see from the capriciousness of these strictures that Walzer is not really working out the consequences of his model, but is taking existing arrangements and providing a rationale for them. The problem is that the moral considerations he adduces are too vague to justify the specific arrangements that prevail, and which he appears to endorse. This is a common feature of communitarian thinking about the welfare state. For example, Maude Barlow and Tony Clarke have written and campaigned extensively against the commodification of water resources. Their central argument for keeping it in "the commons" is that it is "essential to life," and therefore is not just a "need" but a fundamental human "right" (Barlow and Clarke, 2002, 79-81). This requires that water be publicly owned, and that it be provided to all, without charge, by the public sector. Thus they vigorously oppose the privatization of water services, and in cases where it has been privatized, they call for nationalization. Yet this opposition extends only to water that is delivered to the home through pipes. When it comes to the bottled water industry, they express concern about environmental impact but do not call for nationalization. Why not? If water is sacred, then it should be sacred regardless of whether it comes in a pipe or a bottle. A market failures theory is able to explain the difference quite easily – it's not about the water, it's about the *distribution system*. Water pipes are a natural monopoly, which is why they should be owned by the state. Water bottles are not, and so, despite the various other public policy issues that they raise, there is no case for public ownership.<sup>8</sup>

Another aspect of the "fine grain" that the communitarian model has difficulty accommodating is the prevalence of purchaser-provider splits in the delivery of public goods and services. Indeed, communitarians routinely conflate two quite distinct claims: first, that the provision of a particular good should be publicly *funded* (guaranteeing, inter alia, that access will not be limited to those with the ability to pay), and second, that a particular good should be publicly *provided* (which is to say, provided by employees of the state). When Walzer talks about a moral imperative to "abolish the market" for a particular good he assumes that the two must go together. In his discussion of health care, for example, he claims that the requirement that health care be allocated in accordance with need "can

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7] There is actually some ambiguity in his phrasing, such that it is not clear if he intends to prohibit all teachers from educating only the children of the wealthy, or just teachers who work in the public sector. The fact that Walzer spent his career teaching at Harvard and Princeton suggests that it cannot be the former. It is also possible that by public school he means grade-school, and so excludes himself and other university professors from the constraint.

8] Similarly, Barlow and Clarke raise no objection to the installation of water meters in private homes, so that individuals can be charged for the amount of water that they consume, rather than receiving it as a public good (financed through taxation). Most people on the left support such measures – for environmental reasons – despite the fact that it represents an important step in the direction of "commodification" of water. Again, it suggests that the concern is really about the distribution system, not the actual good.

be fulfilled only by turning physicians, or some substantial number of them, into public physicians... and by abolishing or constraining the market in medical care” (1983, 88). Yet apart from the U.K., this is not the typical welfare-state arrangement. Most public health care systems guarantee universal access by ensuring that care is publicly *funded* (through state-owned or regulated insurance schemes and grants to hospitals), but then rely upon the private sector (both for-profit and non-profit), in varying degrees, to provide the health care. Similarly, roads, government buildings, military hardware, and increasingly services such as garbage collection, are paid for by the government, but supplied by private contractors. Even more common are arrangements in which goods are provided by public sector employees, but are paid for privately by consumers. Prominent examples include (in many jurisdictions) postal service, electricity, natural gas, automobile insurance and, of course, water.

Again, this is an element of detail that can be explained quite easily from a market failures perspective. In many cases, the conditions that create the market failure will occur on only one *side* of the market: either the supply side or the demand side. Public provision with private purchase is an attractive arrangement when the failure is primarily on the supply side (e.g. natural monopoly); private provision and public purchase is attractive when the failure is on the demand side (e.g. non-excludability); and, of course, public purchase combined with public provision is best when the market is compromised on both sides. In principle, the communitarian model could provide an account that mirrored this one, focusing on which side of a transaction was morally odious. For example, Walzer’s central preoccupation is typically on the demand side, given that his usual objection to the market is that it is wrong for certain goods to be distributed in accordance with “ability to pay.” This could generate an argument for public purchase combined with private provision. Bakan, on the other hand, is more concerned with supply side considerations, believing that it is immoral for certain goods to be “subject to corporate exploitation” (2004, 112). Here one might imagine circumstances in which it was wrong to make money from selling something, but there was nothing particularly wrong with buying it, which might in turn justify an arrangement involving public provision combined with private purchase. A communitarian theory that developed a more nuanced account of why certain exchanges are prohibited – one that distinguished between supply side and demand side issues – might then be able to supply a more robust account of existing welfare-state arrangements.

This does, however, raise an interesting question, which is why – factoring out egalitarian concerns about distribution and ability to pay – communitarians consider state provision less odious than private provision. Part of the answer lies in the fact that the communitarian model, unlike either the redistributive or the public goods perspective, places great stock in the “public sector ethos” (Davis 1998, 36-41) What makes the state distinctive, according to this view, is not just that it has superior powers of coercion (to redistribute, or to resolve collective action problems), but that its agents act on the basis of a different sort of *motivation*. Private corporations are motivated by profits, which

means that they can be expected to take advantage of consumers whenever they can. The state, on the other hand, is motivated by the public interest, and so is thought to be more trustworthy in dealing with morally sensitive transactions (e.g. when one party is particularly vulnerable, or where the production of negative externalities is a concern).

This argument must be handled carefully, in order to avoid the temptation to assume that, because corporations are trying to maximize profits, the individuals they employ must be motivated by self-interest, whereas in the public sector, where the primary concern is the public interest, civil servants are more likely to act altruistically. Both private corporations and the state are large bureaucratic organizations, whose employees are motivated by a very similar mixture of self-interest and moral constraint. Furthermore, no bureaucratic organization could function at all if its members acted in a purely self-interested fashion; it would fall victim to insuperable agency problems (Buchanan, 1996). Thus every organization, private or public, must be able to elicit a degree of cooperative behavior from its employees. In order to do so, it will typically use a combination of incentives and moral suasion. The latter often takes the form of an appeal to “shared values” or an organizational mission, such as customer service, shareholder value, respect for the taxpayer, etc. Probably the best way of understanding the public sector ethos is to see it as a set of values appealed to in the public sector, whose primary function is to overcome the agency problems that develop within *any* bureaucratic organization. As such, it is not fundamentally different from the sort of corporate culture that is cultivated in the private sector, it simply appeals to different motivational resources (e.g., the state can use nationalism to motivate its employees in a way that the private sector typically cannot).

Much more problematic, however, is the view that the public sector ethos gives the state distinct organizational capabilities, allowing it to achieve objectives that the private sector is unable to achieve, entirely because of its ability to elicit a greater degree of intrinsic, pro-social motivation from its employees. There are no doubt some highly specific instances in which this is true – the administration of criminal justice is probably the best example. Here it is essential to the proper functioning of the system that officers of the court be motivated by non-pecuniary concerns. Privatization of the system simply wouldn’t work, not because competitive markets couldn’t be developed, but because the buying and selling of judicial services would quickly corrupt the process.

There is, however, a tendency to generalize from examples such as this, and so to imagine that a doctor who works in the public sector will be less likely to perform unnecessary surgery than one who works in the private sector, or that a teacher who works in the public sector will be more concerned about the integrity of the curriculum, or that a railway ticket agent will be less likely to take advantage of a tourist, by selling him a more

expensive ticket than he needs, if he works for a state-owned enterprise.<sup>9</sup> The assumption is that being an employee of an organization that is dedicated to serving the public interest will make the individual less likely to act in a self-interested fashion, and more likely to act in the public interest. There is, however, no logical connection between the two. It is mainly a question of organizational psychology whether the state, as a matter of fact, is able to motivate its employees – including high-level managers – to better serve the public. Unfortunately, the track record of states throughout the Western world is not particularly distinguished. Whatever differences there may be in the public sector, they are seldom enough to make a significant difference at the level of organizational competence (Davis 1998, 133-35).

Much of the motivation for the widespread expansion of state-owned enterprises in the wake of the Second World War was the belief that public ownership would result in better service to the public from these organizations. Thus Western governments became involved in a variety of enterprises where there was no obvious efficiency or equality reasons for intervention, such as airlines, railroads, mining and heavy manufacturing. The result of this experiment, however, was the widespread discovery that public ownership did not, in general, translate into better service to the public. In many cases, it did not even translate into effective public control (Lindblom 1980, 113). State-owned enterprises in competitive sectors of the economy often performed worse than private enterprises on any measure – not only did they lose money, but they failed to live up to their public-interest mandate as well. Furthermore, state-owned enterprises often formed powerful special interest groups within the state, and pursued their sectarian interests in a way that was highly detrimental to the public interest (Heath and Norman, 2004).

As a result, the late 20<sup>th</sup> century was characterized by the emergence of much greater modesty about the state's organizational abilities, and in particular, its ability to motivate its own employees to act in a public-spirited way. To the extent that it has been studied, empirical work on the public sector ethos suggests that it plays very little role in the motivation of low-level government employees. It is only at higher levels of the organization that it becomes detectable, and can reasonably be thought to play a significant role in the way that public organizations function (Pratchett and Wingfield 1996, 645). This is pretty much what one would expect from looking at the wage structure in the public service, which is quite flat by comparison to the private sector (with a higher floor and a much lower ceiling). Thus low-level state employees typically enjoy a wage premium over their counterparts in the private sector, whereas high-level civil servants suffer a rather significant wage penalty. This means that not only must the state rely more

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9] The last example is from Evan Davis: "Did the old British Rail ticket-seller lie about which ticket to buy? In fact, the old British Rail did go to some trouble to disguise from travellers the existence of cheap commuter services that were slower substitutes for the British Rail Gatwick Express. Indeed, the company used to go so far as lying about the destination of trains... in order to herd people on to the service the company desired. In as far as the ticket-seller offered best advice, it was normally in contravention of his employer's desire" (1998, 56).

heavily on moral suasion to motivate its high-level employees, but there will also be a significant selection effect, whereby employees with stronger pecuniary concerns will be more likely to leave the public service once they reach a level at which their outside options become more attractive. Thus at the senior management level, the state is able to expect a fairly distinctive motivational structure amongst its employees, but at the lower level – the level at which most services get delivered to the public – the state functions in very much the same way as any other large bureaucratic organization.

Thus to the extent that the communitarian model does provide a coherent conception of what the welfare state should look like, the strategy for demarcating the public from the private that it recommends has been essentially abandoned for more than three decades. Contemporary welfare states are largely structured by the idea that, insofar as the state has a distinctive role to play in the economy, it is not because of the peculiar moral character of its employees, but rather because of its distinctive institutional powers, in particular, its power of compulsion. This power, however, can be (and is) used in two ways: the first is to redistribute wealth (and thereby promote greater equality); the second is to resolve free rider problems (and thereby promote greater efficiency). The first, of course, is the use that is emphasized by proponents of the redistributive model, while the second is the one emphasized by proponents of the public goods model. The central issue, in deciding between the two, is to determine which use of state power can plausibly account for the enormous scope of government activity, as it developed over the course of the 20<sup>th</sup> century.

### *5.2 Problems with the redistributive model*

There can be no doubt that the state engages in some economic interventions that are aimed at promoting equality and some that are aimed at promoting efficiency. There is, furthermore, no contradiction in principle between pursuing these two objectives simultaneously, since equality and efficiency are compatible moral ideals (Stiglitz 1996; Heath 2008, 279-81). Thus there is nothing incoherent about a hybrid “redistribution and public goods” view of the welfare state. However, the amount of actual egalitarian redistribution that goes on in a typical welfare state is often dramatically overestimated. This is because many theorists treat the social safety net, which is essentially a set of government-run insurance programs, as a system of redistribution, and hence as governed by an egalitarian logic. This is quite misleading (Davis 1998, 86; Moss, 2002). There is, of course, a sense in which any system of insurance is redistributive, in that its net effect will be to transfer money from the lucky to the unlucky. But this is true regardless of whether it is public or private. Car insurance transfers money from those who don't have accidents to those who do, just as health insurance transfers money from those who don't get sick to those who do. In both cases, however, the logic of the redistribution is not egalitarian, but rather *assurentiel* (Ewald, 1986). This is reflected in the fact that, first, people voluntarily buy insurance, because the transaction is Pareto-improving *ex ante*, and second, there

is nothing to stop the transfers from being regressive with respect to income (Esping-Anderson and Myles 2009, 640).

Thus the reason for the state to be involved in sectors such as health insurance cannot be the redistribution that occurs at the “front end,” in the way that medical services are delivered to the public. If there is an egalitarian reason, it must be at the “back end,” in the redistribution that is achieved by funding the system out of general tax revenues or payroll deductions, rather than charging individuals an actuarially fair premium. But if this sort of redistribution were the only objective, there would be no reason for massive state involvement in the sector. This follows rather closely from the idea that markets are best at delivering efficiency and the state at promoting equality. If this were true, then the best policy for the state to pursue, when confronted with any particular inequality, would not be to interfere with the way that goods are being traded, but would be to redistribute income so that the pattern that emerges out of the set of market transactions is less offensive to the egalitarian sensibility (Satz 2010, 76-79; Tobin, 1970). The only reason for state involvement, from this perspective, would be a paternalistic concern that individuals would not spend their income wisely. The easiest way to handle this, however, is not through state provision or purchase, but simply through the introduction of constraints on the fungibility of individual endowments. Egalitarianism, in other words, even when leavened with a generous dose of paternalism, tends to militate in favor of what Ron Daniels and Michael Trebilcock have called “government by voucher” (2005) – where most government-provided services, including health and education, would be privatized – not a conventional welfare state.

Indeed, conservative critics of the welfare state often recommend dismantling state health care systems and replacing them with a set of individual health savings accounts (Gratzer, 1999). If the objective of the system is redistribution (e.g. “to help the poor”), they argue, this can be achieved by having the state make a minimum deposit into each individual’s account, enough to cover a standard package of health care services. If the objective of the system is paternalistic (forcing people to purchase health care that they need, rather than something else), then this can be accomplished by having the balances in these savings accounts subject to various restrictions on use, and perhaps even replaced by vouchers. Either way, there is no reason for the state to get involved in running the health care system.

What the argument for health savings accounts misses is the very powerful efficiency arguments in favor of state-run health care systems. The problem with health care spending – what makes it quite different from spending on things like food and shelter – is that it is extremely unpredictable. It typically follows what is known as the 80/20 rule, viz. that 20% of the population accounts for 80% of the spending (Krugman and Wells, 2006). Thus the average person has no idea how much to save for his or her future health care needs. Saving the average amount required is almost guaranteed to result in under or oversaving. For example, one large study in the Netherlands (Polder, Barendregt & van Oers, 2006) showed a huge difference in the average cost of health care for individuals

in the last year of life (14,908 €) compared to other years (1102 €). Even more striking, however, was the standard deviation in final-year expenditure, which was 18,751 €. This means that even if (*per impossible*) every member of the population set aside a generous 34,000 € in order to cover the cost of end-of-life care, more than 15% of the population would still not have saved enough. This is what makes the case for pooling health care savings overwhelming.

The problem with health insurance is that it is subject to rather severe adverse selection and moral hazard problems (and therefore, huge administrative costs associated with attempts to *control* adverse selection and moral hazard). State health insurance schemes are able to achieve better results on both fronts, by eliminating adverse selection entirely and reducing moral hazard (unlike private insurers, who often face a collective action problem when it comes to investigating claims, a public insurer has the incentive to make sure that it is not being overbilled; see Heath 2001, 188). Indeed, if one looks at any serious proposal for a system of health savings accounts, there is usually a *public* insurance system underlying it, to cover “catastrophic care” or hospitalization. This is in recognition of the fact that forcing individuals to self-insure against extremely costly, unpredictable events is inefficient (i.e. lowers everyone’s welfare). And yet, when one goes through the numbers carefully, it soon becomes apparent that the insurance mechanism proposed is likely to wind up covering the bulk of expenditures in the system (e.g. Gratzner 2002, 296-97). Because of this, the “savings account” winds up being just a complex way of imposing a deductible on an insurance plan.

Thus one can see that the real driving force behind existing public health care systems is not a general concern about equality, but rather market failure in the health insurance sector. The “normative logic” of these systems is one of efficiency. The way that public health care systems are *paid for* is redistributive, and progressive with respect to income, but this is a property of the tax system, not the health care system (and the tax system is not a social program, it is the mechanism used to pay for social programs). Of course, socialized medicine systems are often defended through appeal to egalitarian principles in public political discourse.<sup>10</sup> Furthermore, a lot of state intervention in this sector was initiated in order to achieve egalitarian objectives. Yet what keeps these systems going, what creates the political constituencies prepared to defend them against cuts, is the set of efficiency gains they create.

The tendency to misclassify social insurance programs as redistributive is quite firmly entrenched in the literature. It is even more common when it comes to pension systems, which actually do take money from one person and give it to another, and so seem like paradigm instances of the state redistributing wealth. For example, in *The Myth of Ownership*, Liam Murphy and Thomas Nagel discuss the U.S. Social Security plan as

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10] Or quasi-egalitarian principles, such as solidarity. Indeed, one of the attractions of the “solidarity” language, as it is used in France for example, is that it is systematically ambiguous between equality and efficiency concerns, particularly when applied to social insurance systems.

though its central function was that of achieving an egalitarian redistribution of wealth. The reason it targets primarily seniors, they claim, is that redistribution of wealth toward those who have left the workforce creates fewer perverse incentives than redistribution that favors the working-age population. This redistributive intent is “somewhat disguised,” they claim, by the fact that “benefits are a function of contribution.” Nevertheless, “the program is clearly redistributive: low earners get back more than they put in, and high earners less” (Murphy & Nagel 2002, 183).

As a matter of fact, the extent to which the retirement benefit component of Social Security is progressive with respect to lifetime income within cohorts is subject to dispute (Fullerton & Mast, 2005). Much of the talk about “Social Security” as a whole fails to factor out the disability insurance program – which will obviously be progressive with respect to *lifetime* income, since it is intended to cover those who are forced to drop out of the labor-market prematurely – and the auxiliary benefit. The retirement benefit taken alone, which makes up the bulk of spending, is significantly less progressive than the other components of the system (Congressional Budget Office 2006, 4). There is, though, one respect in which the retirement benefit is obviously redistributive, viz. it transfers money away from those who die young and gives it to those who live a very long time. Indeed, one of the factors that diminishes the level of progressivity of the system as a whole is that the rich tend to outlive the poor, and the core function of the system is to redistribute from those who die young to those who live for a long time. This is because the retirement system in the Social Security program is essentially a defined benefit pension scheme, which is to say, a collectively purchased life annuity. And a life annuity is an *insurance product*, designed to protect individuals from the risk of outliving their savings (Moss 2002, 205-6). Just as people do not know how much they should save in order to meet their health care needs, they also do not know how much they should save in order to meet their need for retirement income. The risk is that one will live too long and thus fall into penury. Average life expectancy at age 10 in high-income countries is typically to age 80 or so, but the standard deviation is very high – close to 15 years (Edwards, 2009). Assuming retirement at age 65, this means that while the average person will have to save for only 15 years of retirement, more than 15% of the population will in fact be retired for more than 30 years. So again, there is a strong case to be made for pooling retirement savings, which is precisely what a life annuity does. The market for private life annuities, however, is subject to adverse selection problems, which means that there are efficiency gains to be achieved through public administration of such a program.

If one looks at the three major categories of welfare-state expenditure: health, pensions and education, there is a powerful efficiency-based rationale for each of these programs. That is to say, each of these programs corrects an important market failure (on education, see Haveman and Wolfe, 1984). This is not to deny that these programs have been implemented in a way that is intended to achieve a certain measure of redistribution as well. The point is that the redistribution does not explain why these activities are being undertaken in the public sector, whereas the efficiency arguments do explain this.

This is why the principle of equality should be seen as subordinate to the principle of efficiency when it comes to understanding these programs. The reasoning underlying the redistributive dimension is something like this: “these services must be provided by the public sector, because the private sector is unable to do so efficiently. However, as long as they are being done in the public sector, we may as well finance them in a way that is progressive with respect to income. This will allow us to carry about a measure of redistribution without suffering too much from the efficiency-equality tradeoff.”

## VI. WAGNER'S LAW

Both communitarianism and egalitarianism, as I have attempted to show, fail to offer a plausible reconstruction of the dominant logic of the welfare state. Indeed, these accounts typically harbor significant misunderstandings of how welfare-state programs operate. And if this is true with respect to the “statics” of the system, it is ever more so when the state is considered from a dynamic perspective. One of the most striking features of the welfare state is its extraordinary growth over the course of the 20th century. Furthermore this growth pattern has largely confirmed what is known as “Wagner’s law of expanding state activity”, viz. that public-sector expenditure can be expected to increase as a percentage of GDP as a society becomes more affluent (Bird, 1971). Over the course of the 20<sup>th</sup> century, welfare state spending did not just grow along with everything else, but steadily increased its relative share of GDP. This tends to be taken for granted, but is actually hard to explain on either the communitarian or the egalitarian model.

One of the most striking features of this growth pattern, in particular, is that it was largely unaffected by the ideological complexion of the political party in power. With very few exceptions, the welfare state continued to expand – in some cases quite dramatically – under the custodianship of right-wing political parties that explicitly rejected both egalitarian and communitarian ideals. Conservative governments have often introduced changes in the *tax system*, in order to make income taxes less progressive, or else shift the burden of revenue-collection to more regressive taxes. But at the same time that the tax system was being made significantly less egalitarian (under, say, Ronald Reagan or Margaret Thatcher), state spending as a whole was still increasing, almost always at a pace that exceeded the rate of economic growth. If the core normative logic of the welfare state involved a commitment to promoting equality, or else protecting certain spheres of interaction from commodification, one would naturally expect to see a certain ebb and flow in the activities of the state, with expansion of state activity following the election of political parties who endorsed this moral vision, and contraction during periods following the election of parties who explicitly rejected it. And yet the actual pattern is not like this. If, however, one thinks of the major set of welfare-state programs as public goods, in the broad sense of the term, then it is easier to see why they are so notoriously difficult to cut. When a redistributive program is eliminated, those who had been winners in the transfer can be expected to resist, while those who were losers will tend to support the initiative.

With a Pareto improvement, on the other hand, the outcome is win-win, and so there is no “natural” constituency there to press for its elimination, the way that there is with a win-lose outcome.

If indeed the function of the welfare state were to take certain domains of social interaction and have them “inscribed by law and public policy within protective boundaries,” as the communitarian view has it, then it is difficult to see why state spending should not remain constant over time, or even constitute a diminishing share of the national product. This is particularly so in cases where the protected domains are interpreted in “basic needs” terms. Once basic needs – say, food, water, shelter and security – are satisfied, one would expect economic growth to constitute primarily expansion of the sphere of discretionary wants. Thus one would expect the state sector to *shrink* as a fraction of GDP over time. Even if one interprets “basic needs” in relative terms, so that the list of needs or the quantity of goods required to satisfy them expands as overall wealth increases (Goodin 1998, 181), this still would lead us to expect the state share of spending to remain at best constant.

One can see the same sort of problem with egalitarian theories. If the purpose of the welfare state is to redistribute wealth, in order to redress inequalities produced by the operations of the market economy, why should the fraction of wealth that it seeks to redistribute not remain constant over time? The answer cannot be that the state starts out modestly, then works its way closer to the egalitarian ideal. If this were so, then one would expect to see more ebb and flow in spending, corresponding to the level of commitment to egalitarian ideals in the governing party. So why the seemingly inexorable growth in spending?

The public goods perspective, on the other hand, has a simple explanation for the expansion of the welfare state. Indeed, Wagner’s Law is sometimes formulated as the claim that “the income elasticity of demand for public goods is greater than unity” (Yousefii and Abizadeh 1992, 100). This is actually not a formulation of the law, but rather a proposed explanation for it – one that presupposes the correctness of the public goods framework. Unpacking things a bit, the view is as follows: the state taxes people in order to provide public goods. As people become wealthier, they want to spend an increasing fraction of their income gain on public goods, and so, to the extent that the state is responsive to public preferences, growth in per capita GDP will lead to an increase in state spending as a fraction of GDP.

One feature of this view that is worth drawing attention to is the fact that it actually asserts the opposite of the “basic needs” view, which says that the job of the state is to ensure that everyone has the basic goods required for a decent life. If anything, these sorts of basic goods (food, clothing, shelter) are the ones that the *market* does a good job of providing. What the state provides, by contrast, are goods for which there is relatively low demand at low income levels, which is precisely why the demand for state services increases disproportionately with gains in income. One can see this trajectory very clearly in developing nations, where at early stages of growth the population puts enormous

emphasis on consumer durables (refrigerators, bicycles, televisions, mobile phones, etc.), as well as food (particularly meat) and housing, all of which are delivered quite efficiently by the market. It is only once these “basic needs” are satisfied that people begin to worry about various “quality of life” issues, such as sanitation, water and air quality, health care, and insurance of various types – all of which are goods best delivered by the state.

This increased demand for public goods is sometime an indirect effect of other preference shifts. For example, an increased taste for leisure – understood broadly, to include also time spent in school and in retirement – will generate increased demand for public goods. Increased life-expectancy will have the same effect. (Harold Wilensky suggested, many years ago, that “if there is one source of welfare spending that is most powerful—a single proximate cause – it is the proportion of old people in the population” [Wilensky 1975, 47].) This is because many welfare-state programs engage in what Gøsta Esping-Andersen and John Myles call “horizontal redistribution,” (2009, 640) viz. reallocation of income over the individual’s own life-cycle. This characterizes not only social insurance programs such as health care and pensions, but a lot of education spending as well (insofar as education generates higher employment earnings later in life). As income increases, it is natural that individuals would want to engage in more horizontal redistribution, and because many of these transfers are mediated by the state, it will show up as increased demand for the relevant set of social programs.

Another important consideration is the fact that private goods tend to be the “low hanging fruit,” when it comes to organizing production, simply because markets have such low transaction costs. Even if the public sector has lower transaction costs than the private sector when it comes to delivering a specific service such as mass transportation, there may be close substitutes, such as private transportation, that have lower costs still. Thus production and consumption will initially be focused on these private goods, and it is only with increased satiation in these areas that the transaction costs associated with the public good will begin to seem like a price worth paying. The significance of negative externalities (such as congestion and pollution) will also tend to grow over time, not always because the absolute magnitude of their effects increases, but also because their relative significance increases, simply because they remain unchecked, while the marginal value of increased consumption of private goods declines.

Finally, it should be noted that with increased wealth comes a relative decline in the consumption of material goods, and increased consumption of what Fred Hirsch referred to as “positional goods” (1976). This is codified in the form of what I call Hirsch’s Law, which states that “as the level of average consumption rises... the satisfaction that individuals derive from goods and services depends in increasing measure not only on their own consumption but on consumption by others as well” (2). Thus wealthy individuals spend an increasing portion of their income on goods that are valued for the positional advantage that they confer: status, exclusivity, style, design, beauty, trendiness, hipness, or location (in real estate). The satisfaction generated by consumption of these goods is zero-sum in the aggregate. This decreases the relative value of these goods, as a

class, compared to public goods, which tend to be non-positional (in particular, when they are supplied universally) (Frank 1999). The overall effect, again, will be a shift towards increased state spending as the society becomes wealthier.

This is not intended to be an exhaustive list of the reasons for the growth in welfare-state spending over the course of the 20<sup>th</sup> century. These are simply examples of different mechanisms capable of generating the phenomenon observed by economists, viz. that “the income elasticity of demand for public goods is greater than unity.” The more general point is that positing a shift in demand of this sort provides a far more plausible account of the dynamics of the welfare state than any explanation available within the framework of either the communitarian or the redistributive model.

## VII. CONCLUSION

In this paper, I have been using the concept of a “normative model” of the welfare state as a way of injecting an element of “facticity” (Habermas 1996, 287) into the “reasons for welfare” debate. Rather than focusing on the purely prescriptive task of thinking up arguments in favor of some idealized set of welfare state programs, my goal has been to identify the normative considerations that have motivated, and in a sense are embedded in, existing welfare-state arrangements. The purpose of this exercise is not only the usual one of improved accuracy and self-understanding, but also the pragmatic objective of enabling better judgments to be made about where the public/private boundary should fall. These boundary questions are extremely complex (e.g., Stark, 2009), and so it is important to have a clear, consistent criterion for adjudicating them. Current political discourse, however, tends to be governed by a hazy amalgam of the communitarian, egalitarian, and public-economic perspectives.

The advantages of having a single, clear model can be seen quite easily in the area of health care (where there are an enormous number of difficult boundary judgments to be made). Commitment to a communitarian model of the welfare state has tended to favor what Evan Davis calls the “traditional public sector model,” where goods are both paid for and provided by the state. In the case of health care, this suggests that the health system should function as a single, vertically integrated service provider, with physicians working as salaried state employees. Contracting out of even minor services will seem problematic from this perspective. This is a highly inflexible arrangement, one that imposes very significant efficiency losses. The temptation then is to retreat to an egalitarian position, and argue that some contracting out is permissible, as long as the principle of equal access to timely, quality care is guaranteed. The problem then is to explain why *all* services should not be contracted out, or in other words, why socialized medicine systems should not be abolished entirely, with individuals being given an income supplement or voucher that they can use to purchase care. It is simply impossible to explain what is wrong with such an arrangement without pointing to the problem of market failure in the health insurance sector. And yet once this has been pointed out, then there is nothing further

that needs to be said, in order to make the case for a socialized medicine system. One can appeal to egalitarian principles in deciding how this system should be *financed*, and how much cross-subsidization within the plan should be allowed. But the boundary between public and private with respect to service delivery can be drawn entirely through appeal to efficiency considerations.

Thus the public-economic model of the welfare state provides both the best theoretical reconstruction of the existing configuration of welfare-state services, as well as the most useful set of principles to guide any proposed expansion or modification of these services. Indeed, the usual complaint against it is not that it lacks explanatory adequacy, but that it is not “moral enough” to count as a guide to policy. This is, as I have attempted to show, largely a consequence of a misunderstanding of the Pareto principle. There are of course *features* of the welfare state that are best explained in terms of promoting equality, or resisting commodification. But the public-economic model is the only one able to provide a rationale for public provision of the “big ticket items” – health, education, pensions – as well as to explain the dynamic that produced the extraordinary expansion of state activity over the course of the 20<sup>th</sup> century.

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#### REFERENCES

- Acemoglu, Daron, and James A. Robinson. 2006. *Economic Origins of Dictatorship and Democracy*, Cambridge: Cambridge University Press.
- Anderson, Elizabeth. 1993. *Value in Ethics and Economics*. Cambridge, MA: Harvard University Press.
- . 1999. What is the Point of Equality? *Ethics* 109: 287-337.
- Bakan, Joel. 2004. *The Corporation*. Toronto: Penguin.
- Baker, Dorie. 2002. In Canada, Publicly-funded Health Care is ‘Moral Enterprise’, says Official. *Yale Bulletin & Calendar* 31 (8).
- Barlow, Maude, and Tony Clarke. 2002. *Blue Gold*. Toronto: Stoddart.
- Barr, Nicholas. 1998. *The Economics of the Welfare State*. 3<sup>rd</sup> edn. Stanford: Stanford University Press.
- Bird, Richard M., 1971, “Wagner’s Law of Expanding State Activity,” *Public Finance* 26: 1-26.
- Braybrooke, David. 1987. *Meeting Needs*. Princeton, NJ: Princeton University Press.
- . 1998. The Concept of Needs, with a Heartwarming Offer of Aid to Utilitarianism. In *Necessary Goods*, edited by Gillian Brock. Lanham, MD: Rowman & Littlefield.
- Buchanan, Allen. 1996. Toward a Theory of the Ethics of Bureaucratic Organizations. *Business Ethics Quarterly* 6: 419-40.
- Coase, Ronald. 1937. The Nature of the Firm. *Economica* 4: 386-405.
- Cohen, G. A. 2009. *Why Not Socialism?* Princeton: Princeton University Press.
- Commission on the Future of Health Care in Canada. 2002. *Building on Values: The Future of Health Care in Canada*. Ottawa: Government of Canada (CP32-85/2002E-IN).
- Congressional Budget Office. 2006. *Is Social Security Progressive?* www.cbo.gov (accessed November 26th, 2011).

- Copp, David. 1998. Equality, Justice and Basic Needs. In *Necessary Goods*, edited by Gillian Brock. Lanham, MD: Rowman & Littlefield.
- Daniels, Ronald J., and Michael J. Trebilcock. 2005. *Rethinking the Welfare State*. London: Routledge.
- Davis, Evan. 1998. *Public Spending*. London: Penguin.
- Dworkin, Ronald. 2000. Equality of Resources, in *Sovereign Virtue*. Cambridge, MA: Harvard University Press.
- Esping-Andersen, Gøsta. 1990. *The Three Worlds of Welfare Capitalism*. Princeton: Princeton University Press.
- Esping-Andersen, Gøsta, and John Myles. 2009. Economic Inequality and the Welfare State. In *Oxford Handbook of Economic Inequality*, edited by Wiemer Salverda, Brian Nolan, and Timothy M. Smeeding. Oxford: Oxford University Press.
- Ewald, François. 1986. *L'État providence*. Paris: Grasset.
- Frank, Robert H. *Luxury Fever*. New York: Free Press.
- Frankfurt, Harry. 1984. Necessity and Desire. *Philosophy and Phenomenological Research* 45: 1-13.
- Fullerton, Don, and Brent D. Mast. 2005. *Income Redistribution from Social Security*. Washington, D.C.: American Enterprise Institute.
- Goodin, Robert. 1988. *Reasons for Welfare*. Princeton: Princeton University Press.
- . 1998. Vulnerabilities and Responsibilities: An Ethical Defense of the Welfare State. In *Necessary Goods*, edited by Gillian Brock. Lanham, MD: Rowman & Littlefield.
- Gratzer, David. 1999. *Code Blue*. Toronto: ECW Press.
- . 2002. The ABCs of MSAs. In *Better Medicine*, edited by David Gratzer. Toronto: ECW Press.
- Habermas, Jürgen. 1975. *Legitimation Crisis*. Translated by Thomas McCarthy. Boston: Beacon Press.
- . 1996. *Between Facts and Norms*. Translated by William Rehg. Cambridge, MA: MIT Press.
- Hamilton, Lawrence. 2003. *The Political Philosophy of Needs*. Cambridge: Cambridge University Press.
- Hansmann, Henry. 1996. *The Ownership of Enterprise*. Cambridge, MA: Harvard University Press.
- Haveman, Robert H., and Barbara L. Wolfe. Schooling and Economic Well-Being: The Role of Nonmarket Effects. *The Journal of Human Resources* 19: 377-407.
- Heath, Joseph. 2001. *The Efficient Society*. Toronto: Penguin.
- . 2008. *Filthy Lucre*. Toronto: HarperCollins.
- Heath, Joseph, and Wayne Norman. 2004. Stakeholder Theory, Corporate Governance and Public Management. *Journal of Business Ethics* 53: 247–65.
- Hirsch, Fred. 1978. *The Social Limits to Growth*. Cambridge, MA: Harvard University Press.
- Kant, Immanuel. 1990[1785]. *Foundations of the Metaphysics of Morals*. Translated by Lewis White Beck. New York: MacMillan.
- Krugman, Paul, and Robin Wells. 2006. The Health Care Crisis and What to Do About It. *New York Review of Books*, 53 (5).
- Lindblom, Charles E. 1980. *Politics and Markets*. New York: Basic Books.
- Lipsey, Richard G., Douglas D. Purvis, and Peter O. Steiner. 1988. *Economics*, 6<sup>th</sup> edn. New York: Harper & Row.
- Marshall, Thomas H. 1950. *Citizenship and Social Class and Other Essays*. Cambridge: Cambridge University Press.

- Miller, David. 2004. Justice, Democracy and Public Goods. In *Justice and Democracy*, edited by Keith Dowding, Robert E. Goodin and Carole Pateman. Cambridge: Cambridge University Press.
- Moss, David A. 2002. *When All Else Fails*. Cambridge, MA: Harvard University Press.
- Murphy, Liam, and Thomas Nagel. 2002. *The Myth of Ownership*. Oxford: Oxford University Press,
- O'Connor, James. 1971. *The Fiscal Crisis of the State*. New York: St. Martin's Press.
- Panitch, Vida. 2008. *Back to Basics*. PhD diss., University of Toronto.
- Piven, Frances Fox, and Richard A. Cloward. 1971. *Regulating the Poor*. New York: Random House.
- Polder, Johan J., Jan J. Barendregt and Hans van Oers, 2006. Health Care Costs in the Last Year of Life – The Dutch Experience, *Social Science and Medicine* 63: 1720-31.
- Pratchett, Lawrence, and Melvin Wingfield. 1996. Petty Bureaucracy and Woolly-Minded Liberalism? The Changing Ethos of Local Government Officers. *Public Administration* 74: 639-56.
- Rawls, John. 1999. *A Theory of Justice*. Rev. edn. Cambridge, MA: Harvard University Press.
- Roth, Alvin E. 2007. Repugnance as a Constraint on Markets. *Journal of Economic Perspective* 21: 37-58.
- Samuelson, Paul. 1954. The Pure Theory of Public Expenditure. *Review of Economics and Statistics* 36: 387-89.
- Sandel, Michael. 1998. *What Money Can't Buy: The Moral Limits of Markets, The Tanner Lectures on Human Values*. Utah: University of Utah Press.
- Satz, Debra. 2010. *Why Some Things Should Not Be For Sale*. Oxford: Oxford University Press.
- Schapiro, Daniel. 2007. *Is the Welfare State Justified?* Cambridge: Cambridge University Press.
- Shipman, Alan. 1999. *The Market Revolution and its Limits*. London: Routledge.
- Stark, Andrew. 2009. *Drawing the Line*. Washington, DC: Brookings.
- Stiglitz, Joseph. 1989. *The Economic Role of the State*. Edited by Arnold Heertje. Oxford: Blackwell.
- . 1996. *Whither Socialism?* Cambridge, MA: MIT Press.
- Tawney, Richard H. 1931. *Equality*. London: Unwin Books
- Taylor, Charles. 1985. Social Theory as Practice in *Philosophy and the Human Science, Philosophical Papers Vol. 2*. Cambridge: Cambridge University Press.
- Thompson, Garrett. 1987. *Needs*. London: Routledge & Kegan Paul.
- Tobin, James. 1970. On Limiting the Domain of Inequality, *Journal of Law and Economics* 13: 263-77.
- Tullock, Gordon. 1981. The Rhetoric and Reality of Redistribution, *Southern Economic Journal* 47: 895-907.
- Van Parijs, Philippe. 1995. *Real Freedom for All*. Oxford: Oxford University Press.
- Walzer, Michael. 1983. *Spheres of Justice*. New York: Basic Books.
- Weber, Max. 2004. Politics as a Vocation, in idem, *The Vocation Lectures*, trans. Rodney Livingston. Indianapolis: Hackett.
- White, Stuart. 2003. *The Civic Minimum*. Oxford: Oxford University Press.
- Wilensky, Harold L. 1975. *The Welfare State and Equality*. Berkeley: University of California Press.
- Williamson, Oliver E. 1985. *The Economic Institutions of Capitalism*. New York: Free Press.
- Yousefi, Mahmood, and Sohrab Abizadeh. 1992. Wagner's law: New Evidence. *Atlanta Economic Journal* 20 (2): 100-110.

## The State and the Market – A Parable: On the State’s Commodifying Effects

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*Abstract.* Commodification has become the central parameter in delineating the contours of the market and in the division of labor between the market and the state. The commodification critique has become a ‘buzz word’ against the market and thus in support of state intervention. In what has been termed “taboo trades” – human organs, reproductive capacities, sexuality and the like – market-based orders have been condemned on the basis of commodification, thus leaving the floor open for state-intervention by regulation. The central argument of this article is that the commodificatory effects, often associated with monetary transactions, are not exclusive to monetized exchanges nor to the market arena. Rather, state intervention, as such, involves similar reductive effects, in light of its inherent itemizing, categorizing and ranking nature. This understanding has a significant implication for the structuring of the market-state debate: In light of the fact that upon closer scrutiny state ordering shares similar commodificatory effects with the market – we argue that it is not enough to raise the commodification banner in order to justify state intervention. Put differently, an implicit premise in the prevailing commodification discourse is that where the market commodifies, the state is necessarily neutral. However, state intervention – we will show – suffers from similar flaws. Another purpose of viewing commodification through the prism of state intervention is to expose the multi-faceted nature of the anti-commodificatory sentiment. Expanding the horizons of the commodification discourse beyond the traditional contexts of taboo markets to the unexplored terrain of state regulation exposes the fact that money is but one instance of a whole family of cases where thick social interactions are translated into a uni-dimensional currency that has a reductive effect on them.

*Key words:* commodification, regulation, markets, taboo trades.

Commodification has become a focal point in the delineation of the contours of the market and in the division of labor between the market and the state.<sup>1</sup> The commodification critique has become a “buzz word” against the market and in support of state intervention. In what has been termed “taboo trades” – human organs, reproductive capacities, sexuality and the like – market-based orders have been condemned on the basis of commodification, thus leaving the floor open for state-intervention. The central argument of this article is that the commodificatory effects, often associated with monetary transactions, are not distinctive to monetized exchanges nor are they unique to the market arena. Rather, state ordering could be subjected to similar critiques, in light of its inherent itemizing, categorizing and prioritizing nature.

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1] Of course commodification is not the exclusive consideration for limiting the scope of markets. Other considerations such as efficiency, distribution or democratic participation rationales may also play a paramount role in the structuring of the market arena. For further discussion of these considerations and their effect on marketability, see Dagan and Fisher 2011. This paper focuses only on the perspective of commodification.

The paper is an analytical one, aimed at exposing the similar critiques that can be raised against regulation and market interactions. Of course, the analytical framework offered in the paper can ultimately translate into the normative debate – concerning the desirability of privatization of core functions of the state, or the infiltration of market logic to spheres of life, currently ordered outside the market realm. These normative questions deserve a separate analysis, and will remain outside the parameters of the paper.

At first glance the claim that governmental regulation<sup>2</sup> entails “commodificatory”<sup>3</sup> effects may seem surprising given the radically different organizing principles underlying state ordering and the market: while the market is decentralized and oriented towards profit and preference maximization, the regulatory arena is the quintessential case of central planning and is public policy oriented. State regulation is viewed as the antidote of market. These differences notwithstanding, we claim that the effects of state forces in regulating social relations are similar to those of market forces. This understanding has a significant implication for the structuring of the market-state debate: In light of the fact that upon closer scrutiny state ordering shares similar commodificatory effects with the market, we argue that it is not enough to raise the commodification banner in order to automatically justify state intervention.

Put differently, an implicit premise in the prevailing commodification discourse is that where the market commodifies, the state is necessarily neutral. However, state intervention – we will show – suffers from similar drawbacks, and therefore the commodification tendency is not, in itself, a case for state intervention.

It should be noted that the analogy between commodification and regulation extends not only to the vices of each of the phenomena but also to their virtues: Though the issue of commodification was traditionally raised as an objection to the market, there are also commodification effects that support marketability. First, commodification enables the fragmentation of resources and thus facilitates conversion of one type of resource into another. Second, the uni-dimensional structure of the information regarding the value of a given resource, when translated into monetary terms, could in certain cases improve choice-making capacity by simplifying it (assuming, of course that the information lost in the simplifying process does not impair choice making capacity). Third, commodification may have a liberating effect in converting resources into monetary instruments. The currency of money (notwithstanding, of course, the dangers associated with a discrepancy in access to monetary means) is democratic, for market players can effectively discard

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2] Throughout this paper “regulation” will be used in a broad sense of the term to include the numerous types and forms of state intervention in human interaction, and the allocation of resources irrespective of the originating institution for the prescription.

3] According to Radin (1992, 1859) the term “commodification” accommodates a variety of possible meanings. Those narrowly construed refer to the actual buying and selling of items. Those broadly understood include, inter alia, the very use of market rhetoric and market methodology. Following this inclusive definition, our use of the term “commodification” is broader than a mere actual sale or marketization of the regulatory functions. Rather it also includes many other phenomena that are tacitly infiltrated by market logic.

social identities that restrict participation in other social institutions and arenas. Finally, in a world where money buys respect, markets can inculcate a sense of value for things that might be taken for granted when not paid-for. Marketability of housework, for instance, may lead to under-appreciation of its economic value, whereas its monetization signifies that it has market value. From this perspective, the commodification of housework is a virtue.

The advantages associated with translation of social relations into regulatory terms are of a similar nature: Conversion of attributes into administrative currency entitles their holders to governmentally provided benefits. The categorization offered by regulation may simplify the legal implications of the rich nexus of underlying social relations, thereby improving the ability of individuals to understand, define and communicate these legal implications. Like money, the currency of regulation is also democratic, allowing subjects to discard social identities that restrict participation in other social arenas. Finally, the formal recognition by the regulator of social statuses and relationships may inculcate a sense of value for these social interactions. The one-dimensional features shared by market price and regulatory categories are the source of their power – facilitating comparison, evaluation, conversion and mobilization. At the same time they entail a potentially reductive effect for many acts, attributes and human interactions. This last point will be further discussed in the paper.

Another contribution of the paper and its view of commodification through the state prism is the enrichment of commodification scholarship: The prevailing discourse on commodification acknowledges the difficulty in drawing a clear line between market and non-market spheres. In fact, some of the most influential writings on commodification focused on the grey areas, between universal commodification and universal non-commodification.<sup>4</sup> Our paper joins the voices calling for a more nuanced perception of the market-non market dichotomy, in that it highlights similar commodificatory effects existing on both sides of the line. The surprising commodificatory effects prevailing in the non-market spheres both explain the difficulties encountered by scholars who attempt to draw the boundaries as well as refutes the necessity for such rigorous delineation.

Moreover, expanding the horizons of the commodification discourse beyond the traditional contexts of taboo markets to the unexplored terrain of state ordering further enriches the commodification debate. While the classic commodification critique associates commodification with monetization or with the introduction of market logic into relationships, blaming monetary evaluation (“price-tagging”) for flattening human interaction – the paper shows that money is but one instance of a whole family of cases where the rich variety of human existence is being reduced (Dagan 2010).

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4] For example, Radin (1996, 103) famously suggests “incomplete commodification,” acknowledging the option of incomplete commodification alongside universal commodification and universal non-commodification. Radin further discusses market compartmentalization and the multiple meanings of any given object (113). In a similar vein, Zelizer’s conception of “connected lives” views markets and non-market interactions as co-constitutive instead of rival conceptions (2005, 2).

Commodification, we will show, can occur by commitment to various types of currency in the evaluation of resources and relationships.

### I. THE CASE AGAINST COMMODIFICATION: TAXONOMY OF PREVAILING ARGUMENTS

We start out by outlining the conventional arguments underlying the commodification critique of certain market transactions. Our primary purpose in this part is to use the conventional arguments raised in the literature as a means for unveiling the normative foundations that stand at the core of the opposition to commodification. The normative foundations we expose will set the stage for our discussion, and will be used in subsequent parts to show that on an abstract level they are manifested in non-market settings as well, including that of state ordering.

The classic case made against commodification can be divided into two archetypical arguments: coercion-based arguments and corruption-based claims (Sandel 2000, 94-96).<sup>5</sup> Broadly speaking, the coercion category groups together considerations of autonomy and distribution. The corruption category relates to the moral worth of the resource at stake or of the nature of the interaction between the parties to the transaction. Our discussion follows this dichotomy starting with the coercion-based considerations:

#### *1. The Coercive Nature of Commodification*

Coercion-based anti-commodification arguments focus on the distributive aspects of transforming various attributes into market commodities, questioning the economic neutrality of markets on two fronts: one set of arguments focuses on the background distribution against which market transactions are made, while the other centers on the distributive outcomes of such deals: The former set of anti-commodification objections – also known as the “desperate exchanges” critique (Walzer 1983, 100) – relates to the inherent coerciveness of market transactions against the background of polarized economic conditions. The concern underlying this set of critiques of commodification is that seriously deprived groups may be pushed, in lack of other viable options for survival, to commodify their personal attributes. In Radin and Sunder’s words: “Unequal distributions of wealth, make the poorest in society, with little to offer in the market place, more likely to commodify themselves-their bodies for sex, their reproductive capabilities, their babies, and parental rights.” (2005, 11) The economic necessity and lack of alternative means for survival, claim those critics, may undermine the voluntary nature of the transaction. The latter set of objections to commodification refers to the distributive consequences of market transactions. Allocating resources which are vital

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5] For a different view on the sources of objection, see Satz, 2010; Satz offers a typology of what makes certain markets “noxious markets” based on two dimensions regarding the source of a market (weak agency and vulnerability) and two regarding the outcomes of a market (extreme harms for Individuals and extreme harm for society).

components of human existence through the market – the objection goes – deprives the underprivileged from obtaining them, thus impairing their choice-making capacity. To take a simple example, when transplant-organs become a market commodity, and are distributed according to economic capabilities rather than on a need-base, the poor have limited access to these life-saving measures. (Radin 1986, 1851).

## 2. *The Corrupting Effect of Commodification*

Another type of objection to commodification relates to the potential corrupting effects of certain market transactions. This objection is independent of the above-mentioned coercion critique: According to this critique, even assuming that the distributive background conditions could be rectified, in a manner which eases the involuntariness concerns, and even if marketability of certain attributes proves genuinely beneficial to both parties to the transaction, as well as distributively progressive, there may still be room to object to commodification, in light of the moral and social weight of the object of trade. Irrespective of the parties' genuine voluntariness and their comparable bargaining positions, the very subjection of certain resources and interactions to market logic is in itself problematic.<sup>6</sup> This corruption objection can be supported by either essentialist or conventionalist considerations. Under the essentialist strand, marketability stands in contrast to the ontology of the resource; under the conventionalist understanding marketability conflicts with its established social conceptualization. (Cohen 2003, 689)

According to the main line of the corruption critique, treating attributes constitutive of identity as monetizable items and as the objects of market transactions is inconsistent with the appropriate or established vision of personhood and human flourishing and thus should be curtailed. In Radin's words, "many kinds of particulars – one's politics, work, religion, family, love, sexuality, friendships, altruism, experiences, wisdom, moral commitments, character, and personal attributes [are] ... integral to the self. To understand any of these as monetizable ... is to do violence to our deepest understanding of what it is to be human." (Radin 1986, 1851, 1905–6) Commodification may alter the attributes being commodified, for when a personal item is exchanged, its meaning transforms. Paid-for companionship is different from going out with friends; paid-for care is unlike care by family or friends; selling a kidney is nothing like donating an organ; and sex for money is very different from sex for love.

Elizabeth Anderson provides another version of the corruption critique of commodification based on a pluralistic theory of value, which supports a plurality of authentic but conflicting ideals and conceptions of the good. (Anderson 1993, 118) Goods, according to Anderson, "differ not only in how much we should value them, but in how we should value them." (xiii) Because people value different goods in different ways in different contexts, their freedom, maintains Anderson, requires multiple sphere

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[6] Put differently, while coercion arguments relate to problems with the market interacting with the real world, corruption arguments would have a problem with the market operating even in any ideal world.

differentiation.<sup>7</sup> Thus, although the market “produces and distributes these goods with unsurpassed efficiency and in unsurpassed abundance” (167), when market norms apply in respect to nonmarket goods, they violate the way we properly value these goods (217–18). Anderson proposes restricting the market when its norms, by governing the circulation of a particular good, undermine important ideals such as freedom or autonomy.

Another version of the corruption critique refers to what has been termed the “domino effect.” The domino theory emphasizes the potential adverse effects of commodification not only on the resource being traded or on the parties to the transaction, but also on the non-market arena. The domino theory critique essentially rejects the possibility of a co-existence of a commodified version and a non-commodified version of certain resources or interactions. It adds another layer to the abovementioned corruption critique in that it stresses the negative externalities and adverse effects that the commodified versions might have on the ability to maintain non-commodified versions of these attributes. In Radin’s words: “The prohibition theory stresses the wrongness of commodification – its alienation and degradation of the person. The domino effect stresses the rightness of non-commodification in creating the social context for proper expression of personhood.” (1986, 1913) For example, the claim against selling sex for money is not only that this would alienate and corrupt the self-perception of the men and women selling their sexual services, but also – under the domino theory, that it “. . . will contaminate or infiltrate everyone’s sexuality, so that all sexual relationships will become commodified.” (1996, 95)

To further understand the nuances of the corruption critique, it is useful to distinguish between two possible manifestations of commodification, currently weaved together in the literature.<sup>8</sup> The one relates to the corrupting effects of monetization on the resource itself. (Silbaugh 1997, 84–85) The argument in this regard is that the subjection of certain attributes to market logic alters them and transforms their meaning. The other manifestation relates to the corruption of the interaction between the parties. (Dagan and Fisher (2011) Portraying certain interactions as quid-pro-quo market transactions and thereby depicting them as “impersonal, egoistic, exclusive, want-regarding, and oriented to exit rather than voice” (Anderson 1993, 145) strip them of their possible altruistic nature.<sup>9</sup> At times we may be concerned that marketability would corrupt certain social

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7] “If different spheres of social life, such as the market, the family and the state, are structured by norms that express fundamentally different ways of valuing people and things, then there can be some ways we ought to value people and things that can’t be expressed through market norms.” (Anderson 1993, viii)

8] Anderson (1993, 217-18) writes: “When value is represented as the object of just one generic response, such as desire or pleasure, we don’t bother to consider whether the ways we produce and exchange goods adequately express the other ways we properly value them or one another.”

9] “The goods exchanged and jointly realized in friendship are not merely used but cherished and appreciated for they are expressions of shared understandings, affections, and commitments. The goods proper to the personal sphere can be fully realized only through gift exchange. They cannot be procured by paying others to produce them, because the worth of these goods depends upon the motives people have in providing them. Among these goods are trust, loyalty, sympathy, affection and companionship.” (Anderson 1993, 151)

interactions even when the resource exchanged is a classic market good, and vice versa. Thus, portraying gifts as bartered transactions may have a corrupting effect on the interaction even when the resource exchanging hands is a classic market good. The mirror image is plea bargaining where infiltration of market logic to the interaction between prosecution and well-informed defense (i.e. the bargaining process) is not considered to be corrupting, while monetization of the resource traded – relinquishing the defendant's liberty for monetary consideration - would be considered corruptive.

This rough taxonomy of the anti-commodification arguments outlined above is not meant to be exhaustive.<sup>10</sup> Neither is the analytical dichotomy between the various types of arguments. In fact, in many of the debates concerning classic taboo trade arenas, the various types of arguments are simultaneously raised against commodification and in support of different types and levels of anti-commodification.<sup>11</sup> This admittedly over-simplified taxonomy is designed only in order to facilitate discussion of the parallel universe of regulatory commodification.

## II. NON-MARKET COMMODIFICATION

After outlining the core arguments underlying the commodification critique in prevailing literature, we now turn to demonstrate how these lines of criticism can be applied with respect to state intervention, thereby exposing common themes underlying regulation and commodification. The structural similarities to which we will point go beyond the obvious cases where state ordering entails price-tagging (e.g. taxation of in-kind transactions), or where money's influence lurks in the background (e.g. fines). Instead, we will point to the surprising convergence of commodification and state intervention as they manifest at the heart of the regulatory mechanism.

In what follows we expose the common denominators of state intervention and marketization, as they unveil through the typology of the traditional critiques of commodification outlined above – namely, coercion, corruption and the domino effect. Since the parallels between the coercion objection to commodification on the one hand and the coercive nature (even if not necessarily objectionable from a normative perspective) of state intervention on the other hand seem quite self-evident, we set out by focusing on the corruption and domino effect critiques.<sup>12</sup>

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10] For a recent more comprehensive discussion of the literature, see Cohen 2003.

11] In light of the different types of objections to commodification, Radin proposes a case-by-case analysis and discusses the option of incomplete commodification alongside universal commodification and universal non-commodification (1996, 103).

12] The coercion critique plays a central role in the commodification objection to the market. It challenges the public-private dichotomy, in claiming that coercion is not restricted to the public domain but is also manifested in the private-market arena. Since regulation falls under the public domain in the first place, its coercive power needs no further elaboration.

### ***1. The Corrupting Effect of Regulation***

The classic corruption-based critique of the market refers, as discussed in section 2 above, to the adverse effects in terms of personhood, associated with treating attributes or relationships constitutive of identity as monetizable objects of market transactions. Such monetization, it has been argued, is inconsistent with human flourishing or at least with its established vision. This critique – though seemingly intuitive – warrants further elaboration: one needs to articulate what it is in monetization that leads to such corruptive results when it infiltrates various social arenas. Such articulation is necessary for our purposes in order to demonstrate our claim that similar effects occur even absent monetization.

Close scrutiny of the corruption critique in the market context reveals that it revolves around two central assertions: one, that imposing objective criteria upon personal attributes through the pricing mechanism of the market alters their phenomenology. Personal attributes or relationships may change when they are infiltrated by market logic, thus becoming a commodity or a “thing.” The introduction of the cash-nexus depersonalizes human interactions and imposes the harsh and reductive logic of the marketplace on preexisting social relations which then become anonymous economic transactions. Two, that the perception of the seller may become identified with, and thus reduced to, the attribute being put on the market. The thrust of this second argument, often made against commodification, is that the sale of personal attributes may lead to instrumental perception of individuals in terms of their use value – when the thin sliver of their human existence, that they offer to sell, becomes identified with who they are and thus, purportedly, captures their entire personality – turning the sellers themselves into a “thing.”<sup>13</sup> Supporters of the latter alienation argument claim that sellers may internalize their role as mechanic service providers. To demonstrate these variable manifestations of the commodification critique, we return to the case made against sex for money. The arguments that have been formulated are twofold: first, that monetization of sexual relations may corrupt the meaning of sexual interaction; second; that consumers and sex workers alike will evaluate sex workers in terms of their “use value”, thus alienating them from other parts of their personality.

Turning to state intervention we discover, that both layers of the corruption critique reformulated above – whether infiltration of external objective logic to social arenas or instrumentalism – are present in the public ordering arena and lead to similar effects on personhood.

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13] It is interesting to note that this critique of commodification is contestable, for the very categorization of an attribute as “personal” and as prone to take over one’s entire identity, rests upon a reductive preconception of the significance of such attribute to one’s identity. (Krawiec, 2010, 1739) However, in this current project we refrain from addressing this debate (as well as other debated among the various approaches criticizing the market). Rather, our aim is to unveil the analytical similarities between markets and regulation, and to show that the arguments that have been formulated against markets are as valid with respect to regulation.

First, regarding infiltration of objective logic to social relations, many areas of governmental regulation – taxation, regulation of co-ownership, welfare benefits, family law (adoption, marital status, alimony etc.), and immigration policies – turn the government into a *de facto* partner to social interactions. It is our claim that when the government becomes a partner to the social interaction, it infuses it with regulatory logic and imposes upon it an objectifying perspective similar to that of the market. When the State becomes a partner in identity-forming aspects of human lives, the areas affected cease to function and to be construed solely in the subjective and intimate manner characterizing the private arena. Instead, they are filtered through the public and formal reflection of these attributes in the public eye. The introduction of regulatory logic depersonalizes the regulated interactions and resources thus turning them into a “thing” or an “object.” Individuals and personal relationships become faceless data. (Frug 1984, 1276) For instance, when the State intervenes in the relationship between life partners in order to determine whether it constitutes state-recognized marriage – say, for purposes of determining immigration status – the regulator’s evaluation of the interaction adds a public and impersonal dimension to the relationship whether it defines them as falling under the category of “marriage” or under “non-marriage.”

The corrupting effect of the social institution or attribute is further exacerbated by the fact that state intervention is contingent upon reporting to the public official. The act of reporting is self subjecting in that in complying with the reporting requirements the individual herself actively defers to the intrusion of the regulator upon the intimate relationship or attribute. Just as price tagging and willingness to pay criteria in the market context articulate in public terms what may be one’s intimate life choices, reporting such information to public officials can be viewed as a form of subscription to the public, regulatory “currency.” The effects of reporting are thus parallel to the effects of preference revelation associated with subjecting an item to market force and to the pricing mechanisms of the market. Thus, the state regulatory realm, like the market, thereby carries an “objectifying” potential with respect to the regulated attributes, turning them into a “thing.”

Second, the resemblance between the effects of state intervention and marketization also expands to the second critique of commodification mentioned above – namely, that of instrumentalism. State regulation functions as a means for guiding social behavior – it is inherently saturated with instrumentalism thereby offering an arena that operates under a distinct rationality. The regulator’s perception of individuals as a means by which to promote public policy is structurally similar to the instrumental manner by which market players are said to view others – namely, as a means for profit maximization. To echo Elizabeth Anderson’s famous depiction of market interaction as “impersonal, egoistic, exclusive, want-regarding, and oriented to exit rather than voice” (1993, 145). Interactions with the government are impartial, impersonal, goal-oriented, incentive-building, and offering take it or leave it choices. The impartiality of state regulation dictates uniformity and inherently technical language and criteria; It is also impersonal in its very

nature: “Officials of the modern state are, of necessity, at least one step – and often several steps – removed from the society they are charged with governing.” (Scott 1995, 191-233) Regulation is “want regarding,” in the sense that it is saturated with cost-benefit logic, and operating – through incentive-building.<sup>14</sup>

Lastly, state intervention is often-times oriented towards exit rather than voice, offering those subjected to it to take it or leave it choices. Scrutiny by the State manifests instrumentalism not only in its goal oriented basis, but also in its alienating capacity. Regulation of personal attributes may have an alienating effect when individuals become identified with the attribute being regulated and when the rich texture underlying human interaction is converted into a fixed set of public criteria. For instance, the category of “non-resident alien” not only affects how one is viewed by public officials or by her peers but may also alter her own self-perception as a (non) member of the hosting society.<sup>15</sup>

## *2. Pluralistic Theory of Value Critique of Regulation*

We now turn to demonstrate the applicability of Anderson’s *pluralistic theory of value* critique of the market to the regulatory arena: As mentioned above, Elizabeth Anderson emphasizes another dimension of the corruptive effects of commodification – namely, that associated with uni-dimensional modes of valuation. In her critique of marketization, Anderson contests monistic theories of value, which assume that all forms of valuation are identical and involve “only one basic attitude or response – desire, perhaps, or pleasure – which can vary quantitatively but not qualitatively.” The monistic valuation scale implies commensurability between all assets and attributes. Anderson’s claim is that different spheres of life may be structured by social norms that require fundamentally different modes of valuation and that market norms cannot, therefore, capture the proper evaluation of all goods and attributes.<sup>16</sup> While “economic goods” – under Anderson’s characterization – are properly valued in market terms, other attributes constitutive of one’s personhood demand a different valuation scale. Such differential modes of valuation prescribe incommensurability between economic goods and personal attributes. According to Anderson, the collapsing of multiple spheres of valuation to a single monetary market scale corrupts the proper conceptualization of these personal attributes.

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14] True, governmental policy cannot be characterized as dictated by “preference” but rather operates according to “public reason”. Yet, public reason it is similarly want –regarding and often operates through incentive-building mechanisms, which are parallel to the market-price mechanism. Accordingly, if one is interested in being characterized as a resident, as married, as entitled to some tax benefits-- she in incentivized to follow certain requirements.

15] More generally, regulation will always create categories of “law-abiding” and “law-breaking”, which people really do see as central to their personalities and which can almost arbitrarily sort actions into each side of that distinction, so that an attribute that used to be minor is primary, particularly in terms of how the law will relate to you.

16] Anderson (1993, 143).

Anderson's critique of commodification can be interpreted as including two central lines of arguments: The first dimension (which we hereby refer to as "the commensurability critique") focuses on the reductive effect of monetary evaluation or price-tagging<sup>17</sup>, which are based upon a hidden underlying assumption that the market price is able to fully capture the value of every attribute. For instance, when a kidney is sold for 50,000\$ it is deemed to be worth 50,000\$. Such price-tagging also facilitates transitivity between various resources and attributes. While in the social arena resources diverge in their modes of valuation, money reduces them to a single, thin, one-dimensional measure that facilitates comparability. Thus, if the market price of surrogate-motherhood is 20,000\$, it is deemed to be worth less than a 50,000\$ kidney. Anderson contests the ability of monetary assessment to capture the full value of non-economic attributes and rejects the ability to rank them according to the monetary scale.

The second dimension of Anderson's critique of commodification (which we will term "the autonomy critique") focuses on the resulting deprivation of choice, and its adverse effect on the choosing subject's choice-making capacity. According to Anderson, sphere differentiation is required in order to ensure a substantial repertoire of valuation options, which in turn allow for an effective range of choices. Absent such repertoire of choices, one cannot exercise freedom or autonomy. In her critique Anderson thus emphasizes the context of choice – the array of modes of human existence made possible by pluralistic modes of valuation in society, offering a more expanded view of freedom and autonomy than the traditional liberal conceptualization.

We argue that similarly to the market, the regulatory logic crowds out alternative modes of valuation, resulting in similar commensurability and autonomy concerns.

The commensurability critique is manifested both in cases in which regulation attaches easily quantifiable tags to the regulated attributes, as well as in cases in which it itemizes features of the regulated attribute in a non-quantifiable manner. Starting with the first, as with price-tagging in the market context, the translation of human interactions and attributes to the regulatory currency often entails a problematic hidden assumption, that such currency captures the value of the regulated activity or attribute.<sup>18</sup> A typical

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17] We refer to the effects of money, for this is the currency of the market. However, this critique is equally applicable with respect to any other monistic scale of valuation – even all-inclusive ones such as social welfare.

18] For a similar claim, see Scott 1995, 228: "Officials of the modern state ... observe and assess the life of their society by a series of typifications that are always some distance from the full reality these abstractions are meant to capture. ... The functionary of any large organization actually "sees" the human activity of interest to him largely through the simplified approximations of documents and statistics: for example, tax proceeds, lists of taxpayers, land records, average income, unemployment numbers, mortality rates, trade and productivity figures, the cases of cholera in a certain district. These typifications are indispensable to statecraft as well as being potentially valuable. State simplifications such as maps, censuses, cadastral lists, and standard units of measurement represent techniques for grasping a large and complex reality that must be reduced to schematic categories of some kind to allow officials to comprehend aspects of the ensemble. There is no other way of accomplishing this end than to reduce an infinite array of detail to a set of categories that will facilitate summary descriptions, comparisons and aggregation."

example of such “price-tagging” in the regulatory arena is the sentencing guidelines. Incarceration periods set in the sentencing guidelines take the form of a list of quantifiable measures for involvement in certain behaviors. Crimes committed in various contexts and circumstances are classified as “worth” a given time in prison. The figure of speech “paid her dues” with respect to serving time in prison also conveys this form of conceptualization. Using the commensurability critique, however, we claim that the “menu of incarceration years” or the “list of prices” format of the sentencing guidelines entails reductive effects, for the penalties prescribed for rape, murder or theft obviously do not capture the entirety of their social harm and condemnation. Just as \$50,000 do not capture the value of kidneys and other non-economic goods, 7 years in prison do not properly capture the ways rape is and should be evaluated in society. Second, similar quandaries exist even in regulatory arenas that are less susceptible to “quantification.” Regulation, by its very nature, breaks the regulated activities and attributes into components or “items” of some kind on a bureaucratic spreadsheet. It arranges the world of human behavior in pre-existing, bite-size categories: to be eligible for governmental benefits (welfare, social security, visa, driving license) one is required to meet particular lists of criteria, relating to place of residency, age, income level etc. Such itemization for regulation purposes may entail an effect similar to the commensurability effect of the market, for the list pushes non-list items to the background. For example, listing the time spent in a relationship or being devoted to an activity may disregard the intensity, talent or care invested in such relations or activities. The list-related dimension becomes the quintessential characteristics of the resource.

Itemization in regulation operates both at the “input” and “output” level – namely, regulation enlists both the conditions to enter a particular regulatory category as well as prescribes a list of implications of falling under the particular category. On the input level treating certain features as “events” or as some kind of “proof” – say the length of time a couple is in a relationship for immigration purposes or the sharing of bank accounts – inflates the modest nature these features may actually play in some relationships. Enumerating such features as items on a spreadsheet may belittle the multifaceted meaning of relationships for couples – evaluating them based on one dimension only. Put differently, if we list the things that make individuals “a couple,” or “a family” in an attempt to assess whether or not certain relationships are a sham for immigration purposes, we impose a particular scale of valuation for the assessment of the relationship that is restricted to such items. By so doing, we highlight certain features of relationships (and conceal others) thus potentially portraying the listed features as capturing the full essence of relationship in its full. “Marriage” may be reduced to the equivalent of joint photos, joint bank accounts and long (but perhaps meaningless) relationships. A similar phenomenon, perhaps to a lesser degree, exists on the output level. Recognition of a couple as “married” carries particular implications in specific regulatory contexts ranging from immigration to tax and family law. But the configuration of family status as a list of regulatory implications may have a reductive effect of construing it as “amounting to”

these effects. The social institution of marriage may become evaluated to a large extent according to its specific implication in the various arenas.

The ranking dimension of the commensurability critique with respect to regulation should be quite obvious at this stage: Regulation's listing format not only itemizes but also puts certain attributes on par with each other. To use our sentencing guidelines example, if rape and theft are both evaluated according to the same "incarceration years" valuation scale, there is a danger that they become comparable in public eyes (similarly to kidneys and reproductive abilities in the market context).

In addition to the problems of commensurability, the reductive collapse of sphere multiplicity into monistic scales of valuation also compromises choice making capacity in the regulatory arena. In order to capture the full scope of the effect of regulation on choice-making we would like to draw a distinction between three layers of autonomy: the first relates to the freedom of choice – namely the negative liberty conceptualization aimed at the choice making process; the second refers to the effective repertoire of choices; The third refers to a neglected dimension we would like to highlight – the freedom from choice: advocates of the market and of commodification embrace the negative liberty version, according to which freedom of choice essentially amounts to the absence of coercion. In stressing the choice-making process itself, the negative liberty conceptualization of autonomy disregards the question of the effective repertoire of options, upon which one can exercise choice. As mentioned above, Anderson's critique of universal marketization is a manifestation of the repertoire of choices layer of the discussion. Her pluralistic theory of value is premised upon the notion, that the multiplicity of spheres of valuation are a prerequisite of autonomy, for only they can provide substantive choice which allows individuals to plan and lead meaningful lives. In other words, freedom from coercion is not enough to ensure autonomy: a central element at the base of freedom of choice emanates from, and is facilitated by, life among an array of pluralistic notions of value.<sup>19</sup> Regulation – like marketization – may compromise this more extensive understanding of autonomy, for it often involves a similar collapse of spheres of valuation – substituting multiple private scales of valuation with the single official sphere.<sup>20</sup> Regulation carries a reductive effect in that it restricts individuals' capacity to evaluate people, things, and relationships to the bureaucratic currency imposed. While the involvement of money indeed epitomizes the price-tagging, one-dimensional, reductive aspects of commodification – imposition of monistic valuation does not necessarily require translation into monetary currency.

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19] This distinction reverberates on the debate between libertarians and liberal multiculturalists; the former stress negative liberty, while the latter emphasize life multiplicity of alternatives and cultural communities. In the words of Rosenblum: "What is wanted is the most extensive pluralism combined with chances to exploit it, where men and women can enter and exit groups freely, where new associations are spontaneously formed and where shifting involvements is commonplace." (1998, 63)

20] Regulation may affect the interaction as well – when the official portrayal of an interaction allows or assumes a one-size-fits-all reading of an interaction it significantly alters our reading of it, portraying it as what it is not.

But, the effect of regulation on choice-making does not end here. A third layer needs to be added to the conceptualization of autonomy- the layer of freedom *from* choice. Though the ability to choose is a key feature of what makes one human and plays a constitutive role in autonomous human existence, such existence cannot be reduced to the choice-making function. Human existence encompasses more than a matrix of choice. While individuals are indeed choosing subjects they are not merely choosing subjects. Part of the moral significance of enjoying multiple spheres of valuation rests in the ability to discard the need to select any one sphere and to operate in a deliberately ambiguous fashion. Individuals are simultaneous inhabitants of numerous social universes of meaning and of normative commitments among which they do not necessarily wish to choose. These parallel social worlds and systems of meaning are often incoherent and conflicting, echoing what may be paradoxical, fragmented, and clashing preferences and conceptions of the self. The simultaneous co-existence in these diverse social universes reflects and facilitates a richer form of existence and human flourishing. It is our claim, that allowing individuals to enjoy the paradoxicality of order and the pluralism of social meaning, by not forcing them to choose between conflicting meanings and normative commitments, facilitates their autonomy in the fullest sense.<sup>21</sup>

The organizing principle of regulation compromises this *freedom from choice* dimension of autonomy. Beyond being a system of rules, regulation can be conceptualized as a system of meaning. It serves as a mechanism for merging sporadic, diverse, occasionally conflicting fragments of narratives and normative schemes into a consistent *nomos*. (Fisher 2008, 477) Regulation organizes the complexity of normative commitments and integrates them into a coherent voice, thereby endowing them with a particular meaning. In the regulated arenas individuals are banned from inhabiting parallel normative universes. In the regulator's eye people must often fall under pre-defined and mutually exclusive categories, and cannot simultaneously function in and define themselves according to fragmented and conflicting normative prescriptions. Under the regulatory arena they cannot be relieved of the need to prioritize – to create a clear hierarchy between different sets of choices. Even when individuals subject to a particular regulation are granted an opt-in or opt out choice, they must choose between mutually exclusive options. For instance, though individuals can choose whether to seek formal recognition of the regulator for their relations (through marriage), they are not relieved from the obligation to define their status according to the marriage versus non-marriage dichotomy that the regulator offers (Lifshitz 2010, 165).<sup>22</sup>

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21] This is particularly true of mundane, everyday acts and attributes, since there is something more disturbing about subjecting the smaller things in life to classification: Big decisions entail considerable deliberation. People pause and mull over these decisions regardless of their regulatory implications. Part of the charm of mundane rituals is their ordinary, nonspecific nature.

22] Though nothing in the structure of regulation prevents characterizing a particular couple as married for immigration purposes but as non-married for tax purposes, each context dictates a single categorization and form of valuation.

This last point can be reformulated as an objection to regulation that emanates from its ambition for totality, which is similar to the prevailing commodification critique aimed at the totality of monetary valuation (and its assumption that everything can be translated into the currency of money). This critique stresses the fact that in order to function in certain regulatory arenas individuals are forced to apply pre-dictated modes of valuation which not only allegedly attempt to consolidate and reflect a shared value scale, but also play a pivotal role in constituting human cognition. The regulatory perspective serves as a filter through which human beings, subject to its jurisdiction, understand and experience the world around them. (Marshall 2006, 237). An even stronger criticism of the totality of regulation refers to the domino effect: namely, the imperialist tendencies of the pre-dictated valuation scale that potentially crowd out other social forms of valuation – not only in the regulated arena, but also outside it. As discussed above, the domino theory critique of commodification essentially rejects the possibility of a co-existence of a commodified version and a non-commodified version of certain resources or interactions. It recognizes the collateral corruptive effect that the commodified versions of particular attributes might have on one's ability to maintain a non-commodified version of these same attributes. This "domino effect" version of the corruption critique, if sustainable in the market context, is equally applicable to the context of regulation – the concern being that the regulatory categorization may spill over to the private arena, thereby crowding out alternative social meanings and impairing the ability to sustain their generation.<sup>23</sup> To borrow Cover's term, regulation functions in a "jurispathic" manner – destroying competing social meanings in the interest of social control.<sup>24</sup>

As an empirical matter, there may be room to claim that the spillover effects are not paramount, for individuals are capable of making a distinction between the private and public arenas, and between the way attributes or relationships are portrayed in each of these different spheres. Moreover, the effects of the public sphere upon the private one may operate in a reverse manner – namely, individuals may object to the imperialism of the regulatory categorization in a way that accentuates the private dimensions of their relationship. We do not wish to settle this empirical question. Our contention is a more

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23] For instance, when the regulator defines marriage for immigration purposes as comprised of a list of features deemed essential for marital life (highlighting joint household, shared bank accounts, length of relationship) while disregarding other aspects of matrimony (the intensity of the relationship, emotional intimacy, or support that is not financial) it forces its vision of married life upon the constituents and can alienate attributes that tend to thrive outside the public spotlight. This, in turn, may affect the expectations and self-perception of individuals as spouses or non-spouses. Such characterization of a couple as married under formal regulation, may crowd out alternative social meanings associated with the regulated relationship as well as alter the self-perception of the individuals involved, and the meanings that they attribute to their relationship. For a good example from popular literature, see Gilbert 2010.

24] According to Cover, the legal process allows to choose between conflicting normative commitments, suppressing some while crowning others as hierarchically superior. In Cover's words: "It is the multiplicity of laws, the fecundity of the jurisgenerative principle, that creates the problem to which the court and the state are the solution." (1982, 40)

modest one: we claim that inasmuch as categorizations infiltrate sphere borderlines there is no reason to assume that this effect is restricted to the market-nonmarket boundary. Rather, similar effects may prevail in the crossings of the private-public distinction.

### CONCLUSION

An implicit premise underlying the commodification debate is that where the market commodifies, the state is necessarily neutral. Our article exposed the erroneous nature of this assumption, demonstrating that state intervention by way of regulation suffers from similar drawbacks to those of marketization.

As we have shown, just as marketization carries a corrupting potential when it objectifies individuals or attributes (as in the taboo market context), regulation raises analogous concerns regarding the objectification of social interactions. The introduction of regulatory logic depersonalizes the regulated interactions and resources, turning them into “objects” and faceless data. Moreover, the regulatory arena operates under a distinct rationality that is inherently saturated with instrumentalism. The regulator’s perception of individuals as a means by which to promote public policy is structurally similar to the instrumental manner by which market players are said to view others-- namely, as a means for profit maximization.

The corruptive effects of marketization associated with uni-dimensional modes of valuation are also manifested in the regulatory realm. This, we have shown, occurs both in cases in which regulation attaches easily quantifiable tags to the regulated attributes, as well as in cases in which it itemizes features of the regulated attribute in a non-quantifiable manner. Regulation carries a reductive effect in that it limits the evaluation of relationships and resources to the uni-dimensional bureaucratic currency that it imposes upon them. While the involvement of money indeed epitomizes the reductive capacities of price-tagging, monistic valuation can also be the result of the intrusion of bureaucratic currency. The bureaucratic valuation scale, we claimed, may potentially crowd out other social forms of valuation – not only in the regulated arena, but also outside of its parameters. This consideration is analogous to the “domino effect” argument, which plays a pivotal role in the commodification debate.

The implications of our conclusions regarding the commodifying effects of regulation are twofold: First, by viewing commodification through the regulatory prism we allowed for the unveiling of the multi-faceted nature of the anti-commodificatory sentiment. Expanding the horizons of the commodification discourse beyond the traditional contexts of taboo markets to the unexplored terrain of state regulation exposes the fact that monetization is but one instance of an entire family of cases, in which thick social interactions suffer from reductive effects rooted in their translation into a uni-dimensional currency.

Second, the similarities between the effects of marketization and regulation shift the entire course of the “boundaries of the market” debate and may have substantial

implications for the division of labor between the market and the state. We leave a more elaborate discussion of these implications for future research. It is our hope that the arguments brought forth in this article will set the stage for continued dialogue on this matter.

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#### REFERENCES

- Anderson, Elizabeth. 1993. *Value in Ethics and Economics*. Cambridge: Harvard University Press.
- Cohen, Glenn. 2003. Note, The Price of Everything, the Value of Nothing: Reframing the Commodification Debate. *Harv. L. Rev.* 117 (689).
- Cover, Robert M. 1982. The Supreme Court 1982 Term Forward: Nomos and Narrative. *Harv. L. Rev.* 97 (4).
- Dagan, Tsilly. 2010. Commodification Without Money, *Theoretical Inquiries in Law Forum* 11 (1) <http://services.bepress.com/tilforum/vol11/iss1/art2> (accessed January 30<sup>th</sup> 2012).
- Dagan, Tsilly, and Talia Fisher. 2011. Rights for Sale. *Minnesota L. Rev.* 98 (90).
- Fisher, Talia. 2008. Nomos without Narrative. *Theoretical Inquiries in Law* 9 (477).
- Frug, Gerald E. 1984. The Ideology of Bureaucracy in American Law. *Harvard L. Rev.* 97 (1276).
- Gilbert, Elizabeth. 2010. *Committed: A Skeptic Makes Peace with Marriage*. New York: Penguin.
- Krawiec, Kimberly D. 2010. A Woman's Worth. *North Carolina L. Rev.* 88 (1739).
- Lifshitz, Shachar. 2010. Spousal Rights and Spousal Duties: The Liberal Case for Privileging Marriage, The Jurisprudence of Marriage and Other Intimate Relationships. In *The Jurisprudence of Marriage and Other Intimate Relationships*, edited by Wardle D. Lynn, and Scott Fitzgibbon. Buffalo: William S. Hein Co.
- Marshall, Anna-Maria. 2006. Communities and Culture: Enriching Legal Consciousness and Legal Culture. *Law and Social Inquiries.* 31 (229).
- Radin, Margaret J. 1996, *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts and Other Things*. Cambridge: Harvard University Press.
- . 1986. Market Inalienability. *Harv. L. Rev.* 100 (1849).
- Radin, Margaret Jane, and Madhavi Sunder. 2005. Introduction: The Subject and Object of Commodification. In *Rethinking Commodification* 11, edited by Martha M. Ertman, and Joan C. Williams. New York: New York University Press.
- Roseblum, Nancy L. 1998. *Membership and Morals: The Personal Uses of Pluralism in America*. Princeton, Princeton University Press.
- Sandel, Michael. 2000. What Money Can't Buy: The Moral Limits of Markets. In *The Tanner Lectures on Human Values* 21, edited by Grethe B. Peterson. Salt Lake City: University of Utah Press
- Satz, Debra, 2010, *Why Some Things Should Not Be For Sale: The Moral Limits of Markets*. Oxford University Press.
- Scott, James C. 1995. State Simplifications: Nature, Space and People. *The Journal of Politician Philosophy* 3 (3): 191-233.
- Silbaugh, Katharine. 1997. Commodification and Women's Household Labor. *Yale J.L. & Feminism* 9 (81).
- Walsh, Adrian. 2001. Are market norms and intrinsic valuation mutually exclusive?. *Australian Journal of Philosophy* 79 (4).
- Walzer, Michael. 1983. *Spheres of Justice*. New York: Basic Books.
- Zelizer, Viviana A. 2005. *The Purchase of Intimacy*. United Kingdom: Princeton University Press.

# Political Philosophy and Public Service Broadcasting

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**Abstract.** This paper examines possible justifications for public service broadcasting (PSB) by considering the different kinds of programmes provided by PSB organisations such as the British Broadcasting Corporation. In Section I it is argued that if PSB News is to be justified via its contribution to democracy, the claim that markets fail to provide adequate News must conceptualise such failure quite differently from neo-classical welfare economics, and the judgments people make as citizens must be distinguished from the preferences they express as consumers. In Section II it is argued that unlike News provision, which is compatible with a neutralist liberal view of the permissible grounds for state action, the justification for Arts provision requires at least a weak version of liberal perfectionism, allowing policies aimed at promoting individual autonomy, and quite likely a stronger version, permitting judgments about the value of specific goods that should be available for individuals. In Section III it is argued that PSB provision of Soap Opera may be justified on the basis of a weaker version of liberal perfectionism, by showing how it contributes to reflection by viewers on the problems and possibilities presented by their own and other lives', and with market failure being understood in terms of problems concerning the intra-organisational independence of creative workers. In the final section the mutually supportive relationship between neutralist liberalism and neo-classical economics is explored, and it is suggested that public policy from a liberal perfectionist perspective requires some form of institutional, rather than neo-classical, economics.

**Key words:** broadcasting, public service, democracy, neutrality, perfectionism, neo-classical economics, institutions.

This paper will identify and examine possible justifications for the provision of broadcasting as a public service, and hence for the defence of existing forms of public service broadcasting (PSB) against their marketisation. In doing so it will give particular attention to the implications of various debates in political philosophy for the nature and limits of such justifications. To provide real-world exemplification of the theoretical issues involved, reference will be made throughout to institutional arrangements and public policies in the United Kingdom. However, most of the issues and arguments related to that context apply also, with minor adjustments, to broadcasting systems in other countries.

The cornerstone of PSB in the UK is the British Broadcasting Corporation (BBC). Established as a public corporation in 1926, it is funded primarily by income from the licences that must be purchased by households owning a television. No advertising is permitted on any of its (now numerous) channels. In the early 1960s, its state-enforced monopoly over broadcasting ended, with the establishment of (quite strictly regulated) commercial broadcasting companies, financed through advertising revenue. The viewers' licence fee also provided access to their programmes. This arrangement remains in place, despite the recent proliferation of TV channels made possible by digital transmission, and financed by various combinations of advertising and viewer-subscriptions.

A broadly similar trajectory is discernible across Europe and in many other countries. (The USA, as one might expect, is an exception). With public broadcasting

organisations initially established as public monopolies – and in some cases, unlike the UK, controlled directly by the state – by the mid-1990s most had adopted ‘dual systems’, combining public and commercial broadcasting. The main differences are that commercial broadcasting was introduced in the UK earlier than in most other European countries, and that in the majority of these, PSB is now funded by a combination of licence fee and advertising revenue (Hesmondhalgh 2007, chapter 4).

Thus for all practical purposes, the defence of PSB is nowadays the defence of one element in a mixed system of broadcasting provision. Unlike certain other kinds of case in which placing limits on the market may be proposed, what is being argued for is not the prohibition of commercial provision, but its being accompanied by public provision.<sup>1</sup> It is the retention of this dual system that has been challenged by advocates of marketisation, arguing that broadcasting should become an exclusively commercial activity, though possibly subject to certain forms of regulation.

In the UK, debates about the marketisation of PSB were especially prominent during the 1980s, when the status and funding of the BBC were radically challenged in the context of a wide ranging programme of reforms to public services. The BBC arguably survived this process largely intact, though significant changes to its internal organisation were introduced, aimed at making it a more commercially-minded and market-oriented institution.<sup>2</sup> Some of the issues raised by these debates re-appeared in the late 1990s, in discussions leading up to the 2003 Communications Act, which dealt with the regulation of broadcasting in the multi-channel, digital era of cable and satellite transmission.<sup>3</sup> Some specific features of the 2003 Act will be noted shortly. But first some more general remarks will be made about the justification of PSB.

One may start by drawing a distinction between two different kinds of argument that may be used to justify the public provision of any specific service. The first is based on considerations of social or distributive justice. Public provision is supported on the grounds that the service concerned should be available to everyone irrespective of their income and wealth, which cannot be achieved if its provision is left to the market. The second is based on concerns about the character of the service concerned, the argument

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1] More specifically, arguments for PSB are typically not based on the supposed undesirability of broadcasting services being bought and sold as such (being *commodities*). This distinguishes them from other cases of possible market limitation, such as the purchase and sale of sexual services or bodily parts, where what is at issue is whether this should be permitted at all, or be ruled out as “blocked exchanges,” in Walzer’s sense (1983, chapter 4).

2] See McGuigan 1996, chapter 3, and Leys 2001, chapter 5, for accounts of these organisational reforms; but both authors would probably reject the view that the BBC survived this process ‘largely intact’.

3] It should be noted that technological factors affecting telecommunications systems have often been important for debates about the organisation of broadcasting. For example, one reason for the early public monopolies was the technically restricted broadcasting spectrum, no longer a problem in the digital age. Likewise, subscription-based channels (enabling the exclusion from viewing of non-subscribers) are nowadays technically possible, which they previously were not.

being that leaving its provision to the market will fail to ensure that this service has the characteristics appropriate to the purpose(s) it should serve.

In the case of some services, such as education, considerations of both kinds may be equally relevant. But in others, the justification for their public provision may be based primarily on one rather than the other. In the case of healthcare, for example, it would seem that considerations of the first kind predominate. By contrast, the justification for broadcasting as a public service relies mainly on the second kind. The primary concern of those who support PSB is that a purely commercial broadcasting system would fail to provide certain kinds of valuable programmes: that if broadcasting were fully marketised, it would fail to achieve the purposes that any system of broadcasting should serve.<sup>4</sup>

Thus a successful justification for PSB must involve two main elements. The first consists in identifying and justifying the purposes that broadcasting should serve, and hence the kinds of programmes that should be provided, and the qualities that these should display. The second consists in showing that an exclusively commercial system can be expected *not* to achieve these purposes, and that there is some institutionally specified form of PSB that *can* be expected to achieve them, or at least to get closer to doing so than its commercial counterpart.

What kinds of purposes might these be? Here we can usefully return to the 2003 Communications Act, noted above. Amongst other provisions, it established an Office of Communications (Ofcom), a regulatory body whose duties include monitoring and reporting on the extent to which what are identified as the official purposes of PSB are being achieved. The most important of these are: “(1) To ... increase our understanding of the world through news, information and analysis of current events and ideas, [and] (2) to stimulate our interest in and knowledge of arts, science, history and other topics...” To these purposes are added various *characteristics* that PSB programmes should display: they should be of high quality, original, innovative, challenging, and engaging (Ofcom 2005, 7).<sup>5</sup> The BBC, although retaining its own, independent governance system, is expected to meet all the specified requirements for PSB. In addition, the main (terrestrial) commercial broadcasters have certain PSB obligations, most importantly for news provision.

Of course, there is nothing sacrosanct about this Ofcom definition of PSB purposes, but it is by no means an untypical one, and it can serve at least as a convenient point of departure. Further, and unsurprisingly, Purposes (1) and (2) correspond closely to two of the BBC’s long-stated aims, namely to *inform*, and to *educate*, its audience, which it sees itself as achieving through news and current affairs programmes, and programmes about the arts and sciences. But the BBC also has a third, and equally long established

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4] One might almost say that those who support public healthcare want to ensure that this is as *good* as the private healthcare provided commercially, whereas those who support PSB want to prevent broadcasting being as *bad* as it would be if it were exclusively commercial.

5] The other two official PSB Purposes are: “(3) to reflect and strengthen our cultural identity through original programming at UK, national and regional level...; (4) to make us aware of different cultures and alternative viewpoints... both within the UK and elsewhere.” (Ofcom 2005, 7)

aim, namely to *entertain* its viewers, and does so through an extensive provision of sitcoms, soap operas and popular drama series.

In more general terms, the BBC and its defenders have been strongly committed to providing a 'complete' broadcasting service, rather than one that is restricted to certain specific types of programme. Correspondingly, critics of the BBC's institutional status have often argued that although information, and perhaps also education, may be proper aims for a public broadcasting service, entertainment both can and should be left to commercial broadcasters. And once the BBC is divested of its entertainment purpose, a more radical possibility comes into play: to quote the title of a pamphlet by one its most influential critics, *Public Service Broadcasting Without the BBC?* (Peacock 2004).

In any case, and putting these institutional and political considerations aside for the moment, it seems clear that different kinds of justification – if they can be provided at all – may be needed for different possible purposes of PSB and the kinds of broadcasting outputs associated with these. The main sections of this paper will explore in turn the (primarily philosophical) issues raised by possible PSB justifications for the three kinds of programmes identified above. In the final section, some broader issues about the respective contributions of political philosophy and economics to public policy will be considered.

### I. NEWS: MARKET FAILURE AND DEMOCRACY

The BBC is a major provider of news and current affairs programmes, along with documentaries and investigative journalism exploring issues of public concern. For convenience, I shall refer to all of these simply as *News*. The provision of News is widely regarded both as the most important, and as the most easily justifiable element or purpose of PSB. In the annual surveys of TV viewers conducted by Ofcom, there is a very high level of endorsement for this purpose, and also of satisfaction with the performance of PSB providers in this respect (Ofcom 2007). The level of support for News *provision* is higher than the level of News *viewing*, a point whose significance will be discussed later. Viewers are not asked why they regard this purpose as so important, but an obvious answer, and one that has also been supported by several political theorists, is that PSB News makes a major, or indeed essential, contribution to the proper functioning of democratic political institutions (McGuigan 1996; Leys 2001; Lukes 2005).

However, in order to justify the provision of News through PSB, it must be argued not only that this is a valuable purpose for any broadcasting system, but also that there is good reason to doubt that it would be adequately achieved by commercial broadcasting alone. How might this latter claim be supported? One possibility, which may initially seem attractive, is to draw on the theoretical resources of neo-classical welfare economics, and see if there are reasons to expect News to be *under-provided* by market economies: whether markets can be expected to 'fail', in the specific sense given to this within the neo-classical framework.

According to neo-classical welfare economics, markets that are ideal (in a theoretical, not normative sense) can be shown to be efficient, in the sense of achieving Pareto-optimality: that is, for any given set of individuals' preferences (whatever these preferences consist in, or are 'for'), no re-allocation of resources would make anyone better-off (in terms of those preferences being satisfied) without someone else being made worse-off. But *actual* markets may fail to be efficient because they lack one or more defining feature of the ideal model, such as the absence of positive or negative externalities and of public goods or ills. In particular, both public goods, and goods that have positive externalities, will be 'under-provided'. These are standard cases of market failure, in response to which the introduction of some form of non-market, public provision is one possible solution.

Within this framework, it might then be argued that News can be expected to be under-provided by commercial broadcasters since this is a service with significant positive externalities: there are many benefits of News for those who do not (pay for or) view it.<sup>6</sup> In particular, the quality of decision-making in a democratic polity may well be improved because those who do watch News, and have some influence over these decisions, are better informed about the relevant issues. It is this line of argument which Alan Peacock – an economist who has played a major, and largely critical part in debates about the BBC – has in mind, when he notes that one can expect to find wide support for programmes

[...] from which many listeners and viewers feel they derive a benefit although they do not necessarily listen to or watch them. An obvious example is programmes designed to encourage an interest in current affairs so that those who experience them are better informed about matters that may call for their decisions as voters, conferring, as is commonly believed, an uncovenanted benefit on others. (Peacock 2004, 42)<sup>7</sup>

However, although News may well be under-provided due to positive externalities of this kind, so that a case for its public provision can be made on these grounds, it is important to recognise that this is not a justification that anyone whose primary concern is with the contribution that News makes to democracy should appeal to. This may seem an odd claim to make, given that the neo-classical argument just outlined refers to the beneficial impact of News on democratic decision-making. But the ways in which the concept of democracy functions in the two arguments – let us call them “neo-classical” and “democratic” – differ fundamentally.

In the neo-classical argument, the over-riding concern is with efficiency, and democracy is significant to the extent that, through the effects that News has upon it, it confers benefits on individuals that are not taken into account by News providers. In the democratic argument, by contrast, it is democracy itself, and the conditions for its proper conduct, which are the primary concern, and efficiency has no direct significance.<sup>8</sup> What

[6] See Baker 2002, 41-62, for an extensive discussion of externalities in a wide range of media outputs.

[7] But note that Peacock's theoretical sympathies are with Austrian, rather than neo-classical economics.

[8] This is not to say that the democratic argument rules out any concern for efficiency, conceived as an additional value that should be given some significant weight in public policy, but only that this value has

matters, for advocates of the democratic argument, is whether markets may fail to provide something that is important for democracy, and not whether they may fail to be efficient.

So instead of drawing on the neo-classical framework, proponents of the democratic argument will need to approach the question of whether markets may fail in the provision of News in a different way. They must first specify certain standards or criteria by which News provision is to be evaluated, and these standards must be related to the function that News is to perform for democracy. Here the question will not only be “will there be enough News?”, but also, and more importantly, “will there be *good* enough News?”. They must then compare and evaluate the actual (and likely) performance of commercial and public service News providers, in terms of these standards. In doing so they will no doubt have in mind various factors that might be expected to affect such performance, but it is important that these expectations are tested against the evidence.

At least two such standards might be adopted. One is that News should be *impartial*, or objective (and that current affairs coverage should be ‘balanced’ etc.). The other is that it should be *serious*, dealing with the kinds of economic, social and political events that matter to democratic citizens. Those who doubt the ability of commercial broadcasting to provide good enough News may suspect that the first criterion will not be met, due to the economic or political interests of the owners of broadcasting companies influencing the selection and representation of these significant events, and/or that the second may not be met because of the temptation (or pressure) to cater for the tastes of viewers who are not especially interested in serious News, by providing them instead with celebrity gossip and ‘human interest’ stories.

But are such suspicions justified? An evaluation of commercial News broadcasting performance in these terms would arguably show that the picture is at best a patchy one, with some cases of good performance by commercial broadcasters and many others that are poor.<sup>9</sup> But if commercial News performance is only occasionally good, and often poor, it would be a mistake to rely exclusively on the market for News provision. If one wishes to ensure, or at least be reasonably confident, that impartial and serious News will be provided, there would be a strong case against leaving this to commercial broadcasting alone – provided, of course, that it is possible to devise institutions for PSB News that are better, when judged in these terms.

There is, however, a possible objection to this democratic justification for PSB News (understood now to include this alternative approach to the definition and evaluation of market failure). The democratic justification, it might be argued, is very likely to support

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no place in the democratic argument itself.

9] In making such an assessment in the UK, it should be noted that the provision of impartial and serious News is itself a regulatory requirement placed on the terrestrial commercial channels, as a condition of their broadcasting licences. So although they apparently meet this requirement quite well, this cannot be counted as a success for the market. Indeed, that such a requirement needs to be imposed, and is often regarded as burdensome by the commercial broadcasters concerned, suggests that without it, their News provision would be poor.

PSB News provision that differs significantly, both in amount and character, from what an ideal market would generate, and hence from what would be provided even once all the externalities of News had been taken into account.<sup>10</sup> This would not only be inefficient, and hence undesirable because of the lost opportunities to improve some people's welfare without sacrificing that of others, but it would also be disrespectful to (at least some) people's preferences, to what it is that they would themselves prefer to do, as indicated by their willingness-to-pay. To the extent that democratically justified News provision departs from efficiency, it ignores some people's preferences and privileges those of others.

In response to this objection, however, it might be argued that, in the scenario just outlined, what is involved is not that some people's preferences are being privileged over others', but that the judgments people make in their role as *citizens* are diverging – as they often, and quite justifiably do – from the preferences they express as *consumers*.<sup>11</sup> To see what is at issue here we can return to Peacock's explanation for why more people may support PSB News than actually view it. He suggests, in effect, that this is because they have recognised the positive externalities of News: that they may well benefit from the better quality of decision-making in a well-informed democracy. But there is another possible explanation, namely that people *believe in* democracy, in the sense of regarding it as the right way for political decisions to be made, of endorsing its underlying principles and so on.

That is, they support PSB News not (or not only) because it indirectly confers benefits on them through its effects on democracy, but because it contributes to something they believe in, democracy itself. As consumers, they are primarily (and quite properly) concerned with their own welfare, and – putting aside issues of distributive justice – the strength and seriousness of their preferences for particular goods and services are (quite appropriately) indicated by their willingness to pay for these. But as citizens they are concerned primarily with what kind of society is best, with the proper nature of political institutions, and hence also with what is needed if these are to operate effectively. If they decide that some form of PSB is required, they must accept the possibility that this will involve some loss of efficiency. But unless they regard efficiency as of over-riding value, this need not concern them unduly.

However, even if this 'citizen-judgment' articulation of the democratic argument for PSB were defensible, it would justify only the provision of *News* as a public service. So we need now to consider what if any kinds of justification can be provided for the other elements of PSB identified earlier. As will be seen, these may encounter significant philosophical problems about what kinds of purposes citizens may legitimately try to achieve through state action.

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10] I have not addressed, here, the serious problem faced by the democratic justification of PSB News in determining the appropriate amount or extent of its provision. On this, see Claassen 2011.

11] Sagoff (1988) introduces this distinction in arguing against economic approaches to environmental decision-making; his argument is discussed in Keat 2000, chapter 3. The citizen-consumer distinction is invoked to support PSB in Graham and Davies 1997, and Pratten and Deakin 2004.

## II. ARTS: LIBERALISM AND NEUTRALITY

The BBC is not only a major provider of News, but also of a wide range of programmes connected to the various arts, and to history, science and so on. These include the direct broadcasting of music, theatre, dance and opera, and programmes reviewing developments in these areas. (The BBC is also a major sponsor of concerts and musical performances, and supports several orchestras of its own). For brevity, I shall refer to all these simply as *Arts*. It seems unlikely that such an extensive array of Arts programmes would be generated by a commercial broadcasting system, and although an argument might be made for their public provision, based on externalities, it seems unlikely that this would be as strong as the corresponding kind of argument for PSB News. However, these are not the questions I shall discuss here. Rather, it is whether Arts provision is, even in principle, a legitimate purpose for PSB.

To see what is at issue here, one can start by noting that, as with News, there seems to be a high (though not quite as high) level of support amongst TV viewers for Arts provision (Ofcom 2007). And as with News, but to a greater degree, many of those who endorse the provision of Arts programmes do not themselves view them often, if at all, or might well not view them if they had to pay (directly) to do so. It might thus seem attractive, to the defender of PSB Arts provision, to invoke the distinction between citizens and consumers made in the preceding discussion of News, and to suggest that this widespread support for the public provision of Arts programmes is based on people's judgments, as citizens, about the value of the Arts: regarding them, perhaps, as admirable achievements of human creativity and imagination that can enrich people's lives and are hence worthy of support, *inter alia* through PSB.

However, even if such judgments about the value of Arts were justified, it might not be legitimate for a political community to refer to them in making decisions about matters of public policy. At least, this seems to be implied by a principle endorsed by many liberal political philosophers, that of state neutrality. According to this principle, it is not permissible for the state to act – and hence for its coercive powers to be utilised – with the aim of promoting or aiding the realisation of specific conceptions of the good, of what makes for a valuable or worthwhile life.<sup>12</sup> Hence political decisions should not be based on judgments about what is good, that is, on what are often called *ethical* judgments. Ethical judgments (as grounds for action) should be made only by individuals, in the conduct of their own lives, and there is no place for collective ethical judgments as a basis for public policy.<sup>13</sup>

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[12] Admittedly, the use of state power in the provision of PSB may be quite limited, confined for example to enforcing the payment of licence fees and to defining and enforcing the powers of regulatory bodies. Important matters of principle are nonetheless involved here.

[13] Dworkin (1985a) provides the classic statement and defence of this principle, which is also arguably implied by Rawls's (1971, sec. 50) rejection of perfectionism. For an overview of the debates about neutrality and perfectionism, see the Introduction to Wall and Klosko 2003; also Mulhall and Swift 1996, especially 249-58.

The principle of neutrality would apparently rule out any justification for PSB Arts provision based on the supposed value of the arts as, for example, expressions of human creativity and sources of aesthetic experience. However, just what is implied by the neutrality principle is a matter of some dispute. This is partly because the principle may itself be formulated in somewhat different ways, and partly also because it is unclear what kinds of economic institutions are required by, or compatible with, this principle. In particular, some neutralist liberals have argued that only market economies are consistent with neutrality: the market, as it were, treats people's preferences neutrally, without reference to the desirability of what they are 'for', taking account only of people's willingness to pay for their satisfaction, based on whatever judgments of value they themselves happen to make.<sup>14</sup>

On this view – and putting aside issues of distributive justice – any argument for subsidising certain goods or services through tax revenues or the like, including the state-enforced payment of TV licence fees, must be rejected, and only subsidies justified in terms of rectifying neo-classically defined market failures are acceptable. Thus the principle of neutrality becomes, in effect, a philosophical defence of neo-classical welfare economics as the framework within which justifiable PSB purposes are to be determined. This would not only rule out a citizens' value-judgment basis for PSB Arts provision, but would also limit the justification of News provision to considerations based on neo-classically defined market failure. Judgments of the value of democracy would not be relevant in justifying PSB News provision, just as those of the value of the arts would not be relevant in justifying PSB Arts provision.

However, it is arguable that neutralist liberals need not take this view of the relationship between market institutions and the principle of neutrality. If they do not, this might enable them to discriminate between a democratic argument for News provision, which they can accept as consistent with neutrality, and an ethical argument for Arts provision, which they can then reject as inconsistent with this principle.<sup>15</sup> The rationale for discriminating between the two in this way might be that whereas providing the kinds of information and debate needed for a flourishing democracy is not a matter of promoting any particular conception of the good, supporting the arts clearly is. Indeed, if democratic politics is itself conducted in accordance with the principle of neutrality, it would be odd to exclude the value of democracy as a legitimate ground for state action by referring to that principle.

These issues about the implications of neutrality will not be pursued further here, partly because it is, in any case, far from clear that this principle is actually implied or

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14] This seems to be the view taken in Dworkin 1985a, and in Arneson 1987 (though not in Arneson 2003). For criticism, see Keat 2009a and 2011.

15] Admittedly, attempts have been made to show that Arts provision *is* consistent with neutrality, most notably in Dworkin 1985b. See Black 1992 for criticism of this attempt, and Murray 2004 for a review of the extensive debates on this issue.

required by liberalism. At least, a number of liberal political theorists have argued that judgments about what is valuable to human life can play a part in political decisions, and provide grounds for state action, without this necessarily posing a threat to central liberal commitments and principles.<sup>16</sup> A position of this kind would have significantly less restrictive implications for the legitimate purposes of PSB than its neutralist liberal counterpart.

This view is often referred to as ‘liberal perfectionism’, but it will be helpful to distinguish here between two different versions of this, which will be called ‘weaker’ and ‘stronger’.<sup>17</sup> According to the first, the state may legitimately act in ways aimed at contributing to individual *autonomy*, conceived as the ability of individuals to make their own decisions about the kinds of life they wish to lead, to reflect in a sustained and critical manner on the various possibilities open to them, to make independent judgments about what is a worthwhile life for them, and so on. On this view of autonomy, such abilities are not, as it were, pre-given features of human nature, but complex achievements that may require, or be fostered by, specific social conditions and opportunities. It is thus quite possible that a wide range of public policies may contribute to – or detract from – their acquisition and effective exercise.

The second, ‘stronger’ version of liberal perfectionism goes beyond this by permitting state action designed to promote or secure the possibilities for various specific ways in which such autonomous individuals may in fact choose or decide to lead their lives. Joseph Raz, for example, has argued that political communities have an obligation to provide individuals with an adequate range of valuable options for the kinds of life they might lead, and the activities they might engage in, thereby making it possible for individuals to “exercise all the capacities human beings have an innate drive to exercise, as well as to decline to develop any of them” (Raz 1986, 375).<sup>18</sup>

In a broadly similar vein, Nussbaum (1990) has argued that political communities are properly concerned with the good of their members, and that to understand what this implies requires one to develop what she calls a “thick but vague,” broadly Aristotelian account of essential human functionings, both those necessary for a minimally decent existence, and those central to human flourishing. The responsibilities of the political community are, however, limited to ensuring the possibility, rather than the actuality, of

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16] Amongst these theorists are: Raz (1986 and 1994); Sher (1997), and Wall (1998). Jürgen Habermas now accepts a role for ethical judgments in politics that he had previously rejected: see Habermas 1993 and 1996 and the discussion of this position in Keat 2009b.

17] The distinction here between weaker and stronger versions of liberal perfectionism corresponds to Steven Wall’s between Types (1) and (2), in Wall 1998, 197-202. In Keat 2011 the two are named “perfectionist liberalism” and ‘liberal perfectionism’ respectively, and the claim that both are consistent with core liberal principles is defended.

18] See also Raz 1986, 133, and Raz 1994). Indeed Raz argues that autonomy itself requires that an adequate set of valuable options be available (1986, 417-18), and that the value of an autonomous life depends on that of the options chosen, but neither of these additional claims will be assumed here.

these functionings: to providing people with the relevant *capabilities*, without requiring them actually to engage in the activities made possible for them.<sup>19</sup>

Without exploring this in any detail, it should be clear that the stronger version of liberal perfectionism makes the justification of PSB Arts provision unproblematic, at least in terms of the principles governing legitimate grounds for state action. It might involve, for example, arguing that a valuable social purpose is served by providing people with the possibility of various forms of aesthetic appreciation and enjoyment, the development and exercise of their imaginative capacities, and so on. Securing the availability of such valuable possibilities through broadcasting would be consistent with an emphasis on the provision of options or capabilities rather than the coercive requirement for people to engage in certain activities or conduct their lives in specified ways. After all, viewers need only switch channels or turn off their TVs.

Whether there are possible justifications for PSB Arts provision that are consistent with the weaker version of liberal perfectionism is less clear. But this issue will not be explored here.<sup>20</sup> Instead, I shall consider in the next section the possibility of appealing to this weaker version as the basis for, or the framework within which, a justification for PSB *soap opera* might be constructed. Before doing so, and looking back to the previous section, one further comment on liberal perfectionism can be made. In both versions, it might be argued, this position would enable justifications for PSB *News* to be provided, quite independently of the *democratic* rationale for News provision considered in the previous section. An informed and reflective understanding of the world may be regarded as valuable for individuals (as judged in perfectionist terms, rather than of preference-satisfaction) – irrespective of whether their own or others' achievement of this is good for democracy.

### III. SOAP: ETHICAL REFLECTION AND CREATIVE INTEGRITY

The BBC aims not only to inform and educate its viewers through the provision of News and Arts, but also to 'entertain' them, an aim achieved primarily through its provision of situation comedy, soap opera, and popular drama series. For convenience I shall refer to these as *Soap*, and I will also focus specifically *on* soap opera in discussing this category. PSB provision of such programmes is generally regarded as the most difficult to justify. Neither the high-minded defender of Arts, nor the politically serious defender of News, are natural supporters of Soap, which is widely seen both as lacking any significant

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19] However, Nussbaum does not regard her position as a (liberal) perfectionist one; for her view of the relationship between this and Rawlsian political liberalism, see Nussbaum 2011.

20] To do so one might need to distinguish between Arts such as music, whose PSB provision would require the stronger version of liberal perfectionism, and others such as drama, that would (at least in part) require only the weaker version, and whose PSB provision would then be justifiable in the same way that PSB Soap provision is justified in the following section.

value – being ‘mere’ entertainment – and as, in any case, perfectly well catered for by commercial broadcasters.

Whether PSB Soap provision can be justified has important implications for the BBC. If it were limited to the provision of News and Arts, then nothing much resembling its current (and historical) nature and scale as an organisation might remain, since well over half of its output consists in neither of these. The BBC’s defenders are well aware of this, and have consistently tried to resist its being reduced to a rump organisation concerned only with News and Arts. In doing so they often point to what they see as the disastrous consequences of such a limited role for PSB in the USA (Graham and Davies 1997).

One way of supporting this position, without arguing for the value of Soap itself, is simply to say that viewers will be more likely to tune in to News and Arts if they are also viewing Soap on the BBC, thereby increasing the audience size for these valuable programmes. But perhaps Soap’s *own* value can be justified, and a case made for its PSB provision alongside News and Arts? This is the possibility that will now be explored.

To do so we can return to the weaker of the two versions of liberal perfectionism outlined in the previous section, according to which it is permissible to use the powers of the state in facilitating the development and exercise of individual autonomy. This may include providing people with the means by which they can make suitably informed and reflective judgments about the different ways in which they might wish to lead their lives, something that will also involve understanding and reflecting on the kinds of lives they are now living, the nature of their relationships with others, the possibilities and difficulties these present, and so on. One might call this kind of process *ethical reflection*.

The capacities required to engage in such ethical reflection are not exclusively cognitive in character, but also affective and experiential. Correspondingly, their acquisition and development may be aided as much, or indeed more, by imaginative engagement with the kinds of concrete depictions and explorations of people’s lives to be found in novels, drama and other works of fiction than by abstract theoretical or philosophical reasoning.<sup>21</sup> And although it is usually ‘high culture’ forms of fiction that are invoked in this context, there may (also) be a strong case for the value of Soap in this respect.

Such a case has been powerfully made by John Mepham (1990). He argues that (what he calls) “TV fictions” can, at their best, perform similar, and similarly valuable functions to those performed by their high culture counterparts. Indeed, he suggests that Soap, in particular, has certain advantages over literary counterparts such as the nineteenth century realist novel, as a resource for personal reflection in late-modern societies. These include the absence of authorial privilege, and the open-endedness of its story-lines. Television fictions, he says, can contribute in valuable ways to what he calls the “processing” of their lives by individuals. “Soap operas,” he says:

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21] See Keat 2000, chapter 8, for a fuller development of the argument here.

[...] interact with and very directly enhance the processing which the viewer constantly attempts in his or her own everyday life. They can, at their best, produce a constant stream of puzzles relating to the morals and tactics of everyday affairs and offer to the viewer a range of possible solutions which can be mulled over, assessed, assimilated or rejected. They can expand the viewer's sense of what is possible, enhance his or her vocabularies and repertoires of words, gestures and initiatives. They are the great laboratory of modern everyday life. Of course, they can only achieve these things if they are of high quality. (Mephram 1990, 67)

However, even if Mephams's claims about the potential value of Soap are accepted, and the version of liberal perfectionism that would regard these as permissible grounds for their public provision is endorsed, the case for PSB Soap would still require one to argue that Soap should not be left to the market, that it cannot be adequately provided through exclusively commercial means. At first sight, it seems hard to see how this could be shown: surely Soap is just what commercial TV is so good at providing? In the UK, for example, the main commercial broadcaster, ITV, produces plentiful Soap, and most TV critics would probably agree that a lot of it is pretty 'good' Soap, even if they do not hold this TV genre in such high regard as Mephram does. The BBC also produces a lot of Soap, and it is not obviously a lot better than its commercial counterparts. So why do we need PSB Soap as well as commercial Soap?

Before considering a direct answer to this question, some comments on how the Ofcom definition of PSB Purposes addresses the provision of Soap may be of some interest. There is no explicit reference to Soap in its statement of these purposes. Nor do we find anything resembling the kind of purpose that has been appealed to in the argument so far, which might be stated as: "to aid individuals in making sense of their own lives, and those of others, and to engage in a continuing process of reflection on what is problematic and what is valuable about these." There is, however, regular monitoring and reporting on the provision of popular drama series (which are taken to include soap opera), primarily in relation to another official PSB Purpose, namely (3): "To reflect and strengthen our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences." The implications of this Purpose partly depend on the meaning given by Ofcom to the term *original* (one of its PSB Characteristics), which is understood as requiring "new UK content rather than repeats or acquisitions," i.e. material that is not only produced *in* the UK, but is *about* people's lives there, thus excluding (as ways of meeting this PSB Purpose) the import of Soap that is 'foreign' in either respect (Ofcom 2005, 7).

The idea that Soap's value is at least partly to do with cultural identity is an important one and has obvious connections with central themes in communitarian political philosophy and the politics of identity. But these cannot be explored here. What is more relevant to the present discussion is the fact that, just as in the case of News provision, the satisfactory achievement of PSB Purpose (3) – and hence of what this implies for Soap, *inter alia* – is something that Ofcom requires not only of the BBC but of the main commercial broadcaster, ITV. And as in the case of News, the rationale for this being

imposed as a PSB requirement is that a commercial system could not otherwise be relied upon to achieve it.<sup>22</sup>

However, there is nothing here that would indicate why leaving Soap to the market might be unduly risky in terms of the kind of rationale for it that Mepham proposes. To see what may be problematic from this perspective, we can first return briefly to the discussion of News in Section I above. It was suggested there that one worry about purely commercial News broadcasting is that it might become more like the reporting of celebrity gossip than of significant global events. Presumably this would be because it might be more attractive to certain viewers, and/or more profitable to provide, especially since News is expensive to produce. So perhaps a similar problem affects the provision of Soap. Good quality News is objective and serious, and if it is not, it cannot serve its proper purpose. It is easy to see how commercial pressures may militate against this. Can anything similar be said about Soap – about the need to protect ‘good’ Soap from commercial pressures? I suggest that it can.

Consider the following scenario. Viewing figures for a commercially produced Soap are falling, advertising revenue is thereby threatened, and the company’s market researchers discover that what would improve audience size would be some development of the Soap’s plot of an appropriately sensational kind. The script-writers are asked to provide this, and comply with this request. In doing so, however, they make certain characters in the Soap act in a thoroughly *out of* character manner, depicting them as behaving in a way that makes no sense, given who they are and how they have previously behaved. The writers thereby commit a serious offence in any form of drama-writing: the sacrifice of character to plot. (In Mepham’s terms, they depart from the fundamental ethic of TV fictions, namely truth-telling). There is a loss of artistic or creative integrity here, in allowing what might appeal to an audience to determine how the characters behave, and this damages the ability of Soap to operate as a resource for ethical reflection.<sup>23</sup>

Scenarios of this kind are not only possible, they actually happen. At one level of analysis one might say that they result from ‘the pressures of the market’. But there is another level of analysis that is also important here: that of *the firm*, and its internal organisation. In the scenario just sketched, what is proposed by market researchers is able to determine what script-writers and directors actually do. For this to be possible, the broadcasting company must be organised in a certain way, so that marketing considerations – and likewise financial ones – can over-ride artistic ones. One might put this by saying that the

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22] Note that issues related to multiculturalism are also important for PSB, and that Ofcom’s Purpose (4) partly addresses these: “To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere.” Mepham (1990) also emphasises, as another important role for TV fictions, understanding the different and seemingly alien lives of others, and the relationship between this and multiculturalism.

23] Here one might usefully invoke MacIntyre’s (1981) concept of a *practice*, its internal goods and associated moral virtues; see Keat 2000, chapters 1 and 2, for an application of this concept in exploring the tensions between markets and cultural production. See also Banks 2007, chapter 4.

intra-organisational independence or autonomy of creative workers (Hesmondhalgh and Baker 2011, chapter 4) must be strictly limited.

It might be thought that such limitations on creative independence at the organisational level are an inevitable consequence of the pressures faced by commercial broadcasters at the market level. But there may in fact be a good deal more contingency and variability here than this would imply. For example, recent work on the political economy of the cultural industries suggests that over the past 30 years or so, changes have taken place in the typical organisation of cultural production, involving a significant increase in the power of marketing and finance departments to shape the character of what is produced, and a corresponding decline in that of creative workers (Hesmondhalgh 2007, chapter 7). Just why these changes have taken place will not be considered here, but they at least suggest a significant degree of contingency in the relationship between markets and organisational forms, rather than a single, determinate logic of the market.

This kind of analysis also has implications for what might be called the appropriate 'institutional design' of PSB organisations such as the BBC. If it is true that broadcasting at its best – including the production of *good* Soap – requires a significant degree of intra-organisation autonomy for creative workers, and that this is at least potentially threatened by leaving it to the market, one should presumably try to avoid replicating, within the organisational form of PSB providers, precisely those features of commercial broadcasting that are problematic in this respect. That is, one should avoid designing an institution such as the BBC in such a way that it is no better (or even worse), in this respect, than at least some commercial broadcasters, despite its being non-commercial, and hence not subject to market pressures. Those who have criticised the various internal reforms introduced in the BBC since the 1980s (McGuigan 1996; Leys 2001) might argue that this – the effects of marketisation without actual marketisation – is precisely what has happened. Whether or not the substance of this judgment is correct, the theoretical possibility is important.

#### IV. PHILOSOPHY, ECONOMICS AND PUBLIC POLICY

In this final section I shall suggest (but no more than suggest) some general implications of what has been argued so far, for the nature of the relationship between political philosophy and economics and of their respective contributions to public policy debates.

As has been noted at various points in this paper, two distinct elements are required in any defence of PSB. First, one must define and justify the various purposes that broadcasting should serve, and hence the kinds of programmes that should be provided and the qualities these should display. Second, it must be shown that, if broadcasting is left to the market, these purposes cannot be expected to be achieved, and that there is some institutional form of public provision that will do better than its commercial counterpart in this respect.

In terms of a disciplinary division of labour, it seems appropriate to assign the former element to political philosophy, and the latter to economics. But what 'kind' of political philosophy, and what kind of economics? As Debra Satz (2011) has noted, theoretical debates about the moral limits of markets have, for some time, largely been shaped by liberal egalitarian political philosophy and neo-classical economics. She argues that neither provides an adequate basis for thinking about market limits, a view that I would endorse, though for reasons that partly diverge from hers. But here I shall comment mainly on the relationships *between* these two disciplinarily dominant schools of thought, and on how any alternative position within political philosophy may require an alternative within economics.

Satz's "liberal egalitarianism" (2011, chapter 3) incorporates (at least implicitly) the neutralist liberal position discussed in Section II, along with the claim that, whereas state action aimed at promoting specific goods is not permissible, no such restriction applies to action aimed at removing (unjust) inequalities in the distribution of general-purpose resources used by individuals to pursue their own conceptions of the good. Satz's criticisms of liberal egalitarianism are directed mainly at its understanding of equality, but although this makes them important in debates about the public provision of services such as healthcare and education, this is much less so in the case of broadcasting. Here it is the neutrality principle that is crucial since, as has been seen, it affects the potential *scope* of any public provision that can be supported.

But what is also important to notice is the *complementarity* between liberal egalitarianism and neo-classical welfare economics. The latter distinguishes between efficiency and equity, confining its attentions to the former and handing over judgments about the latter to political philosophers who, as liberal egalitarians, are happy to oblige. But they are also happy to reciprocate, in leaving it primarily to (neo-classical) economists to determine whether there are any grounds for non-market provision *other* than those of distributive justice: i.e. on grounds of inefficiency. Inefficiency is defined by reference to the satisfaction of preferences, about which economists (it is claimed) neither should, nor need to, make any judgments. And for neutralist liberals, this absence of judgments can be understood also (or instead) as expressing the kind of respect for individuals' choices that liberalism requires.

If this depiction of the complementary relationship between liberal egalitarianism and neo-classical welfare economics is broadly correct, one would expect that any significant departure from the former would make the latter a good deal less attractive as a theoretical partner. Some alternative to neo-classical economics might be needed, if political philosophy and economics are to work in tandem in addressing issues of public policy. That this need arises when the neutralist element of liberal egalitarianism is rejected in favour of (liberal) perfectionism can be seen in the following way. (It will be assumed here that it is the stronger form of liberal perfectionism that is adopted).

In a democratic polity whose citizens are committed to liberal perfectionism, rather than liberal neutrality, the potential scope and grounds for public policy are significantly

expanded. Such citizens will be involved in making collective judgments about the ethical value of various aims and purposes, and with making available an adequate range of valuable options that individuals are able effectively to pursue. And because, in at least many cases, the availability of such goods depends on the character of specific institutional arrangements, they will be concerned to create and sustain the institutions that are required for, or conducive to, the existence and enjoyment of such goods. They will be concerned, that is, with securing the institutional conditions that make the effective pursuit of such goods possible.

Amongst these institutions are economic ones, including quite possibly *market* institutions that, from this liberal perfectionist perspective, are something that might be decided upon, on at least partly ethical grounds, as a matter of public policy. Questions about the limits that should be placed on market institutions, and the possible need for non-market alternatives to these, will be addressed on the same basis. Of particular significance for a liberal perfectionist democratic polity will be questions about the institutional arrangements required if the kind of political debate that it involves is to flourish. Those concerned with broadcasting (and the media more generally) will clearly be important, and the question of whether PSB should be supported, and if so in what specific form, will need to be addressed.

We have seen, in Section I, how this kind of concern underlies the democratic argument for PSB News. But if the grounds for public policy are to include judgments about 'the good', about what is valuable for the lives of citizens, the potential role of PSB in contributing to democratic deliberation is greatly enhanced and extended. It is not just impartial News, reliable information and balanced debate that are important, but whatever may contribute to critical reflection about the kinds of valuable options that should be available for people, and about the institutional arrangements that make these possible. Indeed, even Soap, whose PSB justification was discussed in the previous section in terms of its significance for ethical reflection on the part of individuals, about their own lives, might turn out also to be important in more political terms, when such reflection is directed towards the value of what a society's institutional arrangements encourage or impede.

Thus liberal perfectionism, as a conception of political philosophy, brings with it a conception of public policy, and of the nature and requirements of democratic debate, that differ significantly from neutralist liberalism (and hence also from liberal egalitarianism). Correspondingly, it can be suggested, the kinds of questions that it poses about institutional design, including the design of economic institutions, are ones that neo-classical economics is not well equipped to answer.

This is partly because, as was argued in the earlier discussion of PSB News, in Section I, its conceptual structure is so closely tied to the normative value of efficiency that it is difficult to deploy this structure in answering questions whose normative significance is defined by reference to other values. But it is also because its analytic and explanatory powers are insufficient to address the kinds of issues about the internal organisation of

firms in the culture industries, and about the impact of this on the characteristics of what they produce, that were argued in the previous section to be crucial in understanding the production of Soap, but apply quite generally to the analysis of cultural production.

What is needed instead, it could then be argued, is a certain kind of *institutional* economics, one that could play its part in a more broadly social scientific approach to the kinds of questions for public policy that liberal perfectionism renders significant and legitimate.<sup>24</sup> But just *what* kind of institutional economics this is, and how it might contribute in this way, is beyond the scope of this paper to discuss.<sup>25</sup>

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#### REFERENCES

- Arneson, Richard. 1987. Meaningful Work and Market Socialism *Ethics* 97: 517-45.
- . 2003. Liberal Neutrality on the Good: An Autopsy. In *Perfectionism and Neutrality: Essays in Liberal Theory*, eds. S. Wall and G. Klosko, 191-218. Lanham: Rowman and Littlefield.
- Baker, Edwin C. 2002. *Media, Markets and Democracy*. Cambridge: Cambridge University Press.
- Banks, Mark. 2007. *The Politics of Cultural Work*. London: Macmillan.
- Black, Samuel. 1992. Revisionist Liberalism and the Decline of Culture. *Ethics* 102: 244-67.
- Claassen, Rutger. 2011. Communication as Commodity: Should the Media be on the Market? *Journal of Applied Philosophy* 28 (1): 65-79.
- Dworkin, Ronald. 1985a. Liberalism. In *A Matter of Principle*, 181-204. Oxford: Oxford University Press.
- . 1985b. Can a Liberal State Support Art? In *A Matter of Principle*, 221-33. Oxford: Oxford University Press.
- Foss, Nicolai. 1993. Theories of the Firm: Contractual and Competence Perspectives. *Journal of Evolutionary Economics* 3: 127-44.
- Graham, Andrew and Davies, Gavin. 1997. *Broadcasting, Society and Policy in the Multimedia Age*. Luton: University of Luton Press.
- Habermas, Jürgen. 1993. *Justification and Application*, trans. C. Cronin. Cambridge: Polity Press.
- . 1996. *Between Facts and Norms*. Translated by W. Rehg. Cambridge: Cambridge University Press.
- Hesmondhalgh, David. 2007. *The Cultural Industries* (2nd edition). London: Sage.
- Hesmondhalgh, David and Baker, Sarah. 2011. *Creative Labour*. London: Macmillan.
- Hodgson, Geoffrey. 2000. What is the Essence of Institutional Economics? *Journal of Economic Issues* XXXIV: 317-29.
- Keat, Russell. 2000. *Cultural Goods and the Limits of the Market*. London: Macmillan.

24] See Keat 2011 for discussion of the type of institutional economics required for public policy choices between different varieties of capitalism. This is not the 'new' institutionalism associated, for example, with Oliver Williamson's (1985) transactions costs analysis (for criticism of which, see Lazonick 1991, chapter 6), but closer to the 'old' institutionalism whose central features are identified by Hodgson (2000), and are developed in so-called "competence" theories of the firm (see Foss 1993).

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- . 2009a. Anti-Perfectionism, Market Economies and the Right to Meaningful Work. *Analyse und Kritik* 31 (1): 121-38.
- . 2009b. Habermas on Ethics, Morality and European Identity. *Critical Review of International Political Philosophy* 12 (4): 535-58.
- . 2011. Liberalism, Neutrality and Varieties of Capitalism. In *New Philosophies of Labour: Work and the Social Bond*, edited by Nicholas H. Smith, and Jean-Philippe Deranty, 347-70. Leiden: Brill.
- Lazonick, William. 1991. *Business Organization and the Myth of the Market Economy*. Cambridge: Cambridge University Press.
- Leys, Colin. 2001. *Market-Driven Politics: Neoliberal Democracy and the Public Interest*. London: Verso.
- Lukes, Steven. 2005. Invasions of the Market. In *Worlds of Capitalism*, edited by M. Miller, 298-314. New York: Routledge.
- MacIntyre, Alasdair. 1981. *After Virtue*. London: Duckworth.
- McGuigan, Jim. 1996. *Culture and the Public Sphere*. London: Routledge.
- Mephram, John. 1990. The Ethics of Quality in Television. In *The Question of Quality*, edited by Geoffrey Mulgan, 56-72. London: British Film Institute.
- Mulhall, Stephen and Swift, Adam. 1996. *Liberals and Communitarians* (2nd edition). Oxford: Blackwell.
- Murray, Dale. 2004. Liberalism, Arts and Funding. *The Journal of Aesthetic Education* 38 (3): 116-22.
- Nussbaum, Martha. 1990. Aristotelian Social Democracy. In *Liberalism and the Good*, edited by R. Bruce Douglass et al., 203-52. New York: Routledge.
- . 2011. Perfectionist Liberalism and Political Liberalism. *Philosophy and Public Affairs* 39 (1): 3-45.
- Ofcom. 2005. *Ofcom Review of Public Service Television Broadcasting Phase 3: Competition for Quality*. London: HMSO.
- . 2007. *Public Service Broadcasting: Annual Report*. London: HMSO.
- Peacock, Alan. 2004. *Public Service Broadcasting Without the BBC?* London: IEA.
- Pratten, Stephen, and Deakin, Simon. 2004. Commentary: The Scope of Public Service Broadcasting, in Peacock 2004, 82-95.
- Rawls, John. 1971. *A Theory of Justice*. Oxford: Oxford University Press.
- Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Oxford University Press.
- . 1994. Duties of Well-Being. In *Ethics in the Public Domain*, 3-28. Oxford: Oxford University Press.
- Sagoff, Mark. 1988. *The Economy of the Earth*. Cambridge: Cambridge University Press.
- Satz, Debra. 2010. *Why Some Things Should Not Be For Sale: The Moral Limits of Markets*. Oxford: Oxford University Press.
- Sher, George. 1997. *Beyond Neutrality: Perfectionism and Politics*. Cambridge: Cambridge University Press.
- Wall, Steven. 1998. *Liberalism, Perfectionism and Restraint*. Cambridge: Cambridge University Press.
- Wall, Steven, and Klosko, George, eds. 2003. *Perfectionism and Neutrality: Essays in Liberal Theory*. Lanham: Rowman and Littlefield.
- Walzer, Michael. 1983. *Spheres of Justice*. Oxford: Martin Robertson.
- Williamson, Oliver. 1985. *The Economic Institutions of Capitalism*. New York: Free Press.

# Quasi-Market versus State Provision of Public Services: Some Ethical Considerations

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**Abstract.** In many countries, public services such as health care and education are both funded by the state and provided by state monopolies. Others use a 'quasi-market' form of public service delivery, retaining state funding for the service, but with users having the choice of independent providers operating in a competitive market. This paper tries to clarify some of the ethical issues involved in comparing quasi-markets vs. state monopolies. It is argued that, in comparison with state monopoly, quasi-markets can promote service users' freedom, autonomy and sense of well-being, though whether they do so in practice will depend on certain empirical conditions being fulfilled. The impact of quasi-markets on provider motivation is also discussed, arguing that the ethical judgments involved will again depend in part upon empirical considerations, including the extent of public service motivation in private and public providers.

**Key words:** quasi-market, choice, competition, motivation.

The ethics of market vs. state systems of resource allocation is an issue of perennial interest to economists, political philosophers, policy analysts and indeed popular debate. Most of the arguments concern what we might term "pure" markets: that is, markets where utility-maximising consumers purchase products out of their own private resources from a range of goods and services supplied by private, profit-maximising, competitive providers. In these cases, the ethical debate usually focuses on the issues involved in introducing monetary forms of payment from private sources into areas where the goods or services concerned are currently provided by the state or others free of charge. Thus Titmuss (1971) discussed the ethics of a health service paying for blood for transfusion purposes; Anderson (1990) investigates the paying for public streets and parks; Claassen (2009) explores the idea of paying for personal care and for broadcast media; Radin (1987) discusses surrogate motherhood, baby-selling and prostitution; Lukes (2004) and Cohen (2003) concentrate on distinguishing between various forms of paid for market exchange; Wolff (2004) considers 'blocked' market exchanges. Satz (2010) looks at why some things should not be for sale; and Sandel (2009) examines what he terms the coercion and corruption involved in buying and selling things for money that were previously not involved in market exchange.

This paper concentrates on slightly different issues, although ones that are in some ways no less controversial. These concern some of the ethical considerations surrounding a comparison of state provision, not with pure markets, but with 'quasi'-markets: that is, markets where the provision of a service is undertaken by competitive providers as in pure markets, but where the purchasers of the service are financed from resources provided by the state instead of from their own private resources (Le Grand and Bartlett 1993). So, unlike in pure markets, in quasi-markets the service is provided free or largely free at the

point of use; unlike under most forms of state provision, in quasi-markets the user has a choice of providers and the providers themselves operate in a competitive market. Ethical comparisons of state and quasi-market systems thus concern, not the ethics of paying for services that were previously provided free or could be so provided, but the ethics of user choice and provider competition; and it is on these that this paper concentrates.

The paper begins with a more elaborated description of quasi-market provision and the form of state provision with which it is to be compared. It then examines some ethical considerations concerning user choice and provider competitions. Now any discussion of ethics needs to specify which particular ethical theory underlies the discussion. Here I take a somewhat eclectic approach, using what might loosely be termed libertarian and utilitarian arguments, and what I term the morality of motivation argument. More specifically, I consider the impact of the different systems on (a) users' freedom or autonomy (b) on users' levels of utility or well-being; and (c) the motivation of providers. There is a brief concluding section.

### I. QUASI-MARKET AND STATE PROVISION

Under a quasi-market, the public service concerned is provided free, or largely free, at the point of use to its users. However, the users (or, in some cases, agents acting on their behalf) are not allocated to particular providers but can choose which provider they wish to supply the service for them. The state then pays the service provider for the item of service provided on behalf of the user. The providers may be private profit-making organisations; but they could also be non-profits, or indeed organisations still within the public sector.

Classic examples of a quasi-market policy are voucher or open enrolment systems for school education. Under an educational voucher system, parents are given a voucher by the state. This is worth a fixed amount of money which they in turn pass to the particular school they choose to provide for their children's education. The school then submits the voucher for reimbursement to the state or to an agency operating on the state's behalf. Open enrolment is similar in principle, but no actual vouchers change hands: the parents simply choose the school they want to send their children to, and the school receives resources directly from the state according to the number of children enrolled in the school. There have been experiments with voucher systems in Florida and Milwaukee in the United States, and with open enrolment in New Zealand, Sweden and England and Wales (for more details, see Le Grand 2007, Ch.4).

Other examples include government-funded health systems, such as those prevalent in many European countries and parts of the Medicare and Medicaid systems in the United States, where patients can go to doctors or medical facilities of their choice and the (government-provided) money follows the choice. In these systems, either the medical facility concerned charges its patients, and the patients then claim reimbursement from the state, or the facility simply sends the bill to the state for payment directly.

In quasi-markets of this kind, some of the ethical issues involved in users or consumers paying for services do not arise; for the services continue to be provided free of charge to users. Of course this is an oversimplified picture. In fact, all systems for public service delivery, including those involving quasi-markets, have some services that are charged at market or subsidised prices. Even where there are no charges, some distributional issues can remain, for there may be non-monetary barriers (such as a lack of information, or poor local facilities) that impede access by different groups. Also there may be a two-track system, with a for-payment or otherwise privately financed system running alongside the quasi-market. However, here we are abstracting from such complications in order to concentrate on the two principal features of quasi-markets that distinguish them from monopoly state provision: the existence of user choice and provider competition.

Systems of state provision usually involve the state owning and operating the institutions that provide services in a monopolistic environment, and using various allocative rules to distribute users to those providers. Examples include education systems such as those in most Western countries where a child's enrolment in a particular state of government school is determined by the 'catchment area' for that school: that is, by the area in which the family lives. Allocations within the area are determined by rules, such as proximity to the school. In such system, schools do not compete with one another for pupils or resources: rather, they are directly allocated a budget by the level of government concerned (state, local or federal), with the budgetary amount being determined by historic staffing levels and facilities. Medical care examples include health systems where patients are referred to their local hospital or to more specialist services by a gatekeeper, such as a primary care physician. Again, in such systems, the providers concerned (hospitals, other medical facilities) are given a global budget by the state that is largely independent of the quantity or quality of the service provided.

Again this is an oversimplified picture. In most state systems, there may eventually be some administrative response to, say, a fall in quality by a school or hospital or a drop in the number of their users, perhaps including a re-assessment of their budget. However, again we abstract from such complications in order to isolate some key ethical concerns concerning the presence or absence of user choice and provider competition.

## II. USER CHOICE

A libertarian justification for quasi-markets would be that the user choice inherent in a quasi-market is a good in and of itself. Put more broadly, the argument might run that the kinds of choices involved are an essential component of individual freedom or liberty, and freedom is itself good. Parents should be free to send their children to the school of their choice, and patients should be free to choose their own physician or hospital provider. To have the freedom to make choices in such key areas is good because such freedom is intrinsically desirable; the fact that monopoly systems of public service provision do not

offer such choice is enough on its own to make such systems ethically inferior, at least in this respect.

For those who do not accept the idea that freedom of choice is intrinsically good, there are also instrumental or consequential arguments concerning the impact of user choice on the individual's sense of autonomy and/or well-being. With respect to the former, Albert Weale has described what he terms "the principle of equal autonomy." This he formulates as: "all persons are entitled to respect as deliberative and purposive agents capable of formulating their own projects, and that as part of this respect there is a governmental obligation to bring into being or preserve the conditions in which this autonomy can be realized." (Weale 1983, 42). For responsive to the needs and wants of users could be viewed as an essential element of according the respect to "deliberative and purposive users;" and offering users a choice of provider is clearly a part of that. To use a metaphor employed elsewhere (Le Grand 2006), the principle of autonomy requires that users are treated less like pawns, the weakest pieces on the chess board, but more like the most powerful piece, the queen: or, to pick another metaphor with royal associations, the consumer should be king. Whatever the user's royalty status, in quasi-markets the user has indeed the opportunity to behave like a deliberative and purposive agent; whereas under state monopoly allocation that opportunity is denied.

As well as autonomy arguments in favour of user choice, it is also possible to mobilise a utilitarian argument: that is, one that concerns the impact of choice on the individual's level of well-being or utility. Here it is helpful to refer to psychological theories of motivation, especially that generally described as self-determination theory or SDT. SDT was developed by psychologists Richard Ryan and Edward Deci (1985; a useful summary can be found in Moller, Ryan and Deci, 2006). It is a theory, both of the factors that motivate individual behaviour, and of the satisfaction, utility or sense of well-being that people get from that behaviour.

With respect to the factors that motivate behaviour, the theory distinguishes between autonomous actions and those that are perceived to be controlled or influenced by factors external to the self. Autonomous actions occur when people do something because they find it interesting, enjoyable or important. Controlled actions occur when individuals are motivated to perform them by external factors, such as regulations, peer or family pressure, and systems involving external rewards or penalties. With respect to satisfaction, Deci and Ryan argue that autonomous actions or behaviour deliver the highest degree of satisfaction or well-being. Controlled action may be just as highly motivated as autonomous activity, but the quality of the experience and performance is not as good in general when people are controlled than when they are autonomous; hence their sense of well-being is less.

Offering individual users of education or health services the choice of service provider clearly gives them more opportunity for autonomous action than simply allocating them to providers by some bureaucratic rule or professional fiat. It is thus more

likely to contribute to their well-being. Given that increasing well-being is desirable at least for the utilitarian, if it is correct that exercising choice does raise utility, this can provide a further justification for replacing state allocation by user choice.

But what if offering choice does not raise well-being? Schwartz (2004) argues – and indeed demonstrates through behavioural experiments – that, at least where the consumption of consumer goods is concerned, consumers frequently find excessive choice unsatisfying and demotivating. He and other critics of choice have also pointed out that choice offers the opportunity of regret: and the more choice that is on offer the more likelihood there is that the particular choice you make the greater the chance of regret, with detrimental consequences for well-being.

Whether offering users of choice of provider actually increases or diminishes well-being is ultimately an empirical question, and not one that can be fully resolved here. However, it seems plausible to suppose that the provision of a reasonable amount (not too little, not too much) of choice is, for most individuals, well-being enhancing. Certainly surveys of attitudes in a variety of countries, including the United Kingdom, the United States, New Zealand and Finland found that most groups in society wanted choice of schools and hospitals; interestingly, the largest pro-choice majorities were among the least powerful groups in society (Le Grand 2007, 51-57).

Finally in this section we should draw attention to an argument made by Claasen (2009) that draws on Sen's notions of agency and capabilities. He defends what he terms complex pluralism: the availability of informal, market and non-market forms of providing public services, all co-existing simultaneously. He does so in part on the grounds that having some choices available within each form of provision encourages people to develop their capacity for agency and in turn to develop their capabilities. He does not include quasi-markets in his list of possible elements in complex pluralism, but there seems to be little reason as to why this form of provision should not be part of that list. Indeed there is a positive reason for quasi-markets to be included in the list; for they actually encourage the exercise of choice. Hence they also serve to promote capability and the capacity for agency.

### III. PROVIDER COMPETITION

Although it might be possible to compose a libertarian argument in favour of competition (qualified providers should have the right to compete in any market they choose), the strongest arguments for the provider competition that is inherent in quasi-markets are essentially utilitarian. Compared with monopoly state provision, it is argued that competition between providers promotes a higher quality of service and a more efficient allocation of resources, both of which have positive impacts on individual well-being.

The links between quasi-market competition and these particular consequences are have been discussed in detail elsewhere (Le Grand 2006, 2007), but perhaps it would be

helpful to summarise them briefly here. User choice and provider competition are argued to lead to higher quality of service provision and to greater efficiency in the use of resources by providers because of the incentives they provide for competitive suppliers to improve their performance. If users who are receiving a poor quality service from particular providers can go elsewhere for the service concerned, and if, as in quasi-market systems, the money follows the choice, then the providers concerned have a strong incentive to deliver a higher quality of service; for, if they do not, they will go out of business. Similarly, all providers have an incentive to be efficient: that is, to generate as much quality as possible from a given level of resources. For those that are relatively inefficient will provide services of a lower quality or a higher cost; hence again they will either lose business or face bankruptcy.

All this can be contrasted with monopoly systems of public service delivery. There inefficient or low quality providers have little direct incentive to improve performance. If a school or a hospital knows that dissatisfied users have nowhere else to go, and they will continue to receive the same level of funding regardless, they can simply ignore such unhappiness that they become aware of, and continue with inefficient and unresponsive practices. Direct incentives for improvement are largely absent; improvement needs to be driven from higher authority.

There are also arguments concerning the distribution of utility or well-being among users. It has been demonstrated that monopoly systems often favour the better-off. If school enrolment depends on proximity of place of residence to the school, then well-off families can buy houses near to their chosen school, thus driving up house prices and disadvantaging families in lower income groups. If better-off patients do not like the prospect of being transferred to their local hospital, then they have the articulateness and confidence to persuade the GP to send them to another hospital which they perceive as of higher quality. In the terms of Albert Hirschman (1971), they have a powerful “voice” – more powerful than the voice of the less articulate, less confident poorer groups. In contrast, the introduction of a quasi-market gives those poorer groups a form of power – what Hirschman terms “exit” – at least equal to that of those from higher ones. And, it is argued, in quasi-markets, the power of exit is more equally distributed than the power of voice.

Now, of course, none of these propositions linking user choice and provider competition with the predicted consequences of higher quality, improved efficiency and greater equity are indisputable; indeed, many are highly contested. Even at a theoretical level, certain conditions have to be in place for them to hold. For instance, there have to be alternative providers from which users can choose; and there has to be a system for ensuring that new providers can enter the quasi-market, and that inefficient ones leave it. Users have to have good information about what constitutes quality, and be well placed to use it in order properly to exercise choice – especially, if equity is to be served, lower income or otherwise disadvantaged groups. Also, and fundamentally, providers have to be

motivated by a desire to maintain their business; and opportunities for cream-skimming or provider selection must be limited

Whether these conditions are actually fulfilled in practice – and hence more generally, whether quasi-markets are superior in terms of quality, efficiency and equity to other methods of service delivery – is not a question for this paper. For these are questions that can only be resolved by empirical research (some of the evidence is discussed in Le Grand 2006, 2007). For the purposes of this paper, it is sufficient to point out that, if quasi-markets do turn out to be superior in those respects to other forms of public service delivery, as in many cases they do, then this would provide a further ethical justification for user choice and provider competition to complement the arguments discussed earlier.

A final ethical concern relates to the motivation of providers. It is often argued that competitive provision is ethically inferior to monopoly provision because of the impact the former has on provider motivation. This requires a little more attention.

#### IV. MOTIVATION AND ETHICS

The ‘motivation’ argument that monopoly provision is superior to competitive provision has three dimensions, embracing both statements of fact and statements of value. The first set of empirical propositions concerns the motivation of providers in the two systems. Monopoly providers could be justified on the grounds that the people who work within them are motivated by what is frequently termed the public service ethos, but is perhaps better interpreted as altruistic or professional considerations (Perry and Hodeghem 2008). That is, the principal concern of these providers is for the welfare of the people they are serving. Thus the dominant concern of doctors and nurses working in state systems of health care is with the welfare of their patients; of teachers in state education, that their principal concern is with their pupils. In the terminology of a metaphor I have used elsewhere, they are knights: professional altruists whose only concern is to serve the public (Le Grand 2006).

In contrast, it could be argued that providers working in a competitive environment are motivated solely by self-interest, and by financial self-interest at that. Profit is their driver; they are not knights, motivated by a desire to help their fellow citizens, but rather knaves, out to help themselves, and to seize any opportunity not to assist but rather to exploit their fellow citizens. This profit motive is thus likely to conflict with the public interest.

The second strand of the argument is that altruism is morally superior to self-interest. Hence, given that state monopoly providers are knights, driven primarily by altruistic considerations, whereas competitive providers are knaves, motivated entirely by financial self-interest, any replacement of public by private providers involves diminishing the pool of altruistic behaviour – and perhaps the pool of altruism itself – in society. Such a change, therefore, makes society less moral. Put another way, a society that relies upon altruism to deliver publicly-funded services such as health care and education is, other things being

equal, ethically superior to one that relies upon self-interest to provide these services. It is hard to locate the moral superiority of altruism in either of the two ethical theories that we have been using so far: utilitarian or libertarian. However, it is a view that is so widely held that it perhaps needs no weightier justification.

The third argument is a straightforward utilitarian one: that relying upon altruistic motivation has better consequences for the well-being of service users than relying upon self-interest. In particular, public services that are supplied by providers that are motivated by altruism (or the public service ethos) will provide services of better quality and higher quantity than those that are supplied by those fuelled only by financial self-interest.

This last argument is an extension of that originally put forward by Richard Titmuss in his famous work on blood donation already referred to (1971). There he argued that replacing a system for obtaining blood for transfusion purposes by relying upon donation by one that relied upon financial incentives would lower both the quality and the quantity of the blood supplied. The quality would be reduced because suppliers of infected blood would have an incentive to conceal the fact their blood was infected – in contrast to the donation system where they would have an incentive to reveal the fact, since their aim in that situation is to help the potential recipient and not expose him or her to unintentional harm. And the quantity would be reduced because those who had previously donated would feel their altruistic acts had been devalued and stop donating.

The extension of this argument to quasi-markets would run something like this. Any knights operating in a quasi-market system would feel that their altruism – their commitment to the public service ethos – was exploited by market incentives. Hence their motivational structure would change: their altruistic commitment would diminish and self-interest would assume an ever-greater prominence. The knights would become knaves. Also, users of the service, unable properly to monitor quality, would have their lack of knowledge and information exploited by self-interested providers. For these would be able to increase their profits through cutting costs, and therefore quality) without anyone noticing. Given that it is morally desirable for there to be both a high quality and quantity of the service, this reinforces the moral case against private provision (Titmuss 1971; see also Anderson 1990).

We thus have a number of propositions. State monopoly providers are motivated only by altruism whereas competitive providers are motivated only by financial self-interest; and altruism is morally superior to self-interest. Hence switching from a system that relies upon the former to one that relies upon the latter will reduce opportunities for the exercise of altruism, turn knights into knaves and hence make society less moral. Moreover, such a switch would have adverse consequences for the quantity and the quality of the service concerned, leading to lower levels of both: an outcome that again would be morally detrimental to the society concerned.

The essential difficulty with these arguments arises from the empirical nature of some of them. We might agree that altruism is morally superior to self-interest; and that a society with public services of a high quality and quantity is morally superior to one whose

public services are lower in both. But what if there are elements of private interest that affect the way that state providers behave? What if some competitive providers actually take pride in serving their users well? Or, even if all competitive providers are really knaves, driven only by self-interest, suppose that competitive provision of public services, actually in fact leads to better quality and a larger quantity of the services concerned? In such a situation, the moral case for monopoly provision becomes much less clear – and indeed may even be overturned.

Anyone who has encountered a large public bureaucracy will know that not all state employees operate all the time in the interests of the people they serve. Likewise, most of us will have had dealings with competitive businesses where the individuals concerned have gone out of their way to be helpful – even beyond what might be called for by purely business considerations. In fact, there is evidence that competitive operators working in key areas of public services actually have a strong element of altruism. So, for instance, a study of U.K. nursing home operators operating in the profit and non-profit sectors found little difference in their motivational structure, with both types of provider most frequently citing as their principal motivation meeting the needs of elderly people and a feeling of duty to the society as a whole (Kendall, 2001). Further, again there is evidence that on occasion competitive providers may offer services that are of least as good as quality and quantity as public ones. So, for instance, a study of privately-provided specialist treatment centres in the UK found that they provided care of equal or better quality than in their public sector competitors (Browne and colleagues, 2008).

So there is no evidence that state monopoly providers also have a monopoly on altruism – or that competitive ones a monopoly of self-interest. And it is not always true that state provision is better in terms of quality and quantity than competitive ones. So, the least that can be said is that there can be no *a priori* case, on motivational grounds at least, that state providers are ethically superior to competitive ones.

## V. CONCLUSION

We have seen that there are a number of libertarian and utilitarian arguments that can be mobilised in favour of quasi-markets. It would be nice if we could emerge from this discussion with an unambiguous answer to the question as to whether quasi-markets are ethically inferior or superior to monopoly forms of state provision. Unfortunately we cannot do so here, largely because, although apparently primarily an issue of value, the answer will actually depend on the resolution of a number of empirical questions – mostly, though not exclusively, concerning the consequence for the service user of the different systems. However, it is hoped that the paper at least clarifies some of the arguments. In particular, I hope to have demonstrated that the ethical case concerning user choice and competitive provision in quasi-markets is not simply a question of value, or even of competing values; it is also a question of facts.

## REFERENCES

- Anderson, E. 1990. The ethical limitations of the market. *Economics and Philosophy* 6: 179-205.
- Browne, J., L. Jamieson, J. Lewsey, J. Van der Meulen, J. Copley, and N. Black. 2008. Case-mix and patients' reports of outcomes in Independent Sector Treatment Centres: Comparison with NHS providers. *BMC Health Services Research* 8: 78.
- Claassen, R. 2009. Institutional pluralism and the limits of the market. *Politics, Philosophy and Economics* 11: 420-47.
- Cohen, G. 2003. The price of everything, the value of nothing: reframing the commodification debate. *Harvard Law Review* 117: 689-710.
- Deci, E. L., and R. M. Ryan. 1985. *Intrinsic Motivation and Self-Determination in Human Behaviour*. New York: Plenum.
- Hirschman, A. O. 1970. *Exit, Voice, and Loyalty: responses to decline in firms, organizations, and states*. Cambridge, Mass: Harvard University Press.
- Kendall, J. 2001. Of knights, knaves and merchants: the case of residential care for older people in England in the late 1990s. *Social Policy and Administration* 35: 360-75.
- Le Grand, J. 2006. *Motivation, Agency, and Public Policy: of knights and knaves, pawns and queens*. 2<sup>nd</sup> edition. Oxford: Oxford University Press.
- . 2007. *The Other Invisible Hand: delivering public services through choice and competition*. Princeton: Princeton University Press.
- Lukes, S. 2004. Invasions of the market. In, *From Liberal Values to Democratic Transition: essays in honor of Janos Kis*, edited by R. Dworkin. Budapest: Central University Press.
- Moller, A. C., R. M. Ryan, and E.L. Deci. 2006. Self-determination theory and public policy: improving the quality of consumer decisions without using coercion. *Journal of Public Policy and Marketing* 25: 104-16.
- Perry, J. L., and A. Honddeghem. 2008. *Motivation in Public Management: the call of public service*. Oxford: Oxford University Press.
- Radin, M. 1987. Market-inalienability. *Harvard Law Review* 100: 1849-937.
- Sandel, M. 2009. *Justice: what's the right thing to do?*. London: Allen Lane.
- Satz, D. 2010. *Why Some Things Should Not Be For Sale: the moral limits of markets*. Oxford: Oxford University Press.
- Schwartz, B. 2004. *The Paradox of Choice: why more is less*. New York: HarperCollins.
- Titmuss, R. 1971. *The Gift Relationship: from human blood to social policy*. London: Allen and Unwin.
- Weale, A. 1983. *Political Theory and Social Policy*. London: Macmillan.

# The Commodification of the Public Service of Water: A Normative Perspective

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**Abstract.** This paper examines some key normative issues that arise from the commodification of the public supply of water. Since the end of World War Two, the provision of water for domestic consumption has, in most Western countries, been regarded as a fundamental public service and, as such, has typically been supplied by the State cheaply or free of charge to users. (Water for agricultural and industrial purposes has also often been so provided.) However, in recent times, in many parts of the world, water markets have been established. This clearly has distributive implications and, potentially, depending upon one's theoretical framework, raises problems of distributive justice. However, questions concerning the proper distribution of water have garnered little attention from political philosophers and applied ethicists, nor has there been much discussion of the moral permissibility of commodifying water. This is surprising given the centrality of water to human civilisation. In the early sections of the paper I outline several of the normative and conceptual puzzles surrounding water. I then explore a number of plausible objections that might be raised against commodifying water and consider what role they should play in our all-things-considered judgments about the moral permissibility of water markets. I conclude with some reflections on the role of philosophical inquiry in applied public policy-making.

**Key words:** commodification, water, distributive justice, public services, environmental values.

## I. COMMODIFICATION, WATER, AND PHILOSOPHY

Water is a fundamental human good that many contemporary governments supply for domestic use as well as for both agricultural and industrial purposes. Indeed, in the case of domestic usage, the provision of clean running water has often been regarded as a basic function of government. Water for domestic uses is widely regarded as a basic good that should be provided to everyone free of charge. This principle of *universal access* was enshrined in a great deal of the Keynesian policy-making that emerged after World War Two and has been a significant ideal motivating much recent water activism (see Bleisch 2006).

However, if the ideal of free universal access to water is one that has enjoyed widespread acceptance, it is nonetheless in hasty retreat right across the globe with the advent of water privatisation, water trading and large corporate groups buying the rights to what had previously been public or common goods. The pressures for such marketisation or commodification (I shall use the terms interchangeably) are both financial and intellectual. In the first place, water resources are becoming increasingly scarce and there are clearly great profits to be made in this area. But, equally, the intellectual climate in many government circles in recent times has favoured market solutions to resource allocation dilemmas, be they natural resources or social goods. The thought is that the most efficient way to allocate scarce resources is via the market. Unsurprisingly, given that the back-

ground ideal of universal access is still extant, marketisation has met with opposition in many quarters.

Clearly there are important *normative* issues here regarding the proper allocation of water. However, the just allocation of water is not a topic to which many philosophers have attended. Conversely, if one explores public policy debates in this area, which are dominated by economic theory and hydrology, there is little acknowledgement of the *fundamentally normative* nature of any inquiry into the allocation of this resource.

One might object that much of the foregoing could be said about the marketisation of *any* public good; if we look at, for instance, housing, roads, or education, where processes of marketisation have occurred, we soon discover debates between advocates of efficiency and advocates of universal access. Indeed the most common criticism of such marketisation is distributive; namely that marketisation undermines access to goods that previously had been universally available.

However, there are differences that render the water case distinct. First of all water is a complicated *object of analysis* since, when discussing these issues, it is difficult to focus solely on it *as a* public good. Any analysis of the marketisation of publicly provisioned water will inevitably lead to an analysis of water in general. (As we shall see below, in discussing this we will veer at times into discussions that might appear, at first sight, more properly located in environmental ethics). Secondly, *the process of marketisation* itself faces difficulties because of the idiosyncratic nature of water and the peculiarities of the hydrological cycle. It is hard to establish ownership rights over a good that is in a constant process of recycling. Thus, while many of the general normative issues are familiar, there are issues that arise because of the specific nature of water as a distributive good. Finally, although the normative concern is primarily distributive, there are other ethical issues involving aesthetic and environmental values that necessarily arise because domestic water cannot be separated off from the broader hydrological cycle.

Herein then I will examine the marketisation of water from a philosophical perspective and argue that:

1. There are significant normative and conceptual issues concerning water that require philosophical examination but which the dominance of hydrological and economic models obscures.
2. The question of how water is to be allocated needs to be reconceptualized as fundamentally a problem of distributive justice. Although I shall consider other questions of value (in particular of environmental value), I take distributive questions to be the most central.
3. The answers provided by philosophers to these questions primarily involve establishing the bounds of the *determinable* rather the *determinate*.

In pursuing these claims, I hope along the way to demonstrate the relevance of philosophical analysis in understanding both the marketisation of water and, indeed, water

policy more generally. The analysis will also highlight some of the idiosyncratic features of water as a public good.

## II. COMMODIFYING A NATURAL RESOURCE AND COMMODIFYING A PUBLIC GOOD

By ‘commodification’ I shall simply mean the transformation of an object or practice into a market good (or a commodity), that is, a thing that is bought and sold. The canonical philosophical definition of a commodity comes from the work of Aristotle. In the *Politics* Aristotle notes that any object has two possible uses, namely as an object of use and as an object of trade or exchange (Aristotle, 1976 [1257a]). Thus an article that is sold on the market can be said to have both a use-value and an exchange-value, while an article that is made for consumption alone, is said to have use-value alone. Following this line of thinking, marketisation can be defined as the transformation of a thing with *only* use-value into a good with both use-value and exchange-value. A good comes to possess an exchange value when it is bought and sold in a market for money or some relevant equivalent.

This account is, for all intents and purposes, the standard definition of both the Classical economists (such as Smith and Ricardo) and Marxists. Modern economists, however, take a slightly different approach, focusing instead on the ability of a commodity to satisfy wants or needs rather than on its apparent two-fold nature. The term ‘commodity’ in this discourse simply becomes a general term for any marketable item produced to satisfy wants or needs and, accordingly, commodification here becomes the transformation of a thing into such an entity (see Milgate 1987, 546-49).<sup>1</sup> Such a definition fails to provide the grip on the normative and phenomenological significance of commodification that one gains through the use-value/exchange-value distinction.

Let us turn to water itself. If we follow the definition endorsed above then the commodification of water refers simply to the transformation of water into a good that has both use-value and exchange value and is bought and sold on a market, typically for money. Sometimes such commodification will involve water that was previously owned by the State (or some other collectivist public institution) and at other times it will involve water that was part of the commons and not subject to specific ownership rights. In both instances, whilst the water in question always possessed use-value, it now also possesses exchange-value. The case with which we are concerned involves the commodification of water for human use in towns and cities that was owned and governed by the State. (Notice that it could also involve water that was unowned prior to the marketisation.)

This is still rather imprecise, however, since the analysis covers a range of different possible social phenomena. The phrase ‘marketisation of water’ might naturally be

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1] There exists a common misunderstanding amongst some modern economists that the employment of the distinction between use and exchange value by Classical economists is central to their theory of how prices are formed. This is in part why the distinction is controversial. However, the view is odd since their theory of prices is one that focuses on labour. For an example of this, see Samuelson 1976, 438. For a discussion of the use of the term “commodity” in economics, see Milgate 1987.

thought to refer to any one of the following cases, each of which involves a shift away from the post-war consensus in which domestic water was conceived of as a publicly owned good that should be universally supplied free of charge. It might mean either:

- the provision of a pricing mechanism for municipal water or;
- the commodification of water utilities that provide municipal water or;
- the creation of full-scale water markets where water is bought and sold by commercial entities.

Let us take each of these in turn. The first category simply involves cases where state agencies decide to charge a price, with the aim typically of cost-recovery – that might or might not reflect the potential market value of the water – to citizens for the domestic water they consume. The second category refers to situations where state water utilities are privatised and become proper capitalist enterprises aiming to generate profits in their supply of municipal water or where private companies enter into the provision of water for citizens. The final category involves cases where it is not only municipal water and water utilities that are being bought and sold but where this is part of a broader pattern of marketisation of all (or at least most) water resources and in which water is a commodity in the fullest sense. (This would obviously incorporate the marketisation of publicly owned water as well as water that was previously unowned and not administered by any institutional grouping).

Now, given the nature of our initial question, it might well seem natural to restrict the discussion to the second category. But there are good grounds for examining the broader conception (which additionally means that questions of natural resource management will also arise). In the first place there is a ‘sociological’ reason for examining the broader question. The pressure for the marketisation of domestic water is not isolated to domestic water alone, but is part of much larger project of marketising water. As a matter of fact, the same commercial groups that wish to marketise agricultural water are typically involved in the marketisation of water for domestic usage. Further, in most cases the legislation required in marketising, encompasses water across the whole hydrological cycle. To be sure, this does not mean that the ethical issues for domestic water will be identical with those raised by the marketisation of wild rivers, but certainly many of the arguments given in favour of marketisation will be similar.

Secondly, the divisions between ‘kinds’ of water is, in many ways, artificial and, moreover, not always *normatively* relevant. Hydrologists often distinguish, for instance, between *ground* and *surface water*. But these are not different species of water, simply water located at different stages of the hydrological cycle. Similarly policy makers often distinguish between industrial, municipal and agricultural water but again this does not track any intrinsic features of the water itself but simply distinguishes types of human use of water.

Thirdly, in evaluating the *ethical standing* of the marketisation of municipal water, questions about water more generally are necessarily raised. Given the scarcity of water in many parts of the world, it follows that municipal use will affect water availability for other purposes. Domestic water use is often in competition with other human uses such as irrigation or industrial processing. Equally, domestic water use can affect the water available for maintaining sustainable and healthy freshwater ecosystems and, in such cases, value conflicts will arise between human needs and environmental values of ecological sustainability and environmental integrity. Such resource competition means that if marketisation has effects upon the demand for water or levels of consumption – as I believe will sometimes be the case – then it will affect the availability of water for other purposes such as environmental flows. Thus we soon find ourselves discussing natural resource ethics and not merely questions of the provision of a public service.

The project of marketisation of water also confronts various practical and conceptual difficulties that are *peculiar* to this good itself. For any form of marketisation, if the good is to become a fully-fledged commodity, then there are legal, practical and cultural obstacles that must be overcome. Here I have in mind such things as cultural resistance to *the very idea* of some good as a commodity or, alternatively, cases where the property rights that underpin the marketisation are difficult to enforce. In the case of water there are some special difficulties. Firstly, practical problems arise with respect to the so-called *security of the resource*. One might, for instance, buy the right to access certain quantities of water each year only for the occurrence of a drought to render the right meaningless. This makes for a highly unusual commercial right.

Secondly, if one is to charge for the use of a resource there is a justificatory requirement for that impost to be universal in the sense that if any person consumes the good they must pay for it. However, such universality is hard to enforce since, in many isolated regions, use of water is difficult to police and, further, not all interception activities are immediately obvious as interception activities. Many people in more remote locations are able to make significant use of water, free of charge, without that use being detected. Thus a rice farmer, living by a river in a remote region, might well be able to pump water into his fields without detection.

Moreover, not all uses of water that are financially beneficial are immediately obvious. Consider, for instance, the take-up of ground water by plantation trees in commercial plantations. Here ground water is being intercepted by the roots of the commercial trees and contributes to the overall profitability of the enterprise, yet, at first sight, this does not involve commercial interception. Nonetheless, the uptake affects water availability ‘downstream’ as it were. In order to ensure that all who gain commercial benefits from water usage pay for their usage, many governments have brought in licences for plantations that assess the amount of water consumed. Such licences are obviously contentious and often will not adequately capture all resource usage.

The third difficulty I shall consider concerns the so-called “unbundling” of land and water rights. Traditionally, in many jurisdictions, water that flowed through a portion of

land, or fell on it as precipitation, was considered lawfully the property of the landowner. Rights to the water of a plot of land were typically regarded as concomitant with the rights to the land itself. However, these sets of rights have usually been disconnected by legislatures (or “unbundled”) in the process of creating water markets. The water that runs off a property is regarded as being owned by the holders of the catchment title. In some places, such as, for instance, Arizona, landholders do not even have the right to collect the water that runs off the roofs of their houses since all such water is owned by those with downstream water rights (Western States Water Law: Arizona).

Unsurprisingly, such unbundling is often anathema to landholders who regard the water that falls on their properties to be rightfully theirs. Resistance to unbundling is particularly marked amongst traditional landowners, such as Indigenous Australians, for whom the idea that one could separate land and water rights, in this way, conflicts with their spiritual relationship to the land (Jackson and Altman 2009). This points to one plausible moral objection to the commodification of water; insofar as such commodification requires the unbundling of water and land, then it will be radically at odds with the spiritual values and relationship to land of many traditional peoples (Bhagwat 2009). Any process that imposes rules according to which land and water are to be treated separately might be said to ignore the spiritual values of traditional landowners.

Of course, while important issues are raised here, this is not the most common objection to the commodification of water. When assessing the moral permissibility of commodifying, the most commonly heard criticism concerns the *distributive consequences* of such commodification. The thought is – as we shall see in a later section – that by commodifying we discriminate against those with little economic power. We shall explore this objection from distributive access in greater detail below. But before doing so, let us turn our attention to the way in which a great deal of water policy-making excludes normative considerations.

### III. THE COMMODIFICATION OF WATER AND THE EXCLUSION OF NORMATIVITY

Water policy raises significant normative issues, especially in a political climate in which there exist great pressures to commodify the mechanisms for allocating water. These issues involve considerations of distributive justice, environmental values and religious and aesthetic values.

Let us begin with the distributive case. Water has, as a matter of historical fact, been subject to a wide range of mechanisms for allocating entitlements to its use. The three primary mechanisms have been riparian legal rights, state allocation and market allocation. Under a system of riparian rights, landholders who own property adjoining watercourses are granted rights to use: these rights are occasionally unlimited, but typically involve some constraints upon usage. The other two mechanisms involve the allocation of rights to use water either by the State or the market. In the former case water is usually owned by the State that then grants rights of use to citizens. In the latter case, allocation on the

market assumes private property rights in water: in order to be commodified, property rights in water must first be awarded.

The shift to a market system for the allocation of water – indeed a shift from any one mode to another – will affect the system of entitlements and this raises questions of distributive justice. Robert Nozick famously suggests in *Anarchy, State and Utopia* that if goods fell like “manna from heaven,” then they could be treated as public goods to be distributed according to some patterned theory of justice (Nozick 1974, 198). In one sense water does fall like manna from heaven and, in another, it does not. The water we consume in our homes typically did not just fall from heaven but was provided by government utilities. Equally the water used in industrial processes or for agricultural purposes has typically been made available through human intervention in the form of dams, channels and pipelines. The bucolic vision of water falling naturally from the sky and running wildly in rivers often obscures the fact that most of the water we use is a product of human intervention in natural processes. Given that water is both a basic necessity of human life and an important resource for agricultural and industrial activity, who obtains access for such purposes is a critical issue of social justice. It is not simply a matter of ‘climatic luck’.

Equally, water policy has significant implications for the environment and consequently for the environmental values we express through such policy. For instance, if a government increases the allocation of water to industry, then this might affect ecosystems from which that water is diverted. This, in turn, raises the issue of what value we place on ecosystem health as opposed to industrial outputs. Or again governments might well develop policies that would limit agricultural activities near sensitive riverine environments. But should we do so? How do we measure environmental values, such as river health, against the commercial opportunities that such bodies of water provide? For many people, certain water systems have spiritual and aesthetic values that commercialisation potentially threatens. If we increase the marketisation, to what extent will that impinge upon the health of our water systems? These are all significant questions that are fundamentally normative regarding our engagement with water systems and, furthermore, require philosophical reflection for their solution.

Despite the obviously speculative and philosophical nature of these problems, one striking feature is the lack of philosophical reflection in water policy-making. In part, this is a consequence of the lack of engagement by academic philosophers with water itself and, more specifically, with water policy. It is surprising how little philosophers have said on these issues. For instance, if one searches the *Philosophers' Index* in the period from 1991-2011, for articles which focus on normative issues concerning water one finds less than ten (depending on what one counts as relevant) and a number of these are, in fact, book reviews.

But it is also partly a consequence of the domination of water policy by economists and hydrological engineers that generates a remarkably anti-normative tone to much of the dialogue about water resources.

To illustrate these claims regarding the lack of normative reflection, let us briefly consider recent policy developments in Australian water management that have facilitated the commodification of water across the country. This involved not just domestic water systems, but the commodification of all water. In 2007 the Federal Parliament passed the *Australian Water Act*, whose explicit aim was to establish water markets; subsequently in 2008 the Australian Government National Water Market was established. The aim of the water markets that were established was to provide a forum for the trading of water resources between competing users. The National Water market not only allowed for the trading of water allocations but also ‘entitlements’ (which are the right to a water allocation). It must be noted that this is a *limited market* in that water can only be traded once so-called “Critical Human Water Needs” have been met.<sup>2</sup> The Critical Human Water Needs cover basic domestic uses of water so as to allow showering, cooking and some gardening activities, but not food production or agriculture. Clearly embedded within the legislation are *implicit* normative views about distributive priorities, with a key caveat being that market trading can only begin once basic human needs are met. However, what is striking is the lack of explicit discussion of some key ethical questions, such as:

Who should have access to water?

What if the establishment of water markets means some people are denied access for uses beyond mere domestic necessity?

How, in a market environment, might we balance financial demands against environmental requirements?

Such questions are not explored within the act, nor is there a substantive body of literature surrounding that legislation that explores them. The point is not simply that arguments for and against commodification were not explored when these legislative changes were made, but the very fact that they have normative significance is not at all acknowledged. What is required here is *inter alia* some recognition of the normative significance of transforming the mechanisms via which water is distributed. Of course, this is just one example of legislation in this area but I suggest it is symptomatic of much water policy legislation.

#### IV. CRITERIA RELEVANT TO NORMATIVE EVALUATION

I have claimed that despite the lack of explicit normative discussion concerning the commodification of water, there are serious normative concerns that need to be addressed, and in each case normative input from philosophers is required if the analysis is to be substantive.

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2] *Australian Water Act 2007*: Section 86A.

Let us begin by considering the implications of commodification for questions of distributive justice. Amongst other things, the market is a distributive mechanism for the allocation of goods. Markets allocate goods (ideally) to those who have the economic wherewithal to pay for them: in commodifying a good we transform the mechanism via which it is allocated, from some non-market mechanism to a mechanism which requires money for access to the good. When we fully commodify water, any person's ability to access this resource becomes a mere function of economic power.

Which particular system of water allocation exists prior to the commodification varies markedly. In some jurisdictions water has been owned by the State and access is thus determined by bureaucratic fiat.<sup>3</sup> In other jurisdictions legal systems of riparian rights were in place, such that those who owned land adjacent to watercourses had the right to use water either for domestic, agricultural or industrial purposes. This has been the tradition in the United Kingdom and much of Europe. In some cases there were Lockean caveats about 'enough and as good' left over.<sup>4</sup> The point is that access was determined by historically granted property rights that come with parcels of land themselves (exactly the kind of arrangement that unbundling attempts to overcome).

Commodification, as we noted earlier, involves a transformation of the mechanism by which water is allocated. There are a number of possible negative consequences of such a transformation, but below I highlight four, all of which demonstrate how the commodification of water might affect important moral values:

- a) *The Objection from Basic Need*: if the commodification of water leads those without adequate financial resources to be excluded entirely from access to water then it is morally objectionable;
- b) *The Objection from Exclusion*: insofar as the commodification of water leads those who have had access via prior systems of allocation to be effectively excluded from a good to which they previously had access, then this is *pro tanto* a bad-making feature of the process.
- c) *The Objection from Environmental Integrity*: insofar as commodification leads to decision-making processes that always favour the realisation of profits whenever a conflict arises between financial interests and environmental interests, then commodification is morally objectionable
- d) *The Objection from Expressive Violation*: insofar as the commodification of water leads us to look upon water systems which *should be regarded* in a non-instrumental manner, as mere means to the realisation of profit, then such commodification raises moral concerns.

Note that only the first two relate directly to domestic municipal water, whereas the final two concern environmental water more generally.

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3] Indeed this was the situation in Australia for over one hundred years.

4] See Nozick 1974, 175-76 for a brief discussion of this Lockean proviso.

Let us begin with the first objection. One significant moral value that many people endorse is the *right to basic access* to water for domestic purposes. Indeed in post-apartheid South Africa this right was taken so seriously that a right to water was enshrined in the constitution. The *Constitution of the Republic of South Africa*, adopted in 1996, states that everyone has the right to have access to an environment that is not harmful to their health and this includes a constant supply of clean safe drinking water. If we do characterise it as a fundamental and basic right, then any process or policy that leads to violations of that right (or potentially does so) is morally objectionable (see Bleisch, 2006). Given that the establishment of full-scale water markets potentially means some users will miss out, then when it does so, it clearly violates the right to access. If we take the idea of a right to domestic water seriously, then any markets in water would require the establishment of mechanisms (usually involving government intervention in the market) to ensure that everyone has their basic water needs satisfied (this was the point of the South African legislation). If one requires money in order to purchase consumption rights to water, then this will sometimes lead to a violation of the ideal of universal access.

In a real sense, the view endorsed here is in accordance with what, in the parlance of contemporary political philosophy, is referred to as “sufficientarianism”. According to the sufficientarian, justice requires that everybody obtain enough of the distributive good in question rather than requiring an equal distribution (Frankfurt 1987). The idea is that as many people as possible should have enough of the relevant good to pursue their life goals (Page 2007). All persons should be provided, where possible, with the resources (in the present case, namely water) to reach the threshold of sufficiency, where that sufficiency is defined in terms of what is required for one to realise one’s aims and aspirations. Sufficientarian accounts are regarded as rivals to their close relative prioritarianism, according to which a benefit has greater moral value the worse the circumstances of the individual to whom it accrues. Justice requires us to give *priority* to improving the well-being of those who are badly off (Arneson, 2000). I do not intend here to engage in a general defence of the sufficientarian approach. However, in the case of water the reasons for preferring it to prioritarianism are quite clear. With water, our aim is not so much to make the worst-off as well-off as we can since beyond the level of sufficiency more water will not necessarily improve the quality of a person’s life. Yet below that basic threshold, the lack of water resources will diminish the quality of one’s life.

It must also be remembered, at this point, that the commodification of domestic water does not (typically) occur in isolation, but is usually part of a larger project of commodifying *all available water*. A general project of commodification means, amongst other things, that water for agricultural and industrial purposes also becomes tradeable, and consequently is subject to market pressures. If this occurs then demand for industrial and agricultural water might have a significant negative impact on the availability of water for domestic purposes. It is quite plausible to assume that in many instances industrialists and agriculturalists might use their economic power to command a greater portion of the water than had previously been the case. In such circumstances, the general commodifi-

cation of water might well affect domestic users by reducing the amount of water available for all domestic users. It was precisely this kind of concern that lead Australian policy makers, when establishing rules for water trading, to create the previously-discussed category of Critical Human Water Needs. The idea is that the water needs of domestic users – however those requirements are determined – must be satisfied before water is made available for trading. Before any water trading can occur, all of these critical water needs must be met. What we have here is a *hierarchy of uses*, with domestic water usage given such a high priority that satisfying it to some basic degree requires taking a certain proportion of the available water resource out of the market.

The preceding distributive concerns have no *historical dimension* in the Nozickian sense that the history of access and ownership of the resource has no effect on claims about how it should be distributed. The claim defended here is that every member of a society, no matter what has gone before, should have access to water for domestic use and that any failure to meet such needs is a form of injustice. However, there are also claims based on traditional access. Accordingly, if the commodification of water reduces access to water that some individuals or groups previously enjoyed, then it might well be argued that this also is a form of injustice. This is the *Objection from Exclusion*.

The argument here is grounded in the normative claim that if people *have had* access to a good, and subsequently this access is removed, then this is *pro tanto* a bad thing and requires justification. The claim has greater force where groups have had a long-standing tradition of access to a good and where such access has cultural significance. Of course, there will regularly be cases where there exist sound reasons for the good to be distributed elsewhere; for instance, the needs of other persons or groups might well be far greater than those who have traditionally had access. This normative claim does not rule out the possibility of the historical claim being overridden. It simply says that loss of access is, as a first approximation, a bad-making feature of an action or process and, hence, must be normatively justified.

What is the relevance of this to the commodification of water? There are a number of ways in which such commodification might reduce or (in extreme circumstances) remove access that previously had been extensive. For instance, if the establishment of water trading involves revoking riparian rights, then clearly according to the foregoing normative claim, this would count as a *pro tanto* form of injustice. It is not that individuals' basic needs are no longer being met but previous privileges have been abolished. We see similar consequences with respect to so-called "unbundling" that is arguably a necessary concomitant of the establishment of water trading. One consequence of unbundling is that landowners no longer have the right to the water that passes through or falls on their property.

This is the essence of our *Objection from Exclusion*: individuals and groups are excluded from access to a good to which they previously had access, and the concern upholds regardless of whether their basic needs are being met. This might seem especially unjust

in cases where a group of say traditional landowners has had effective control of a water resource that passes through their lands for many generations.

The focus thus far has been on *human use* of water. However, commodification also impinges upon significant environmental values and ideals. (Notice, in this way, water is significantly different from other public services, such as housing, which do not impinge so directly on environmental issues). Water policy-makers are often forced to choose between allocating water for human consumption and allocating it for the maintenance of healthy ecological systems; such conflicts are often highly contentious.<sup>5</sup> For instance, in Australia in the Murray Darling River Basin, the diversion of water away from fruit production and other agricultural industries towards so-called environmental flows over the past ten years has been extremely socially divisive. On one side of the debate are those who wish to save an ecological system that is on the verge of breakdown: the river is heavily-salinated and fish numbers are in decline (which we might view as symptomatic of the near collapse of the ecosystem). On the other side of the debate are those who support the agricultural industries and communities that rely on that water for agrarian production. This is just one example of the conflict between commercial human uses and environmental uses of water.<sup>6</sup>

Commodification – especially when undertaken within free market conditions – is likely to favour human uses over environmental values. I shall refer to this as the “*Objection from Environmental Integrity*.” In the absence of government intervention in the operation of the market, then environmental goals, such as the maintenance of healthy environments for non-commercial aquatic life, are likely to be threatened. However, this will not always be so. In some instances, governments have bought allocations on water markets and redistributed them for environmental purposes. This is, however, a politically divisive (and highly expensive) exercise and probably not the most likely way of successfully realizing such environmental goals. Commodification will, in most cases, be at odds with commonly endorsed environmental values and will limit any government’s ability to act in an environmentally sensitive and sustainable manner.

When we consider environmental issues, it is not only values of sustainability and ecological integrity that might be threatened by the commodification of water. Many environmental activists believe the *modes of regard* associated with the market to be inappropriate to the natural world, in general, and to water in particular (Bhagwat, 2009). For such critics there are spiritual and aesthetic values associated with various bodies of

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5] Oddly, water systems have not received the same attention from environmental ethicists as has, for instance, the idea of wilderness.

6] In order to defend the idea that the commodification of water might well have negative consequences for the ecological integrity of water systems, one need not enter into debates over whether the value of such systems is at base human or whether nature has intrinsic value. All that is needed for this argument to hold is the assumption that environmental integrity matters, no matter what the source of that moral considerability.

water – be they lakes, springs or rivers – that will be undermined or violated by the norms associated with the market.

We might explicate this line of objection, making rather liberal use of Elizabeth Anderson's idea of there being expressive values associated with goods and activities that the market will sometimes violate (acknowledging, of course, that Anderson does not apply this moral approach beyond the human realm).

Anderson's is a non-consequentialist account of value that focuses on the ideals we express in our treatment of things. For instance, Anderson argues that our personal relationships involve norms of love and respect for which the norms of the market, which involve use and instrumentality, are entirely inappropriate (Anderson 1993, 141-67). This is what makes commodification in such cases morally wrong. I suggest we can apply this framework to water. With respect to the commodification of water, then it can be argued that *to regard* certain bodies of water, such as perhaps a wild river, as mere resources for the realization of financial profit *expressively violates* them. This is, in part at least, what is troublesome for indigenous groups about the so-called 'unbundling' of land and water. To regard water as a resource that can be divorced conceptually from the land on which it flows is to fail to hold the correct attitudes towards the environment in which one lives.

So any economic or political system, including a market system, which treats water as a commodity necessarily involves a violation of the norms of respect that should be directed towards at least some bodies of water.<sup>7</sup> Let us call this the "*Objection from Expressive Violation*." To be sure, the market is not the only distributive mechanism that might treat water as a *mere resource*. Government water regulators clearly are resource managers and if water, which was previously managed by governments for resource allocation, is commodified, then it is unlikely that the attitudes towards that water will change for the worse with respect to the framework of values that those who endorse this objection recognise. Nonetheless, there are two factors worth noting here. Firstly, legislation to commodify water typically covers all water in a jurisdiction and, hence, will also cover those bodies of water that are not currently treated primarily as a human resource. If those are bodies which should not be regarded as mere resources then the objection stands. Secondly, the fact that other systems involve treating bodies of water that have some aesthetic or spiritual value as mere resources does not eliminate the concern with commodification.<sup>8</sup> Finally, the demand for profits that is associated with the market means that the likelihood of non-financial values being taken into account in the all-things-considered judgments of public decision-makers is low.

The point is that insofar as a body of water is one that should be regarded according to norms that are *fundamentally non-instrumental*, then the use-valuing necessarily associ-

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7] Note that in order to criticise the commodification of water on these expressive grounds, one need not hold that commodification necessarily leads to a violation of the norms. For an account that treats the violation of norms as *causal* rather than *constitutive of* commodification, see Walsh 2001.

8] Although obviously not all forms of human engagement with water involving treating bodies of water as mere means of realizing human ends.

ated with the market gives rise to serious moral concerns. Assuming that one endorses the idea that there are particular modes of regard appropriate to parts of the natural world, then this provides a further moral criticism of at least some forms of the commodification of water. The reason for my hesitancy here is that there will be cases where human needs are such that we must – given we accord some kind of priority to human needs – trade-off the mode of regard for the well-being of human beings.

The final normative issue we must consider here concerns the force of these objections with respect to public policy. Do they furnish grounds for rejecting commodification entirely? Do they mandate state ownership and provision of water services? At first sight one might think so, however, closer examination reveals a much less clear-cut picture and I suggest that these objections in many cases provide grounds for caution rather than outright prohibition. What I have outlined are *possible pitfalls* associated with commodification rather than necessary consequences and, as such, endorsing these objections need not commit one to ‘market abolitionism’ in water.

If we reflect upon the *Objection from Basic Need* we soon discover that the goal of ensuring commodification does not undermine basic access to water, can be achieved via options other than absolute prohibition. One might, for instance, allow trading in water but also establish a voucher system that ensures all have basic access. Alternatively, one might establish markets in surplus water once basic needs have been met (this is the thought behind the establishment of the so-called Critical Human Water Needs).

Nor is it the case that the *Objection from Exclusion* provides grounds for prohibition of markets. In the first place, whether or not those who previously had access come to have no access after the establishment of markets in water is an entirely contingent matter. Markets might well be established and no single person is excluded from goods to which they previously had access. Where markets do give rise to exclusion – and where we take such exclusion to be morally significant – then it is possible for the State to intervene so as to ensure that access is maintained. Such solutions do not involve a ban on commodification.

Even more complicated are the implications of the third and fourth objections listed above – i.e. the *Objection from Environmental Integrity* and the *Objection from Expressive Violation* – for the moral standing of water markets and for the provision of alternative arrangements for distribution. Such objections can also be directed against state ownership and provision since state exploitation of water in vulnerable environments is quite possible (and has often been the norm). While one can plausibly argue along the lines outlined above that such outcomes are more likely under market conditions, this does not necessarily make state provision significantly more palatable for those who are concerned with either environmental integrity or appropriate attitudes towards water resources.

The upshot of this discussion is that endorsing these four objections does not necessarily commit one to the conclusion that all water should be owned and allocated by the State or some other non-market institution.

## V. CONCLUDING REMARKS ON THE DETERMINATE AND THE DETERMINABLE IN WATER ALLOCATION

In a recent interview the political philosopher Debra Satz (2010) suggested that no philosophical theory could provide determinate answers regarding the degree to which we should rely on the public sphere or on altruism for the provision of such things as health care and education. For Satz, these are political questions not problems of political philosophy. Similar constraints on the scope of philosophical analysis might be thought to apply to discussions surrounding the provision of water. She continues:

The political philosophy question is to try and point out the constraints on the domain of decision-making. What values ought to constrain our decisions? What values are important to promote in our institutional designs? But even once we have set those constraints, there are going to be a lot of close-to-the-ground empirical factors that have to be taken into account, and there is going to have to be some room for publics to reasonably disagree about different trade-offs. (2010, 85)

Much of what Satz says here seems applicable also to the formation of water policy. Philosophy can outline the values – such as the right to basic access to water – that should constrain any moves towards the commodification of water. In this case there is probably a wider spread of relevant values that need to be taken into account than perhaps will be the case when we are considering, for instance, housing, since the commercialisation of water not only affects the users of water but can well have serious environmental impacts. Water is not just a public service but is also part of the ecological ‘web of life’ and, as such, the trade-offs that need to be discussed in the public domain involve a wider range of normative considerations than is typically the case with other public services. Debates about how those trade-offs are to be determined will be topics, as Satz suggests, for public disagreement and political negotiation rather than philosophical proclamation.

But at the same time Satz undersells the role of philosophy, at the very least when it comes to water policy. Consider the following three roles that philosophical reasoning can uniquely play here.

Philosophers can identify and assess the normative assumptions beneath arguments both for and against various forms of water policy to be pursued by governments. Here the focus is on the *identification* of the specifically moral nature of public policy dilemmas.

Philosophical analysis allows us to identify the normatively-salient features of processes such as, for instance, commodification and nationalisation and, in so doing, work towards some kind of *solution* to the problems identified. So, for instance, Satz’s focus on noxious exchanges and her account of what makes an exchange noxious or Nozick’s moral focus on the historical nature of goods would both count as examples of the process of identifying normatively-salient features of a social phenomenon.

Philosophers can explore the connections between possible empirical outcomes and their moral consequences. One need not be a utilitarian to see that different empirical outcomes will have different moral consequences. For instance, if commodification does, as a matter of empirical fact, lead to a diminution of access to water then clearly this has moral significance. Exploring that moral significance is a matter for philosophical analysis.

I make no pretence that this list is in any way exhaustive, it simply illustrates the point that philosophical analysis, while typically *determinable* rather than *determinate*, has much more to offer to the morality of marketisation than Satz's characterisation might suggest.<sup>9</sup> In particular, if we look at the commodification of the public service associated with water we see, as this paper hopefully demonstrates in some small way, that philosophy not only allows us to reconceptualise such commodification as a normatively significant issue, but also enables us to identify the central normative features of the debate and, in so doing, opens up new and important areas for debate.

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#### REFERENCES

- Aguilera-Klink, Federico, Eduardo Perez-Moriana, and Juan Sanchez-Garcia. 2000. The Social construction of scarcity: The case of water in Tenerife (Canary Islands). *Ecological Economics* 34: 233-45.
- Anderson, Elizabeth. 1993. *Value in Ethics and Economics*. Cambridge, Mass.: Harvard University Press.
- Anderson, Terry L., and Donald R Leal. 1991. *Free Market Environmentalism*. Boulder: Westview Press.
- Aristotle. 1946. *The Politics*. Translated by E. Barker. Oxford: Clarendon Press.
- Arneson, R. 2000. Luck Egalitarianism and Prioritarianism. *Ethics* 111: 37-63.
- Australian Water Act 2007. [http://www.austlii.edu.au/au/legis/cth/consol\\_act/wa200783/s86a.html](http://www.austlii.edu.au/au/legis/cth/consol_act/wa200783/s86a.html) (accessed December 11, 2011).
- Benbaji, Y. 2005. The Doctrine of Sufficiency: a Defence. *Utilitas* 17: 310-32.
- Bhagwat, Shonil A. 2009. Ecosystem Services and Sacred Natural Sites: Reconciling Material and Non-material Values in Nature Conservation. *Environmental Values* 18 (4): 417-27.
- Blaug, Mark. 1980. *The Methodology of Economics: Or How Economists Explain*. Cambridge: Cambridge University Press.
- Bleisch, Barbara. 2006. The Human Right to Water – Normative Foundations and Ethical Implications. *Ethique et économique* 4 (2): 1-23.
- Connell, Daniel. 2007. *Water Politics in the Murray-Darling Basin*. The Federation Press: Sydney.
- Frankfurt, H. 1987. Equality as a Moral Ideal. *Ethics* 98: 21-43.
- Getzler, Joshua. 2004. *A History of Water Rights at Common Law*. Oxford: Oxford University Press.

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9] Here I follow W.E. Johnson's use of the distinction where colour and shape are determinables and red and circular are determinates. See Johnson 1921.

- Godden, Lee. 2005. Water Law Reform in Australia and South Africa: Sustainability, Efficiency and Social Justice. *Journal of Environmental Law* 17 (2): 181-205.
- Hoekstra, A. and Chapagain, A. 2007. *Globalization of Water: Sharing the Planet's Freshwater Resources*. Chichester: Wiley Blackwell.
- Huseby, R. 2010. Sufficiency: Restated and Defended. *The Journal of Political Philosophy* 18: 178-97.
- Jackson, Sue. 2011. Aboriginal access to water in Australia: opportunities and constraints. In *Water Resources Planning and Management*, edited by R. Quentin Grafton, and Karen Hussey. Cambridge: Cambridge University Press.
- Jackson, Sue and Jon Altman. 2009. Indigenous Rights and Water Policy: Perspectives from Tropical Northern Australia. *Australian Indigenous Law Review* 13 (1): 27-48.
- Johnson, W.E. 1921. *Logic* (Parts I, II, and III). Cambridge: Cambridge University Press.
- Manis, Eleni K. 2011. *Distributive Justice for democracies: A needs-based sufficientarian approach*. Michigan: UMI Dissertation Publishing.
- Milgate, Murray. 1987. Good and Commodities. In *The New Palgrave: A Dictionary of Economics*, edited by J. Eatwell, M. Milgate, and P. Newman. London: Macmillan.
- Nozick, Robert. 1974. *Anarchy, State and Utopia*. London: Basil Blackwell.
- O'Neill, John. 1998. *The Market: Ethics, Knowledge and Politics*. London: Routledge.
- Page, E. 2007. Justice Between Generations: Investigating a Sufficientarian Approach. *Journal of Global Ethics* 3: 3-20.
- Prasad, Naren (ed.). 2008. *Social Policies and Private Sector Participation in Water Supply*. London: Palgrave Macmillan.
- Pribram, Karl. 1983. *A History of Economic Reasoning*. Baltimore: Johns Hopkins University Press.
- Radin, Margaret Jane. 1996. *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts and Other Things*. Cambridge, Mass.: Harvard University Press.
- Samuelson, Paul A. 1976. *Economics*. 10<sup>th</sup> edition. New York: McGraw-Hill.
- Satz, Debra. 2010a. *Why Some Things Should Not be For Sale*. New York: Oxford University Press.
- . 2010b. Ethics, economics, and markets: an interview with Debra Satz. Interview with Thomas Wells, and Rutger Claassen. *Erasmus Journal for Philosophy and Economics* (3) 1: 68-88. <http://ejpe.org/pdf/3-1-int.pdf> (accessed December 10, 2011).
- South African Constitution*. 1996, <http://www.thehda.co.za/images/uploads/unpan005172.pdf> (accessed December 7, 2011).
- Syme, G.J., Nancarrow, B.E., and J.A. McCreddin. 1999. Defining the components of fairness in the allocation of water to environmental and human uses. *Journal of Environmental Management*. 57: 51-70.
- Syme, Geoffrey J., and Nancarrow, Blair E. 2006. Achieving Sustainability and Fairness in Water Reform. *Water International*. 31(1): 23-30.
- Tisdell, John G. 2003. Equity and Social Justice in Water Doctrines. *Social Justice Research* 16 (4): 401-16.
- Walsh, Adrian. 2001. Are Market Norms and Intrinsic Valuation Mutually Exclusive? *Australasian Journal of Philosophy*. 79 (4): 525-43.
- Walsh, A.J., and A. Lynch. 2008. *The Morality of Money: An Exploration in Analytic Philosophy*. Palgrave Macmillan: London.
- Western States Water Laws: Arizona. <http://www.blm.gov/nstc/Waterlaws/arizona.html> (accessed December 4, 2011).

## Freedom of Choice and Freedom from Need

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**Abstract.** Those who attempt to make choice the basis for arguments about welfare tend to assume that choice involves nothing more than the availability of options and the opportunity to select among them. The opportunity to select is sometimes referred to as “freedom of choice,” which is assumed to follow from the absence of coercion. There is, however, an alternative way of thinking about the problem that links freedom not to the absence of external constraint on action we associate with choice, but to the capabilities and resources needed to make conduct the expression of an internal agency. This alternative understands freedom not as choice but as self-determination. This paper explores the idea of freedom as self-determination and its implications for the notion of choice not, however, by considering freedom as self-determination an alternative to choice, but rather as the condition without which choice has no meaning. The main theme of the paper is that self-determination is the capacity to negate needs originating in either the natural determination of the organism or in its immersion in a group of the kind that shapes and determines the identity of its members. Choice only becomes meaningful as an expression of the capacity to negate need, which capacity is referred to as freedom from need. The idea of freedom from need is then applied to the problem of the limits of the market and the role of the public authority in securing welfare. Consideration is given to the matters of health care and income subsidy.

**Key Words:** choice, ethics, freedom, groups, needs, self, welfare.

Those who attempt to make choice the basis for arguments about welfare tend to assume that choice involves nothing more than the availability of options and the opportunity to select among them.<sup>1</sup> The opportunity to select is sometimes referred to in the language of freedom as “freedom of choice,” a condition that exists when outcomes are not predetermined for individuals but determined by them. Freedom of choice is typically assumed to follow from the absence of coercion. There is, however, an alternative way of thinking about the problem that does not make this assumption. This alternative links freedom not simply to the absence of external constraint on action we associate with choice, but also to the capabilities and resources needed to make conduct the expression of an internal agency. Following this line of thought involves understanding freedom not as choice but as self-determination.<sup>2</sup> Freedom as self-determination differs from freedom

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1] Choice theory has its origins in the Utilitarian philosophy, which became the foundation for the neo-classical school in economics that emerged toward the end of the Nineteenth century. In the Twentieth century, and especially in the post WWII period, the link between markets, choice, and efficiency became the basis for arguments concerning the role of government and market in securing welfare. On the neo-classical approach to political economy, see Caporaso and Levine 1992, Chapter 4.

2] In the language used by Isaiah Berlin (1984), there is negative freedom (freedom from coercion by others) and positive freedom (existing as subject rather than object). The argument here is that freedom

as choice so far as agency is not assured simply by removing external constraints, but also demands the presence of a capacity internal to the individual.

In this paper, I explore the idea of freedom as self-determination and its implications for the notion of choice. To do so, I take the idea of self-determination in a specific direction, one I refer to as freedom from need. What I have in mind by this is that the presence of an internal agency as source of conduct and relating depends on the capacity to negate needs originating in the natural determination of the organism or in its immersion in a group of the kind that shapes and determines the identity of its members. I try to indicate how the notion of choice lacks meaning and coherence unless it is understood as an aspect of freedom from need. In the last part of the paper, I indicate how the idea of freedom from need can be applied to the problem of the limits of the market and the role of the public authority in securing welfare. There, I consider the role of state and market in the provision of health care and income subsidy.

### I. ETHICS AND CHOICE

Since its origins in the Eighteenth century, economics has treated the market as uniquely suited to providing the means for satisfying needs because the market is understood to adapt to particular circumstance and focus attention on what is particular in need and in the means capable of satisfying need. Thus, with regard to the employment of capital, Adam Smith tells us that “every individual, it is evident, can, in his local situation, judge much better than any statesman or lawgiver can do for him” (1976 [1776], 456; see also Hayek 1945). Corresponding to the identification of the market with knowledge of particular circumstance is the judgment that the public authority cannot know what is needed or how best to produce it and make it available. In other words, corresponding to a judgment about the competence of the market to provide individuals with the means to satisfy need is a judgment about the incompetence of the public authority to do so.

Smith places emphasis not on knowledge of what people need so much as on knowledge of the best lines of investment for society’s capital. In Smith’s case, this emphasis on investment follows from the way he thinks about need. Because he tended to conceive need in the language of subsistence, Smith did not consider it essentially a matter of individual choice, but of history and culture. So far as we follow this line of thinking, the public authority can know what is required to satisfy need even if it cannot know how best to produce it.<sup>3</sup> The judgment of public incompetence is further reinforced, however, when the subsistence idea is replaced by the ideas of utility and choice. Then, not only

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of choice, which is one aspect of freedom from coercion, only has meaning where conditions are met that assure self-determination. Because of this, the two kinds of freedom cannot be meaningfully separated.

3] We may notice an inconsistency in this argument since knowledge of what is the best line of investment depends on knowledge of demand, and therefore, at least indirectly, of need. If there is an inconsistency here, it may be in Smith’s adherence to the subsistence theory of need in the context of an argument for the use of markets in producing and distributing the things people need.

are the means for producing the goods needed a matter of local (in this case individual) knowledge, so also is need itself (so far as the term need continues to apply). This issue has a significant bearing on the matter of public services, since the public nature of such services is tied, implicitly if not explicitly, to the presumption either that what clients need can be determined for them or that non-market provision can take into account their unique circumstances.

The emphasis on utility and choice has taken Smith's original line of thought in a particular direction clearly expressed by Thomas Schelling (1984) when he argues against the use of ethics to guide policy and in favor of institutions designed to facilitate the pursuit of individual ends as expressed in choice. By applying what he refers to as "economic reasoning," Schelling argues that we can assure that preferences as expressed in choices drive outcomes rather than a prior, and presumably arbitrary, imposition of ethical judgment. This line of thought continues, though in a specific direction, the idea that a liberal society is one in which the good is an individual matter, and what is right is to assure that each individual is free to define and pursue the good as he or she imagines it (Rawls 1971, 446-52; Sandel 1984, 1-7; Manent 1995, 25-6).

## II. FREEDOM FROM NEED

For those who doubt the economist's view of the world, it has been tempting to emphasize how institutions and circumstances limit choices in ways that make coercive what might formally be depicted as choice. Thus, formal ownership of laboring capacity does not assure that its sale is a transaction freely (or voluntarily) entered into and therefore a matter of choice. Yet, considerations of this kind, as important as they are, do not get at what is, I think, most problematic about choice, which has to do not with the presence of external restrictions on alternatives, but with the assumption that choice is a meaningful way to describe conduct so long as options exist and actions are not coerced. To be sure, in the absence of viable options or in the presence of coercion, choosing is not a meaningful characterization of action. It does not, however, follow that the presence of options and absence of coercion assure that choosing will or can take place. This is because the possibility of choice expresses not simply attributes of the external world, but also a special way of conceiving the self in that world.

The way in which this aspect of choice is sometimes formulated is in the language of awareness (Elster 1986, 4). Objectively existing options only represent choices to the extent that the agent is aware of them. Because of this, choice cannot be treated simply as an objective condition. Awareness is here taken to mean knowledge of, which tends to subsume it into the matter of what sort of information is available about the world on the basis of which options can be identified. What I have in mind is not, however, the matter of whether the individual is aware of options in this sense. To be aware of options requires not only knowledge of the external world, but a special orientation toward it. This special orientation involves the capacity to imagine different futures with different

experiences of self and object in them. This means that to experience the world as offering alternatives is to see ourselves as the locus of a potential rather than as something already fully determined. The idea of the self as potential is, I think, essential in understanding the matter of choice (Levine 2011, Chapter 1). What is important, then, is not that those observing behavior see a range of options among which one is realized in action, or that the individual have meaningful options available and adequate knowledge of them, but that the individual have the unique capacity to choose, which includes the capacity to see the self in the world in a way consistent with choice.

The development of the capacity to which I have just referred cannot be separated from the development of ends; and, indeed, choice as a description of conduct only makes sense where ends are of the kind appropriate to it. When we choose, we select from among options the one we judge most likely to accomplish our end. Consistent with the point just made, we could say that only when our end incorporates the idea of realizing a potential to become something not yet fully determined can we speak about choice. Thus, we might speak of our end in the language of satisfaction, but only in seeking certain kinds of satisfaction can we characterize what we do in the language of choice. If, for example, the satisfaction we seek is of a purely natural or physical need, then freedom from external determination of conduct does not exist and choice does not describe what we do. Only when we are free from the dictates of such needs can our satisfaction take on that special meaning that links it to freedom from external determination. This condition, in which we are free of determination in conduct by need, defines choice as I use the term here, since, in its absence, what might seem a choice is really an outcome determined independently of the agent who chooses.

While absence of external determination of action requires the absence of coercion and the presence of, and awareness of, alternatives, neither condition is sufficient. Because of this, choice, narrowly conceived, can be a poor basis for judging institutions where freedom is to play a prominent role in defining our standards for judgment. We can, however, capture what is important in the idea of choice if we consider not the availability of options or the legal freedom from external constraint, but the capacity to imagine alternative selves and act on the basis of the imagined self. Doing so makes freedom from external determination real and choice meaningful. This is the condition I refer to as freedom from need.

When I refer to freedom from need, I do not have in mind a state of the organism in which needs are fully satisfied. Rather, what I have in mind is a state in which conduct is not driven by need, but by ends other than those rooted in natural imperatives of the kind the classical economists associate with the notion of subsistence, and that have more recently been associated with the idea of “basic need” (Braybrooke, Ch. 2). In speaking of freedom from need, I do not, however, mean to suggest that the organism no longer exists within a natural system. Rather, I have it in mind to consider the existence of the organism in a specially constructed world of conduct and relating where natural imperatives do not govern. We can, then, define welfare (the state of doing well or thriving) as a state of being

marked by the exercise of the capacity and exploitation of the opportunity to live in a way that is not defined by need.<sup>4</sup>

While we may be tempted to imagine that existence in this specially constructed world depends on the individual first satisfying the needs associated with existence as a natural organism and only then turning toward a life where freedom from need is the rule, I do not think that approaching the problem this way will in the end prove helpful. What I think will prove more helpful, if perhaps less intuitive, is to consider how the evolution toward freedom from need creates a world and a way of life in it where the satisfaction of natural need becomes essentially a byproduct of the pursuit of self-determination in want. And, as this evolution progresses, it becomes more and more difficult to identify what is a natural need and when it is being satisfied because in a meaningful sense it has ceased to exist as the governing factor in living. Then, something like natural need reemerges only where the world of freedom from need breaks down and living becomes nothing more than survival in the most elemental sense. Or, it reemerges when the natural processes of the organism cease to function or threaten to do so and in so doing reassert their dominance.

Freedom from need does not involve treating the individual as a locus or set of wants, as is assumed in subsistence, basic need, and choice-based constructions. Rather, the individual is here treated as a locus of the capacity to conceive the world as a place in which want cannot be taken as already determined by natural imperatives.<sup>5</sup> When the individual exists in this way, he or she can be said to choose, and choosing can be said to be an important part of what makes life meaningful. What I would propose to do is to focus our attention, then, not on the act of choosing, but on the presence of the capacity that makes choice meaningful, and indeed leads to the creation of a world in which choosing is possible. To do so, it will be useful to say something more about the nature of the capacity to conceive a world of alternatives and opportunities.

One way to understand the capacity to conceive the world in this way is in the language of imaginative construction. What frees action from natural imperatives is that before we act we imagine ourselves doing so. Choosing as an expression of the imaginative capacity is an act of selecting not simply among alternative satisfying objects, but among alternative selves, one of which will be realized in part through choices made. Once, however, we begin to imagine who we might be, we are not limited to options already available; there is also the possibility of options not yet in existence, and by extension of a self not already available in models given to us from outside. In other words, not only can we choose among options, we can also explore “opportunities as yet undetermined”

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4] For a fuller discussion of this notion of welfare, see Levine 2008, 13-20.

5] In other words, the starting point for thinking about welfare is the capacity to exist in a state “in which every concrete restriction and value is negated and without validity” (Hegel 1952 [1822], 37). This idea bears a connection to Rawls’s notion that individuals can reorient themselves in relation to the external world through the imaginative act that deprives them of any knowledge of what they want or what resources they have to satisfy their wants.

(Erikson 1964, 161-62). This latter is essential if there is to be freedom from natural imperatives. Not only, then, is there the matter of choice to consider, there is also, and more importantly, the matter of the creation of a world and of the self in it.

Once, however, we consider the imaginative act as the starting point for choice, freedom from need is no longer limited to freedom from natural imperative. Imagination attacks not only our natural limitations, but all constraint associated with external reality, whether that is the reality of the organism existing as part of a natural system, or the reality of the social organism existing within a cultural milieu. Here, I will consider freedom from cultural imperative in a special sense, the one linked to culture understood as a group phenomenon, and need understood as rooted in adhesion to the group through entering into a group identity. The idea of subsistence as that was used by the classical economists included not only those needs derived from natural imperative, but this connection to history and culture and to needs derived from adopting a way of life embedded in the culture of a group. These needs are as much defined for the member as are the natural imperatives of the species.

While it might appear that determination in natural imperative and in group identity stand sharply opposed, this is not, in fact, the case. Rather, it is in the nature of the group to imagine that its contingent rituals and regulations of everyday life are part of the natural order of things, an order from which it is not possible to deviate without losing all meaning in life and all connection with others. What is in the nature of a human life is also, in that sense, a kind of natural imperative of living. The loss of this connection to what is natural, and therefore inevitable, implied in the coexistence of many groups and many group-based cultures undermines the determination of conduct not only in culture, but in nature as well.

Can we be free of natural-cultural imperative, which is to say of group identity? Here, again, I think it is worth emphasizing that freedom from need does not mean that we have no group identity and no forces shaping how we live according to the group or groups to which we belong. It only means that we have the possibility of also living a life not determined by our group affiliations, and that those affiliations do not shape and control the whole of our being and all those ways we gain satisfaction in living by expressing who we are in what we do.

In the exercise of imagination and the effort to realize what we imagine in living, we can move outside the imperatives of nature and group life and still exist. Existence in this sense is what Donald Winnicott refers to as the "being expressed in doing" (1986, 39). Winnicott links this to the idea of creativity in living, which he distinguishes from a way of living organized around compliance. Compliance is another way of speaking about the external determination to which I refer above, so creativity in living in Winnicott's sense means that what we do originates internally, which is the being expressed in doing.

Winnicott also links creativity, or the ability to express being in doing, to what he refers to as "formlessness." Being able to enter into a state of formlessness places us into the "area of freedom" (Eigen 1996, Chapter 7). This formlessness, or indeterminacy, is

the result of the act by which we negate external determination. It is the starting point for shaping a life based on the internal factor we refer to by the term self. This closely parallels the notion of welfare as freedom from predetermined ways of living, which is the starting point for self-determination. When we understand welfare in this way, we look first not to satisfaction, but rather to our ability to exist without prior determination and to imagine what we might become through our own efforts to realize possibilities yet to be determined.<sup>6</sup>

### III. LIVING OUTSIDE THE GROUP

Freedom from need does not mean that we have no needs; rather, it means that we have access to a world in which need is not the governing factor. Here, I will emphasize the involvement of group life in making need a governing factor in living, which makes the possibility of living outside the group an essential element in self-determination. Because the idea that self-determination involves the capacity and opportunity to live outside the group plays an important role in the conception of welfare outlined here, it will be useful to offer a fuller discussion.

We can take a broad view and define the group as a collection of individuals who share some characteristic: ethnicity, location, interest, gender, values and so on. Yet, while this is not an unreasonable use of the term group, it leaves out something important in the idea of the group as I will use that term, which is that there must not only be a common characteristic, but also an emotional investment in it. When there is an emotional investment in a common characteristic, we can speak of identification among group members. This is how Freud speaks of groups, which he thinks of as systems of relatedness bound together by identification (Freud 1959 [1922]). The more important the shared characteristic, the more it serves to organize and animate what is meaningful in life for the members, the less those members are also individuals who share a trait, the more they are members of a group, and exclusively so. In other words, the greater the importance of the shared trait in the individual's life, the less he or she acts and relates as an individual, the more he or she exists exclusively as a group member. Indeed, we can understand many groups as existing for the sole purpose of fostering this emotional investment in the shared characteristic of their members.

In his essay on group psychology, Freud explores the powerful tendency toward regression fostered by groups. Groups, he tells us, promote the "intensification of affects and the inhibition of the intellect" (1959 [1922], 20). In groups, individuals transfer their

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6] The world that has its origin in freedom from need is produced by a creative act; and what makes an act creative is that it begins in the mind as an image or idea. Thus, according to Marx, what gives work (or labor as he terms it) its exclusively human form is that, at its end, "we get a result that already existed in the imagination of the labourer at its commencement" (1967 [1867], 178). The activity, or work, undertaken to create this world expresses what Arendt refers to as "the unnaturalness of human existence." Through work, she tells us, man creates a world "distinctly different from all natural surroundings" (1958, 7).

capacities for judgment outside themselves, onto the group and its leader. To encourage this result, the group calls on the individual's capacity for identification and the associated sacrifice of any firm distinction between self and other. The group to which Freud refers is all about merger and not at all about respect for self-boundaries and the integrity others. Following this line of thinking, Wilfred Bion, in his essay on group experience, notes how, in joining what he refers to as the "basic" group, all the individual needs to be able to do is to "sink his identity in the herd" (1984 [1969], 89). Being in a basic group, then, requires neither a specific emotional development nor a learning process, but only the mobilization of primitive emotional capacities associated with identification; and, so far as we have developed emotionally beyond the mode of relatedness that forms the group, being in a group requires regression.

Freud goes on to suggest that there is another possibility in group life, groups that operate in exactly the opposite way "and from which a much higher opinion of the group must follow" (1959 [1922], 14). This opposite opinion owes its origin "to the consideration of those stable groups or associations in which mankind pass their lives, and which are embodied in the institutions of society" (15). Freud characterizes those groups of which a higher opinion might be formed not only as more stable, but also as "organized" and "artificial" (49). Since these organized or artificial groups only operate where the regression typical in groups has been somehow limited if not prevented, their existence expresses the emotional development of their members and the special emotional capabilities made available by that development.

What enables the organized or artificial groups to escape the regressive forces that normally dominate in groups? Freud answers this question by referring us to the matter of the individual. As he puts it: "The problem consists in how to procure for the group precisely those features which were characteristic of the individual and which are extinguished in him by the formation of the group." Freud goes on to suggest that our aim should be to "equip the group with the attributes of the individual" (18-19). If we do so, however, the group loses much of what makes it a group, which is that it calls on forms of relatedness that suppress the division of its members into separate individuals, especially that form of relatedness forged by identification. In the groups about which a higher opinion can be maintained, the members retain their ability to function as individuals, which means that self-boundaries remain intact at least to a significant degree. It is safe to assume, I think, that when we move the group in the direction Freud suggests, we tend to replace it with something closer to what we think of as an organization. A question remains, however, which is what enables the group to move in this direction.

Bion has something important to offer on this question. His account of how regression can be limited in groups has to do with the availability of ends associated with work rather than with simply being in the group. Bion distinguishes between groups that work, which he refers to as "sophisticated work groups" and the basic groups that do

not.<sup>7</sup> Work, then, is the essential factor that limits the regressive forces inherent in group phenomena, and the capacity to work is one result of emotional development that must be suspended if not given up when we participate in the basic group.

Yet, historically, much work has taken place in groups that are not sophisticated and do not call on the emotional development to which I have just referred; so we may wonder if it is not work per se that poses the problem for the group, but work of a special kind. This is the kind of work that calls on higher mental functions and therefore on the results of emotional and cognitive development. Because this work calls on the results of development, it requires that measures be put in place to limit regression. The movement away from the regressive forces in groups can be understood, then, to derive not from the connection of the group to work per se, but from the necessity to do work of a particular kind, work for which the group is ill suited precisely because of the characteristics alluded to by Freud and Bion.

While Bion formulates the problem of work within the language of groups, the growing importance of the sophisticated work group can also be understood to mark a movement away from the group. The result of this movement is the modern organization, a stable and structured setting for work of a particular kind. While it is possible to use the language of groups to speak about organizations, I think doing so tends to obscure important differences by broadening the use of the term so that what is distinctive about group phenomena tends to get lost. For this reason, when I speak of groups here, I limit the term to systems of interrelatedness that foster the regression to which Freud refers.

In the world of work we associate with organizational life, the individual also exists outside the group and, because of this, is able to maintain at least a degree of autonomy, an autonomy expressed for example in the possibility of moving from one job to another. This latter is a vital element of civil society. It has developed gradually and through significant conflict. It depends on the presence of marketable skills that enable individuals to command employment in different settings, and on the system of worker protections that assure the individual does not become overly dependent on any individual employer. Thus the dependence associated with work, though real, remains limited and partial.

#### IV. STATE AND MARKET

The modern institutions of state and market play a special role in securing freedom from need. Both make living outside the group, and outside of the subsistence defined by the group, possible, though in different ways. We can, then, think about the normative standing of the market as deriving not from the choices it provides, though those are important, but from the freedom from dependence on the group that it supports. And, similarly, we can think of the state not as an alternative source of subsistence, but as a potential source of livelihood that does not impose dependence on the group. Thought

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7] On the sophisticated work group, see Turquet 1985.

about in this way, what is important about the market is not choice, but private property. Private property is important because it affords the possibility that we might live apart and therefore have a life of our own. This means that we can imagine ourselves in ways not already fully formed and predetermined for us.

The use of the term group briefly outlined in the last section makes the group a setting in which a genuinely individual life cannot exist. What exists instead is a shared way of being in which self-boundaries are not respected. Where self-boundaries are not respected, nothing pertains specifically to this particular member, which is really the point of the group. Private property refers to what pertains to this particular individual, is attached to his or her person and not shared with others or subject to their will. Existence in groups has a kind of public quality to it, although in the absence of a private world it may be misleading to apply the notion of a public sphere. Life outside of the group is, by contrast, essentially private. This does not, however, mean that all public experience is group experience. There can also be a public space that is not the space of the group organized around conformity to a shared identity. Indeed, so far as creativity in living is an important norm, it becomes important to conceive a public space that is not the space of (basic) groups. Where the norm of creativity in living is important, however, there must also be a refuge from the group and the loss of separate and different self it demands. For creativity, there must be “detachment from the forms as they exist” (Bruner 1962, 23), which is, among other things, detachment from the group.

Normatively, exchange and the market systems that arise out of it are no more than byproducts of the instantiation of a norm of living apart in private. This does not mean that matters of efficiency are unimportant, but only that the normative standing of the market depends not on whether it is efficient, but on the way it makes living apart a possibility.

For those whose capabilities and resources leave them with limited access to the market in securing their livelihood, the absence of a welfare state means they have little choice but to become dependent on groups, which means that securing livelihood stands opposed to self-determination. The development of a robust welfare state can protect the individual from forms of dependence destructive of autonomy. This is the idea Emile Durkheim expresses in the language of protecting the individual from those groups that would seek to “absorb the personality of their members.” According to Durkheim, the state must “remind these partial societies that they are not alone and that there is a right that stands above their rights” (1958, 65). It is, then, as Durkheim goes on to emphasize, the weakness rather than the strength of the state that poses a threat to the individual. State failure fosters regression to the group and to ways of living marked not by freedom from need, but by group identity and a life dominated by need. Thus, while the argument that unregulated markets foster coercive authority structures and the exploitation of labor takes on importance as an argument for state intervention, so also does the argument that, in the absence of public welfare institutions, individuals become dependent on groups and associations in civil society, and are driven to regress to ways of living that express shared group identities.

The dependence to which I have just referred involves domination by need; so we can also say that, in the absence of public welfare institutions, the individual regresses to living on the basis of need, which is to say on the basis of the imperatives of nature and group culture. Conversely, public welfare institutions can provide a measure of protection from the domination by those imperatives. Yet, they can only do so if they are not themselves dominated by notions of the organism and group member determined by the needs defined by nature and group life, which is to say notions of subsistence and basic need.<sup>8</sup>

#### V. WELFARE

I will now suggest some ways in which the ideas briefly outlined above can be applied to the problem of welfare provision. I begin with health care.

The matter of the provision of health care plays an especially significant role in the complex effort to negotiate the boundary between public and private. If we consider the matter within the framework outlined above, then the salient feature of health care is its complex relationship to freedom from need. This complexity arises because natural imperative plays such a prominent role where care of the body is concerned. This is not to say that health is a purely physical matter. Clearly it is not. Nor is it to suggest that choice has no part to play where decisions regarding the meaning of health and the way health care is sought are concerned. Clearly it does. Yet, however we emphasize variation in concepts of health and choice in the manner in which health care is sought, physical imperative is still a, and often the, primary concern. And, so far as this is the case, we cannot assume that health operates within the sphere of freedom from need. And, where freedom from need is not primary, neither can we subsume issues of how care is provided and what kinds of care are provided under the heading of choice. Yet, health care bears essentially on the possibility that we might experience ourselves as free from need in that ill health can foster regression to a state in which self-determination is impaired or lost. This means that a concern for freedom from need is relevant to thinking about health care.

Provision of health care constitutes a challenge for public policy aimed at securing self-determination so far as health care is an area where the individual's capacity for self-determination may be impaired. Impairment in self-determination means that policy cannot simply delegate the matter of provision of health care to the market, thereby assuming that those in need can fend for themselves. Nor can it assume that subsidizing market provision for individuals unable to afford market-provided care will resolve the matter. At the same time, public policy cannot resolve the problem of impaired agency by replacing individual agency with public decisions about need and the way it will be satisfied. To do so would be to assume that those in need should be encouraged to, or made to, regress to a way of living in which their agency plays no role and both need and the means for satisfying it can be prescribed for them.

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8] For a fuller discussion, see Levine 2008.

An important implication of the idea of freedom from need is that, because it understands freedom as a capability, it requires us to take impairment seriously. Indeed, it provides us with a way to understand the meaning of impairment and therefore to understand better how the ideal of freedom in living, and even choice, can lead us toward a robust role for public institutions in securing welfare. By contrast, when we take choice for granted, as choice-theoretic approaches to determining the roles of market and government tend to do, we are forced to ignore matters of impairment and assume that choosing is relevant where the capacity to choose is not fully present and real choices cannot be made.

A second important area of public provision where the matter of freedom from need can play a part is that of income subsidies. For some, it has been tempting to think about income subsidies in the language of basic need. Where basic needs dominate living, freedom cannot be assumed, and choice is irrelevant. There is a problem, however, in attempting to think about income subsidy in the language of basic need, a problem already implied in that language, since what is proposed is income and not a basket of necessities defined by the physical functioning of the organism. Income has, therefore, at best an indirect connection to basic need. This indirect connection is weakened when we take into account that the means to satisfy need defined in a purely physical space are unavailable in the market and therefore cannot be acquired through the use of income. While the market may offer us goods that also exist in physical space (food, clothing, shelter), the purely physical need does not define their purpose or account for the shape they have. Rather, as I suggest above, where freedom and choice are relevant, so far as physical need gets satisfied it is as a by-product of the use of goods to exist in a world where such need does not govern.

Related problems exist for any attempt to apply the notion of subsistence to the problem of assuring adequate levels of income. This is because it cannot be assumed that something like a subsistence is well defined in the absence of rigid constraints on the use of income that turn it into nothing more than a means for acquiring a prescribed basket of goods. For us to make sense of this construction, we would need to know what is in that basket, and we would need to know this without the benefit of a well-defined group identity to guide us. We do not have the benefit of group identity to guide us so far as we live in a setting of multiple groups, multiple group identities, and the idea that the individual has the right to live outside the group.

As we begin to take into account these considerations, we cannot avoid undermining our argument for the necessity, which is to say predetermination, of the ends for which income will be used. The result is that the magnitude of income support becomes to a significant degree contingent. This quality of the concept of subsistence is expressed by T.H. Marshall when he ties the determination of income subsidies to “the current level of civilization in the country concerned,” which is, in turn, “represented by the average” of existing levels of income (1981, 43).

Thinking about the problem on the basis of the idea of freedom from need, the question about income is not whether it is adequate to satisfy need but whether it is adequate to make freedom from need possible. For the latter, it is not enough for the individual to have the capacity to make choices and live in a world outside the group, it is also necessary that he or she have the resources needed to do so. While we cannot determine the amount needed for this, which must inevitably vary from person to person, we can see how a movement away from need is implied in the provision of income rather than a prescribed basket of goods, whatever the amount of that income may be. So, the provision of income does secure at least a measure of freedom from bodily need, and, so far as income is provided by the public authority, it also secures a measure of freedom from dependence on the group. By providing health care and income, the state can assure a degree of freedom from the imperatives of group identity. It does so by providing what assurance it can that the individual life will not be dominated by natural imperative. Where the state fails to provide this assurance, the individual must fall back on relations of dependence in living, especially those associated with group life.

But, there is also something important in income subsidy that takes us beyond these considerations. By providing income, the state asserts the value of living outside the group, and thus plays an essential role in supporting an ideal of living consistent with freedom from domination by the group. In other words, the state establishes the normative standing of creativity in living. If we consider doing so the primary function of the state, then we can begin to understand how arguments about the state as simply guarantor of rights, especially property rights, take us only so far in understanding the state's role. What they leave out of account is that it is not simply the matter of protecting rights but also the matter of establishing the ethical standing of the idea of creative living, which is living outside the group and in the sphere created where there is the possibility to free ourselves from need.

## VI. ETHICS AND POLICY

The economist's view of policy attempts to link policy not to ethical judgment, but to the choices made by individuals. While these choices may be based on ethical considerations those individuals find compelling, they may not; and, in any case, ethical considerations are not what justify policy; choice does. What I think this leaves out, and what I have attempted to highlight in my discussion is that choice has ethical significance not in itself as a means to avoid the imposition of ends and thus coercion, but in the ethical standing of the idea of the agent who chooses and the capacity to make choices that is the distinguishing characteristic of that agent. What is also left out in the economist's argument is that the ethical standing of the agent who chooses is the ethical standing of a way of relating to others. This expresses the idea that ethical conduct is essentially a form of connection with others in which a special investment has been made.

It might help clarify this idea if I formulate it in the language of Durkheim's study of solidarity (1984 [1892]). In his study, Durkheim distinguishes between two bonds that hold social systems together. The first is the bond of identification, which he refers to as mechanical solidarity. The second is the bond of the division of labor operating without identification, which he refers to as organic solidarity. Systems organized around organic solidarity offer the possibility that those in them can live outside the group and therefore establish their autonomy. This would seem to suggest that if we replace mechanical with organic solidarity, we will move from immersion in the group to self-determination. But, we cannot simply replace mechanical with organic solidarity because, while organic solidarity may provide a basis for interdependence that does not demand submersion of identity into the group, it does not establish the connection that holds such a system of interdependence together.

What is distinctive about the primitive form of identification implicated in mechanical solidarity is that its object is particular and concrete: the shared way of life and culture of the group. For organic solidarity, neither ways of life nor group culture need be shared. Indeed, there need be no group connection. Rather, what connection there is remains implicit. This connection is an external dependence that would seem, on the surface at least, to have nothing to do with identity and sense of self. Yet, organic solidarity does involve a kind of identification and does engage an important aspect of identity. This is the aspect of identity bound up with participation in the exchange contract that holds the system of organic solidarity together. In other words, this is a connection embedded in the idea of living in a private world made possible by recognition of private property, a connection having to do with the shared status implied by recognition of the right to do so and of the opportunity afforded those who have that right, which is the opportunity I refer to above as freedom from need (Hegel 1952 [1821]).

This means that the form of identification implied in organic solidarity has to do not with shared group identity, but with its absence. This is identification, therefore, not with what is concrete in living, but with what is abstract and universal, identification with the other not conceived as a locus of particular needs, capacities, life projects and group affiliations but as a locus of the potential to take on concrete qualities yet to be determined. Organic solidarity, understood as a form of identification, depends on the capacity to negate all those restrictions associated with external determination in culture, history, group identification and natural imperative. Where this capacity is present, organic solidarity represents not the absence of connection, but connection established on a more universal basis.

When we identify not with the concrete attributes, interests and values of others, but with their existence as the potential to become or take on those attributes, interests and values, we raise identification to a higher level, one consistent with differences and with the freedom from need that invests those differences with what normative standing they have. In other words, normative standing is not something a particular way of life has in and of itself, or because it is shared; rather, it is something that expresses the presence in

a particular way of living of a shared capacity to make the self the mainspring of conduct and relating, the capacity to make doing express being.

The presence of the potential self in others means that they share what we most value in ourselves. Our ability to value the potential self (in self and others) is the underpinning for ethical conduct understood as conduct that respects the integrity of others, where integrity refers to the presence of the self as the integrating factor in conduct and relating. Ethics, then, contrary to Schelling's assertion, remains important even where we accept the idea that authority over and knowledge of what is valued in living resides at the local level, especially within the individual. What is missing in Schelling's account is the significance of connection, even identification. It is the importance of this element that demands we attend to ethical considerations and ethical argument. While it may be correct to insist that the ends of policy making be to assure that there is no external imposition of ends on individuals, this does not exclude ethics if we understand by that term an ideal that informs conduct and relating. This is because for an ideal to inform conduct there must be the capacity to act in a particular way and, more importantly, to form connections with others that realize an ideal.

The economist's way of thinking about the problem tends to assume that the only step needed to assure freedom is to eliminate constraints on choice, especially those associated with the imposition of ends. But, this is only true where freedom from any externally determined imperative is possible. This means that the relevance of the economist's argument depends on the possibility of action undertaken without external determination, which is possible only where specific conditions exist, specifically those conditions associated with the instantiation of the norm of freedom from need in institutions. In this sense, the economist's argument expresses a prior ethical judgment, though not of the kind that involves imposing an external constraint on conduct in the form, for example, of community values or arbitrary cultural norms. It is not the ethical judgment that establishes shared ends and the value of a shared way of living. Rather, it is the ethical judgment that establishes the normative standing of a connection of a special kind. This is the connection that expresses the presence in self and other of the potential self and of the capacity to invest value in the potential self and in the connections that express its presence.

When we accept the normative standing of this connection, we also give up the normative standing that supported the older order of things, that order Durkheim refers to in the language of mechanical solidarity. We do not, however, accept loss of the older order of things easily. In particular, we do not accept this loss because we are offered a convincing argument that it is right to do so.<sup>9</sup> At the same time, we cannot accept loss if doing so undermines any hope that our lives will have ethical standing, which it does so long as we equate ethical standing with the older notion of adherence to shared community values and ways of life. What makes acceptance of loss difficult is the

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9] For a fuller discussion, see Levine 2011, Chapter 4.

continuing investment of moral significance in the way of life no longer available to us, and exclusively in that way of life. This means that, before we can employ the newer ethical standard, we must first overcome the resistance to it resulting from the loss of meaning it is experienced to impose. It is not, then, simply or primarily a matter of testing policy against ethical ideals, but of the struggle between two opposed ideals neither of which can be adequately formulated in the language of choice and economic reasoning.

## VII. PUBLIC SERVICES AND THE MARKET

One implication of linking choice to freedom from need is that it leads to the conclusion that the form of economic reasoning whose main idea is efficient allocation defined in terms of utility and choice fails to provide an adequate basis for shaping institutions and policy. It fails not because it is inconsistent with opposing foundations for policy making such as community values or democratic process; rather, it fails on its own terms because its central concept—choice—is not irreducible, but a limited expression of the idea of the agent who has the capacity to choose. In other words, the argument that institutions and policy should facilitate choice should be understood as an argument that institutions and policies should facilitate the exercise of the imaginative capacity.

If they do not do so, then all the familiar talk about freedom and its association with markets will remain disconnected from any reality of the experience of freedom in living. This disconnection is evident in the movement against public institutions, which tends to reinforce rather than weaken dependence thereby securing domination by need rather than freedom from it. For all the rhetoric of freedom implicit and explicit in the movement against government, the reality is that of a movement to deprive people of freedom rather than secure freedom for them. By depriving people of freedom, the movement tends to reinforce regression toward a life governed by need and therefore toward dependence on the kinds of groups membership in which conflicts with self-determination.

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## REFERENCES

- Arendt, Hannah. 1958. *The Human Condition*. Chicago: University of Chicago Press.
- Berlin, Isaiah. 1984 [1969]. Two Concepts of Freedom. In *Liberalism and its Critics*. Edited by M. Sandel, 15-36. New York: New York University Press.
- Bion, Wilfred. 1989 [1961]. *Experiences in Groups*. London: Tavistock.
- Braybrooke, David. 1987. *Meeting Needs*. Princeton: Princeton University Press.
- Bruner, Jerome. 1962. *On Knowing*. Cambridge, MA: Harvard University Press.
- Caporaso, James, and David Levine. 1992. *Theories of Political Economy*. Cambridge: Cambridge University Press.
- Durkheim, Emile. 1958. *Professional Ethics and Civic Morals*. Translated by C. Brookfield. Glencoe, IL: The Free Press.
- . 1984 [1892]. *The Division of Labor in Society*. New York: The Free Press.

- Eigen, Michael. 1996. *Psychic Deadness*. Northvale, N.J.: Jason Aronson.
- Elster, Jon. 1986. Introduction. In *Rational Choice*, edited by J. Elster, 1-33. New York: New York University Press.
- Erikson, Erik. 1964. *Insight and Responsibility*. New York: W.W. Norton & Co.
- Freud, Sigmund. 1959 [1922]. *Group Psychology and the Analysis of the Ego*. Translated by J. Strachey. New York: W.W. Norton & Co.
- Hayek, Friedrich. 1945. The Use of Knowledge in Society. *The American Economic Review* 45 (4): 519-30.
- Hegel, G.W.F. 1952 [1821]. *Hegel's Philosophy of Right*. Translated by T.M. Knox. Oxford: Oxford University Press.
- Levine, David. 2008. *Welfare, Right and the State*. Abingdon: Routledge.
- . 2011. *The Capacity for Civic Engagement: Private and Public Worlds of the Self*. New York: Palgrave Macmillan.
- Levine, David, and S. Abu Turab Rizvi. 2005. *Poverty, Work and Freedom: Political Economy and the Moral Order*. Cambridge: Cambridge University Press
- Maker, William. 1994. *Philosophy without Foundations*. Albany: SUNY Press.
- Manent, Pierre. 1995. *An Intellectual History of Liberalism*. Translated by R. Balinski. Princeton: Princeton University Press.
- Marshall, T. H. 1981. *The Right to Welfare and Other Essays*. New York: Free Press.
- Marx, Karl. 1967 [1867]. *Capital*, Volume I. New York: International Publishers.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press..
- Sandel, Michael. 1984. Introduction. In *Liberalism and its Critics*, edited by M. Sandel, 1-11. New York: New York University Press.
- Schelling, Thomas. 1984. Economic Reasoning and the Ethics of Policy. In *Choice and Consequence*, Thomas Schelling. Cambridge MA: Harvard University Press.
- Smith, Adam. 1976 [1776]. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Oxford: Oxford University Press.
- Turquet, Pierre. 1985 Leadership, the individual, and the group. In *Group relations reader 2*, edited by A. Coleman, and M. Geller, 71-88. Jupiter, FL: A.K. Rice Institute.
- Winfield, Richard. 2005. *The Just State: Rethinking Self-Government*. Amherst, NY: Humanity Books.
- Winnicott, Donald. 1986. *Home is Where We Start From*. New York: W.W. Norton.

## The Marketization of Security Services

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**Abstract.** This paper discusses the normative credentials of the “commodification of security,” i.e. subjecting protection against (criminal) threats to the market. It distinguishes between a “pure security market,” in the absence of public protection by the police, and an “additional security market,” co-existing with public provision. It argues that a pure security market is not so much unstable (as Nozick’s invisible hand argument for the minimal state implied) but undesirable, because of persisting levels of unjustifiable violence. This does not however, mean that an additional security market is equally problematic. I discuss two main arguments in favor of state provision and how both lead to the same conclusion, that additional security efforts by commercial providers should be considered permissible. This shifts the question to the conditions which make the resulting mix of market and state legitimate. I will close by discussing three of these conditions: adequate regulation, cooperation between market and state providers, and a balance between both so that commercial security efforts do not undermine the minimum level provided by the state.

**Key words:** market, commodification, state provision, security, policing.

Significant shifts have been occurring over the last several decades with regard to combating crime and delivering security. Whereas formerly the state was the focal point for the attribution of responsibility, a range of actors is now explicitly looked upon to supply security services. Arguably the most important of these new actors is the private security industry, which has been growing rapidly since the 1960s and 1970s. In terms of the number of personnel employed, private security now equals or outnumbers the public police in many countries. For example, in the US the private security industry employed 1.5 million people against 828,000 for the public police (De Waard 1999, 155). In the EU as a whole the police still have the upper hand, with 1.5 million employees against 1.1 million for private security (Van Steden and Sarre 2007). Since the size of the police in absolute terms has also increased over the decades, it would be incorrect to say that the private security industry has replaced the police. Rather, private security has satisfied large parts of a “new demand for security” (Jones and Newburn 2002, 96). As a consequence the relative proportions of security delivered by public versus market security have changed dramatically in favor of private security. This raises many empirical questions, but also a key normative question: What to think of this “commodification of security?”

In speaking about the practice of security provision I define security rather narrowly, not as an all-encompassing state of being (e.g. including social security and ecological security), but rather as “the preservation of the peace, that is, the maintenance of a way of doing things where persons and property are free from unwarranted interference so that people may go about their business safely” (Shearing 1992, 399). Security provision thus defined aims at establishing a form of social order in which individuals are protected against a well-specified range of threats or risks to life and property, normally labeled

“criminal.” The range of contributions to this aim is potentially very wide, from national defense to police patrol, from education about the dangers of crime to job programs for the unemployed. Here I focus on activities directly aimed at prevention and prosecution of criminal threats; such as surveillance in public places, guarding specified objects, arresting and hearing suspects, etc. Roughly, these activities are summarized under the rubric “policing.”<sup>1</sup> Ideal-typically, this can be done by the police (public provision), by commercial security companies (market provision), by citizen groups in neighborhood watch schemes and the like (informal provision) or by individuals protecting themselves and their property with their own means (self-provision). When one mode predominates I will call this a “pure” system (e.g. “pure market” or “pure public” provision etc.) When several of these modes of provision operate side by side I will call this a system of “institutional pluralism” (Claassen 2009). A security market which exists in such a pluralist system where a minimum level of security is provided the state, I will call an “additional market.”<sup>2</sup>

I first discuss the argument that security has to be state-provided, because a market-based system is inherently unstable. I will examine this position as represented by Nozick’s argument for the minimal state. The conclusion will be, *contra* Nozick, that a pure security market is conceivable (Section I). This makes it necessary to ask the *normative* question whether such a market is desirable. Two main objections against market-based security are its tendency to produce several kinds of unjustifiable violence (Section II) and its tendency to produce more feelings of anxiety (subjective insecurity) than warranted by actual levels of insecurity (Section III). This leads me to turn my attention to the two most important arguments in favor of pure public provision. The first maintains that state provision is necessary to hold individuals responsible for their violations of public order (section IV), while the second maintains that state provision of security is necessary to establish community (section V). Both arguments give the state a pivotal role in providing a minimum level of security to all, but they also show why additional security efforts by other providers should be considered permissible. This shifts the question to the conditions which make the resulting mix of market and state legitimate. I will close by discussing three of these conditions: adequate regulation, cooperation between market and state providers, and a balance between both so that private security efforts do not undermine the minimum level provided by the state (Section VI).

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1] For an extensive discussion of the problem of defining “policing,” see Jones and Newburn 1998, 247 ff. I exclude other branches of the “system of justice” most notably jurisdiction (courts, arbitration mechanisms) and detainment (prisons), and “external security,” i.e. protection against foreign enemies.

2] Informal provision and self-provision play a relatively marginal role as additional mechanisms. In the literature, “community policing” is the notion that captures the amalgam of informal, voluntary and unpaid initiatives by citizens such as neighborhood watch schemes. See Johnston 1996.

### I. SECURITY AS A PURE MARKET GOOD?

A discussion of security as a public service may seem to be asymmetrical to a discussion of any other public service (like health care or education), because security has a special connection to the state. The state is the distinct entity it is because of its role in providing security. In social contract theories the fact that a state takes upon itself the protection of all citizens marks the crucial break with the state of nature, in which security is purely “market-based.” The libertarian philosopher Robert Nozick provides a theoretical account of a pure security market (i.e. a market in the absence of a state) that has been particularly influential. He maintains that such a market is inherently unstable.

In *Anarchy, State and Utopia* (1974) Nozick reconstructs the need to overcome the state of nature and to establish a minimal state which relieves its citizens of the burden of providing security for themselves. For Nozick, individuals in a state of nature have individual rights. They can reach all kinds of agreements with each other on the basis of these rights. However, in the state of nature the enforcement of these rights is a matter of self-provision. This raises a problem:

Thus private and personal enforcement of one’s rights leads to feuds, to an endless series of acts of retaliation and exactions of compensation. And there is no firm way to *settle* such a dispute, to *end* it and to have both parties know it is ended. Even if one party *says* he’ll stop his acts of retaliation, the other can rest secure only if he knows the first still does not feel entitled to gain recompense or to exact retribution, and therefore entitled to try when a promising occasion presents itself. Such feelings of being mutually wronged can occur even with the clearest right and with joint agreement on the facts of each person’s conduct; all the more is there opportunity for such retaliatory battle when the facts or the rights are to some extent unclear. Also, in a state of nature a person may lack the power to enforce his rights; he may be unable to punish or exact compensation from a stronger adversary who has violated them. (Nozick 1974, 11-12)

This passage aptly summarizes the reasons for the inadequacy of security provided through the mechanism of self-provision. Nozick notes three problems: the problem of credibly binding oneself to one’s commitments, the problem of establishing agreement about the rights and facts involved, and the problem of enforcing these rights.<sup>3</sup> To solve these problems of the state of nature, Nozick imagines that people associate into “mutual-protection associations” that settle disputes between their members and enforce these settlements upon them. In these associations, people will not provide security for themselves or other members: “Some people will be *hired* to perform protective functions, and some entrepreneurs will go into the business of selling protective services. Different

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3] The occurrence of these problems presupposes the accuracy of some empirical assumptions about the psychology of those inhabiting that state of nature – most notably that there is a system of social cooperation (man is not solitarily wandering through the fields) but with limited altruism of people within this system. These assumptions mirror the assumptions about the “circumstances of justice” as David Hume and John Rawls have used them.

sorts of protective policies would be offered, at different prices, for those who may desire more extensive or elaborate protection.” (Nozick 1974, 13) This effectively turns security into a pure market good. It is now exchanged freely on the basis of prices that result from the interplay of each person’s personal preferences and endowments.

The protection agency solves the problems mentioned above. It has the capacity to establish the rights and facts involved and to enforce its judgments. Moreover, its threats are credible since it is neutral between conflicting parties (its members). However, it is not the endpoint of Nozick’s hypothetical history, for he argues that the security market turns out to be unstable. The presence of several competing agencies, each with its own membership, ensures the continuation of the state of nature on a higher level – now between protective agencies rather than individuals. Conflicts between members and non-members provoke conflicts between associations. Nozick argues that these conflicts have three possible outcomes. Either one agency always defeats the other and appropriates its membership, or both agencies are equally strong and divide up the territory among themselves, or both will set up a third party mediating conflicts between them. All of these outcomes represent a situation in which “almost all the persons in a geographical area are under some common system that judges between their competing claims and *enforces* their rights.” (Nozick 1974, 16) This common system is the “dominant agent” in a given area and in due course it will acquire the attributes of a state.<sup>4</sup> It arises by an autonomous process, as if led by an “invisible hand.” Nozick explains the inherent instability of the security market as follows:

Why is this market different from all other markets? Why would a virtual monopoly arise in this market without the government intervention that elsewhere creates and maintains it? The worth of the product purchased, protection against others, is *relative*: it depends upon how strong the others are. Yet unlike other goods that are comparatively evaluated, maximal competing protective services cannot coexist; the nature of the service brings different agencies not only into competition for customers’ patronage, but also into violent conflict with each other. Also, since the worth of the less than maximal product declines disproportionately with the number who purchase the maximal product, customers will not stably settle for the lesser good, and competing companies are caught in a declining spiral. (1974, 17)

If Nozick is right, a normative assessment of the pure security market is unnecessary, for the security market does not represent a stable outcome in the first place. But is he right? A natural test for the strength of his argument is to see whether instantiations of

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4] The dominant agency lacks two attributes of the state: it does not claim a monopoly on the use of force and it does not protect non-members. Both attributes testify to the voluntary nature of private agreements: I can choose not to contract with the dominant agency but to continue providing security for myself. To become a state, the protective agency must refuse others the right to enforce their own rights and impose obligatory membership in its protective scheme. Nozick argues that these further steps can also be justified. The dominant agency has the right to refuse non-members their enforcement rights, because the latter impose risks on its members (they may resort to “wrongful and unjust retaliation” (Nozick 1974, 55)). The dominant agency may do so provided that it compensates them by providing security for them, even though they did not subscribe to its services (Nozick 1974, 110).

such a pure security market have actually existed or perhaps still do exist. Therefore it is instructive to confront his argument with an empirically informed account of what is arguably such a pure security market: the mafia in Sicily. Sociologist Diego Gambetta in his *The Sicilian Mafia. The Business of Private Protection* (1993) makes a convincing case that the mafia is best understood as a cartel of businesses dealing in private protection. Using his account, I will argue that Nozick is wrong and a pure security market is a conceivable outcome.

According to Gambetta, it is a fundamental misunderstanding to think of the mafia either as mere criminals stealing from innocent citizens, or as entrepreneurs in specific illegal commodities (such as drugs or weapons). Of course the mafia does commit crimes against property and engages in illegal trades. However, their primary business is to provide protection. Gambetta gives an account of the role of mafia organizations that is strikingly similar to Nozick's protection associations. He starts from the fact that parties to ordinary transactions initially lack the trust in each other needed to engage in trade. Then he explains that they need a third party who guarantees enforcement of their mutual contracts in exchange for a fee. The third party solves the problem of enforcement that would reign in its absence (Gambetta 1993, 15-18). Mafia organizations are such third parties – structural analogues to the protection agencies in the state of nature. The crucial difference is that Gambetta maintains that mafia organizations will not necessarily merge into one dominant agency over time.

The main theoretical reason Gambetta gives for this is that mafia organizations are subject to conflicting incentives. On the one hand they have an incentive to increase their membership, "in order to strengthen both their sources of revenue and their independence from any single source." (Gambetta 1993, 23) But they are also subject to the countervailing incentive of restricting their circle of clients, for two reasons. First, there is a problem of scale. If the number of clients is too large, the mafioso in effect offers a public good. This creates incentives for "tax evasion": clients will attempt to profit from the mafioso's protection without paying the price. Second, if the mafioso provides protection to everybody, clients may come to think that orderly transactions are not so much the result of his mafioso's protection but emerge from the inherent trustworthiness of one's contract partners. This would undermine the dependence of clients on the mafioso. A personal reputation for effective protection is a mafioso's most important asset and this asset would be endangered if it appears to be superfluous in the eyes of his clients. For both reasons, then, the viability of the protection business depends on the fact that it is delivered to some, not to all.

Due to these opposing incentives a market structure will arise which fluctuates permanently between cartel and competition. This outcome is empirically validated. Over the course of their history (mid-19<sup>th</sup> century to the present day) mafia businesses have remained small and numerous. Sometimes they form a cartel in which mutual ("collusive") agreements are made, for example about divisions of territory and sharing of customers (Gambetta 1993, 197-202). However, this cartel often is unstable – competition

can always reemerge, as has happened numerous times (periods of inter-mafia war). Gambetta illustrates this market structure by imagining a situation in which a consumer is dissatisfied with the protection service he receives from a mafia organization. Which courses of action are open to him? First, there may be a situation of monopoly, because one mafia firm has defeated all of its competitors. In this situation the dissatisfied consumer has no choice. Second, there may be a situation of competition. Another mafia firm can try to attract the dissatisfied consumer – however, this firm ultimately risks a war with the original provider. Third, there may be a situation of competition but the alternative firm decides to abstain – this establishes an oligopoly where clients and territory are divided between firms.

Gambetta maintains that only monopoly and oligopoly are attractive for each mafia firm separately. Oligopoly obtains in periods of stability in which mafia firms have a territory under their control. Nonetheless, oligopoly can always be interrupted by fresh challenges to domination by newcomers or as a consequence of power shifts among existing firms; they will try to establish a monopoly but thereby bring about competition.<sup>5</sup> The emergence of a permanent monopoly that will never be challenged – Nozick’s dominant agency – is by no means the necessary outcome.<sup>6</sup> Gambetta concludes: “there is no inescapable equilibrium. Here we stumble into the much less predictable realm of *politics*.” (Gambetta 1993, 71)

This conclusion is reinforced, I think, by the common sense observation that more or less anarchistic political environments have existed, and continue to exist in certain parts of the world. The rise of a state successfully monopolizing force is not inevitable. But if that is correct, if a pure market for security is a conceivable outcome, the question becomes a normative one, i.e. whether such an organization of security provision is *desirable*. The fact that a leading example of a pure security market is the mafia does trigger a strong intuition to the contrary. However, an explicit analysis of objections to a pure security market is needed to validate that intuition. It is to these objections that I now turn.

## II. A FIRST OBJECTION TO MARKETIZING SECURITY: UNJUSTIFIABLE VIOLENCE

The fundamental normative goal for security provision is that people can be secure. This normative demand can be spelled out in different terms. We could call it a basic need, or alternatively a basic capability for “being secure.” Being in a state in which one is protected against violations of one’s rights to life and property is a precondition for realizing one’s personal goals, values, commitments and plans of life. I assume everyone has such a

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5] A typical cause for such a war is when a mafia boss is jailed or murdered, so that his family is put out of business. This causes a power vacuum to arise, whereupon customers drift to other families and upset the original power equilibrium between these families (Gambetta 1993, 70 and 115).

6] Similarly, Murray Rothbard has criticized Nozick for failing to let the invisible hand actually do its work instead of predicting what it would do. He claimed that the minimal state might fall back into anarchy because of challenges raised to it by independent protection firms (1977, 47-48 and 55).

basic interest in the opportunities for realizing their goals; I will refer to this as our interest in having the “capacity for agency” (Claassen 2009). This leaves open the question of the addressee: who has to take upon itself the charge to secure the provision of a basic level of security that its members need in order to sustain their free agency? What is clear, a priori, is that the fundamental interest cannot be one in establishing “absolute security.” A guarantee that no violation of one’s rights will ever occur is a mere illusion. Different levels of security provision establish different levels of protection of one’s capacity for agency against threats, and only a contentious political discussion can establish what level of (in) security is acceptable in a given society.<sup>7</sup>

Against this normative background, the first objection against a pure security market is that it will tend to practice *unjustifiable levels of violence*. This formulation makes it clear that no security provider can do without violence completely. The question is how different modes of provision fare in this respect. We may distinguish two types of unjustifiable violence on a pure security market.

The first type is violent manipulation of market demand. The most common variant of this is extortion, i.e. coercion exerted by protection firms toward prospective clients in order to make them buy their services. In economic terms, the producer overrules the process of free preference formation on the part of the prospective consumer, on pain of punishment.<sup>8</sup> Another variant of violent market manipulation arises where providers artificially increase demand for their protection services by inviting others to commit criminal activities. Thus, in 18<sup>th</sup>-century America and England a security market existed which made victims of theft dependent on commercial agencies that would attempt to recover the stolen goods for a percentage of their value. This encouraged these agencies to contract with prospective thieves to share the reward they would receive when they “recovered” the stolen goods, or even worse, to set up crimes themselves, then accuse innocent victims and force them to pay a “reward” to go free (Spitzer and Scull 1977, 275). Both variants violate the freedom of the agent to act on the market (“consumer sovereignty”), either by directly coercing the agent or by creating a demand that would otherwise not exist. In addition to this, dissatisfied customers lack the freedom they would have in a normal market, when they could respond to these malpractices (‘voting with their feet’) by turning to a more reliable provider. In a pure security market, by contrast, it

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7] Correspondingly, individuals will have to take different levels of precautions to protect themselves against the residual possibility of threats. For example, at one level of security provision, one will be so safe that one does not even lock the doors at night, at another level, one will be regularly forced to take time-consuming detours to avoid dangerous places, at yet another level one will have to hide for years to escape deportation to a concentration camp.

8] The popular image is that this is an important part of how the mafia operates. Gambetta notices that this is not completely justified: “contrary to widespread belief, the refusal to buy protection is not met with outright violence.” He does concede that “mafia promotion is indeed a virulent version of the ‘foot in the door’ sales technique,” but he maintains that a refusal to buy is mostly met with violence against property only, whereas murders are reserved for those who break agreements or become informers. (Gambetta 1993, 54)

is extremely risky for clients to switch to another supplier. Long-term and often intimate connections between customers and suppliers of protection obtain, so that clients lack the power to cut themselves loose from their providers, who are able and willing to enforce contracts by resorting to force.<sup>9</sup> At all these levels, the free exercise of consumers' capacity for agency is violated.

The second type of violence is practiced in the service of protecting one's clients. The objection here is not that this kind of violence is automatically immoral, since *any* system of security provision will have to resort to violence to protect clients. Unless one presupposes a rosy psychology in which everyone always obeys the security provider without resistance, the safety of all can only be guaranteed by occasional violence against some. The point is that these violations of the capacity for agency of those against whom violence is practiced must be legitimated; that is, the violations must be unavoidable to ensure that one's client "can go about his business safely" (whatever the level at which one sets the expectation of safety) and this must be proportional to the offense. This kind of legitimation is absent in a pure security market. Escalations of violence above the necessary and proportional level are likely to occur, because competition on the pure security market tends to be not on price but on quality – and the predominant quality is susceptibility to violence. Anyone who wants to establish a place on the pure security market has to distinguish himself and set a reputation for effectiveness in protection and retaliation in favor of his clients, i.e. in using violence.<sup>10</sup>

What both types of violence have in common is that "protection against the protectors" is lacking. Put in different words, while protection is delivered, as far as these companies are willing and able to, what is absent is a system of *justice*. This problem, one could protest, is not unique to the market. Public provision of security essentially faces the same problem: Who protects us against Leviathan? Can't monopolistic rulers be cruel and arbitrary in the way they treat their subjects? What this makes clear, is that the monopolization of the use of force is in itself an insufficient remedy. The crucial transition is to impersonal rule (the rule of law), the institution of systems of accountability toward the community as a whole (via the democratic process) and the creation of countervailing powers (such as an independent judiciary).<sup>11</sup> Security markets are objectionable because they cannot (by their nature, given competition between firms) make this transition, while monopolized provision *may* – given the right historical circumstances – make this

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9] Gambetta attributes the long-term nature of contracts to the difficulties of establishing prices for single acts of protection. This leads both provider and customer to prefer a constant flow of protection. The symbiosis goes so far that clients can be characterized as a kind of "property" of the mafia firm, which is confirmed by all kinds of symbolic exchanges between customer and supplier (Gambetta 1993, 55-57).

10] This too is confirmed in the bloody evidence from the mafia history. For a theoretical explanation of the necessity to compete on violence see Gambetta 1993, 41.

11] For a discussion of modes of accountability for the public police see Stenning 2000.

transition. If it does so, it will give rise to a *legitimate* state, as the classical social contract theorists have argued.

Some libertarians have disputed this conclusion. They hold that security markets will not be characterized by endemic violence at all, for it would be in the economic interest of protection businesses to set up a system of independent appeal courts and arbitrators to mediate conflicts. Clients would demand guarantees of such a peaceful system and would dislike wars and conflicts between businesses because “such wars and conflicts would be bad – very bad – for business.” (Rothbard 1978, 225)<sup>12</sup> This presupposes that these providers will be convinced that they all benefit by its establishment. However, this seems to me an unlikely presupposition. Situations can always arise in which one security provider thinks he can gain larger benefits by defecting from the system. The crucial question is whether the third party will then have the means to prevent him from defecting. When this is the case, the third party will most likely become a state, monopolizing the means of violence itself. When it doesn't have these means, it will remain so powerless that the resulting anarchy provides no guarantees against unjustified violence.

This also shows us what to think of the argument that can be made by using standard economics, i.e. that protection should be delivered by the state because it is a public good. The two characteristics of a public good in the economic sense are non-excludability and non-rivalness in consumption. However, (groups of) individuals can often be excluded from the consumption of security provision and the addition of extra consumers at a certain point will be to the detriment of the quality of provision for the original group of consumers.<sup>13</sup> Most authors therefore agree that protection has both private good and public good elements. The public good element is a matter of (large) positive externalities, mainly with respect to deterrence (Morris 1998, 59-61). However, unlike with other goods, the efficiency rationale for public provision because of these externalities, is *not* the main reason for preferring public provision. The reason is that the private alternative is not available in the first place, at least not without considerable levels of unjustifiable violence. Only in this latter, moralized, sense, we could say that a private security market is ‘unstable.’ To the extent that such a pure market becomes stable (with a strong third party overseeing the market) it is already close to monopolized (quasi-state) provision. To the extent that it is not stable, it will remain close to Hobbesian anarchy (Cowen 1992; Friedman 1994; Cowen 1994).

In conclusion, the features of a pure security market discussed here provide the basis of what I will call the corrective justice argument in favor of state provision. In section IV, I will discuss whether this argument also rules out the establishment of an additional security market.<sup>14</sup>

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12] For an extensive discussion of libertarian thinking on private security see Loader 1997, 379-83.

13] Some have worked this out by showing how the several types of services that police offers engage in can in principle be subject to privatization (Fixler and Poole 1988).

14] Some defend a market in conjunction with a charity-based system (Rothbard 1978, 223). This

### III. A SECOND OBJECTION TO MARKETIZING SECURITY: RAISING ANXIETY

I now turn to a second objection against security markets. This objection holds that security markets will tend to manipulate the anxiety about crime on the part of consumers. This objection holds – unlike the previous one – both for pure and additional security markets, i.e. both in the absence and in the presence of a state itself providing security services.

Security companies – like all companies – can only survive if there is a demand for their services. Above we encountered two ways of ensuring that such a demand exists (extortion and stetting up crimes). Both are objectionable because they directly interfere with the consumer's capacity for agency. But in addition there is a third way to ensure market demand, which does not require coercing the consumer or commanding criminal threats. One can also try to change the consumer's perception about these threats. Market demand for security presupposes a certain level of distrust between individuals, so it is profitable for security providers to cultivate and enhance these feelings of distrust by engaging in a deliberate effort to increase feelings of anxiety, fear and insecurity.<sup>15</sup> This kind of preference manipulation is common to almost all contemporary markets, where preferences are being influenced and biased by the information and persuasion exerted upon consumers by producers. For most of these markets, such pressures do not provide a reason for protest because we normally assume that consumers are able to critically handle such pressures: they retain their full powers of agency. The objection therefore is not that consumer's capacity for agency is violated directly, but rather that preference manipulation prevents the attainment of an *optimal level of security*, to which we have a basic capability or basic need.

Explaining this requires us to complicate our understanding of what security is. Security is a peculiar good in that it has two distinct dimensions. It refers both to objective security (absence of crime) and subjective security (absence of feelings of fear and anxiety about crime) (Zedner 2003, 155). Up to this point in the paper, I have only considered the first dimension. But success on both dimensions is required for a successful reduction of insecurity. Obstacles to agency ("going about one's business safely") are present both where one is objectively inhibited from performing certain actions and when one subjectively perceives there to be such an inhibition (even when there is not). This double-sidedness of security implies that, ideally, security provision should be a self-effacing

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alternative, however, gives up on security as a basic right. There is no guarantee whatsoever that charity will not leave important parts of the population without security. Security charity would probably be selective, fragmented and understaffed.

15] Again, Gambetta confirms this point for the mafia: "The mafioso himself has an interest in making regulated injections of distrust into the market to increase the demand for the good he sells: protection. If agents were to develop trust among themselves, he would become idle." (25) Distrust, "once addressed through mafioso protection, becomes self-perpetuating and self-expanding" (1993, 27) because the shield of the mafia induces those merchants profiting from it to cheat on those who are unprotected, which in turn stimulates the latter to seek protection as well.

practice. Security is best provided for when no threats remain, so that future security efforts are rendered superfluous. However, it is not in the interest of a commercial provider to render himself superfluous; he has an incentive to manipulate preferences so that insecurity persists at least on the subjective dimension. He has an incentive in creating a kind of “security hypochondria” (Zedner 2003, 176). The security industry’s marketing and advertisement efforts are in the business of creating such an effect. Moreover, the deliverance of security itself may increase anxiety and enhance further demand, and in that sense be self-propelling:

The actuality of security consumption has, however, a powerful in-built capacity to disenchant – to fail to satisfy the expectations that attend its contemplation. Insofar as private policing and security “works” (and victimization is subsequently avoided), consumers may of course derive satisfaction from having made themselves, their home, business or community more secure – though the proliferation of protective services and hardware can (in ways that are self-fulfilling) signify to them that the world outside remains as dangerous as ever. Should these products fail, however, the ensuing disquiet and anxiety is likely to be greater than if no consumption had taken place at all. (Loader 1999, 381)

People are (also) insecure if they feel insecure. Since these feelings are a component of being in a state of security and since security is a basic need, feelings of insecurity are objectionable in their own right. In that sense, the experience underlying the demand for security is fundamentally different from the experience underlying the demand for most normal commodities. For normal commodities this experience is a package of positive feelings like excitement and challenge and negative feelings like unfulfilled desire and frustration. The moral evaluation of this package is normally mixed; at least not completely negative. For security, its being in demand is an expression on the part of consumers of experiences of insecurity; that is, of obstacles to the exercise of their capacity for agency.

Whether the market can be faulted for this failure depends on the actual level of demand in the market. If market demand is a response to – and proportional to – actually existing levels of crime there is no ground for objection. The market (or any other mode of security provision) cannot be faulted for responding to a demand for security services that emerges as a consequence of developments that are outside of its sphere of influence. However, the market is objectionable if it causes subjective insecurity to be higher than is justified compared to crime levels.<sup>16</sup> Given security providers’ interest in such an “overproduction” of feelings of anxiety, security markets may be expected to overproduce. The active promotion of security measures tends to create a level of demand higher than the demand that would prevail when the information delivered to consumers would be unbiased by commercial interests.<sup>17</sup>

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16] Too low levels of subjective insecurity are also problematic (Zedner 2003, 157). Therefore, an objection against preference manipulation of the subjective kind can only be valid in as far as it targets *unwarranted* levels of anxiety, as measured against the actually obtaining objective security situation.

17] State provision is potentially subject to the same dynamic of overproduction. Insofar as citizens

These remarks in themselves do not lead to one firm conclusion. If the tendency to overproduce is particularly strong, one may want to forbid additional security markets. But my estimate is that this tendency can be sufficiently held in check if the market is adequately regulated. Thus, I will include regulation of this aspect amongst the conditions for a legitimate additional security market (section VI). But first, I will now consider whether the two main arguments for public provision leave space at all for the establishment of such an additional security market.

#### IV. THE CORRECTIVE JUSTICE ARGUMENT IN FAVOUR OF STATE PROVISION

We have already seen, in section II, how the unjustifiable violence practiced on pure security markets led to the conclusion that state provision is necessary. The argument from corrective justice maintains that only state security has enough incentives to do what security provision should do: to uphold a sufficiently safe social order by prosecuting and punishing those who have breached that order by violating against the laws. In other words, security aims at doing (corrective) justice and only the representative of the social order – the state – is able to uphold justice against its actual violators.

If this is true, however, it does pose problems for the current rise of private security. Indeed, many have argued that additional private security will tend to frustrate justice because it transforms security into a species of “risk management” which tends purposefully (though not necessarily malignly) to neglect justice: “Its ultimate goal is not prosecution, conviction or punishment, still less upholding the normative superstructure that is the criminal law. Rather, it aims at protecting property and reducing risk.” (Zedner 2006, 270) Private security and public security, according to this argument, obey different logics (Bayley and Shearing 1996, 592; Johnston and Shearing 2003, 16). Private security has a “client-defined mandate” and is not interested in upholding the law against violations, but in preventing unwelcome events from happening. It tends to deal with offenders internally instead of handing them over to the official judicial system. Sanctions have a private character (e.g. firing employees, denying access to resources) rather than a legal character. The state’s security effort is directed at “governing the past” (redressing offenses), while risk-based private security emphasizes “governing the future” (preventing offenses) (Johnston and Shearing 2003, 95). Inevitably, then, the influence of private security is at the expense of justice. In the interest of justice, private security should be marginalized or even completely prohibited (Shearing and Stenning 1983, 499-502).

If these observations are correct, one may be led to the conclusion that the state should be the *exclusive* provider of security. However, in this section I want to argue that

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are disappointed with the achievements of the public police they will press for a tougher response from the state. This makes it tempting for (electorally competing) politicians to exploit fears of crime in order to be perceived as “tough on crime.” Hence the new emphasis by the state on crime control in the 1980s and 1990s can be explained by an upward spiral different in its structural causes, but similar in its effects, to what happens in a market context (Garland 2001, 142).

the picture arising from the strong opposition between public efforts to do “justice” and private companies focusing on “risk management” is unconvincing. The crucial point is that the police have always been engaged in the dual task of both prevention (guarding, patrolling, etc.) *and* repression (prosecution). It is not surprising, then, that the new techniques of “risk management” invented and implemented by the private security industry, have also found their way to the public police (Johnston and Shearing 2003, 17 and 81). The difference between private and public security is better described by saying that the former is exclusively in the business of prevention while the latter is engaged in both prevention and repression. The problem with private security, then, is that it competes with the preventive activities of the police, while it is at the same time reluctant to take up the connected repressive activities, i.e. to act upon crimes committed in the spaces that it controls. Insofar as the argument from justice objects to this, however, it builds on the tacit suggestion that if only the police would have the monopoly on both activities, these problems would vanish. The power of this suggestion in turn is reinforced by a historical account in which the police first had such monopoly and then lost it to the detriment of commercial security providers. However, a brief excursion into the debate about the causes of the rise of private security discredits this historical account.

There have been two dominant explanations for the rise of private security (Van Steden 2007, 35 ff). The first is the so-called “mass private property” thesis, which holds that private security spread its wings in areas that have a public function but are nonetheless privately owned (shopping malls, residential areas, theme parks etc). Owners of such mass property have preferred not to rely on the police but to hire private security (Shearing and Stenning 1983, 496).<sup>18</sup> The other dominant explanation for the rise of private security is the “fiscal constraints” thesis. This thesis holds that due to fiscal crises in the 1970s and onward, the public sector has been unable to expand to keep pace with the rising demand in crime protection (Spitzer and Scull 1977, 24-25). The two explanations can run in tandem. Together, they provide the image of a state that gradually retreated from providing security for all and gave way to other, notably commercial, actors – for financial reasons and because of a transformation in the structure of large-scale property. These explanations have been challenged, however, by research from Trevor Jones and Tim Newburn, who argue that the transformation from public space (with public policing) into private space (with private policing) is minor compared to another development, namely the “formalization of social control:”

More significant however has been the emergence of a variety of types of “hybrid space” and the formalisation of security arrangements on such sites. This process of formalisation came about partly as a result of changes in the nature of the security problems experienced in such places (schools, hospitals, parks). However, it would be wrong to assume that the increasing visibility of private security on such sites represented a move from public to private policing. Rather, in most cases this was indeed a formalisation of security arrangements involving the replacement of staff

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18] For criticism, see Johnston 1992, 211 ff.

such as caretakers, wardens, and park keepers by uniformed security guards. In most cases the presence of the public police on such sites would always have been unusual. (1998, 169)<sup>19</sup>

In their view the explanation for the rise of private security begins with the decline in employment (due to labor-saving technologies) in occupations that did not include social control as primary task, but in which such control was practiced as a natural byproduct of their professional roles (Jones and Newburn 2002, 140-41). What actually happened was not so much a decline of the state, but a change in the internal composition of the non-state part of security provision: from informal provision by professionals employed for other reasons, to market provision by commercial companies. From this perspective, recent efforts by the public police to share the burden of security with “civil society” also make more sense. Using “responsibilization strategies,” state actors have begun to press individuals, local communities, corporations and others to assume more responsibility for their own security situation and to implement preventive measures.<sup>20</sup> Jones and Newburn make clear that these efforts can build on a long tradition of shared responsibility for security between state and non-state agents. Moreover, their explanation shows that community uptake of the ‘responsibilizing’ effort by the public authorities has not been symmetrical. New community-based initiatives (such as neighborhood watch schemes of patrolling citizens) have not been absent but commercial solutions dominate the scene.

As this historical digression shows, the police never did have a monopoly on preventive activities and it is not foreseeable that it will ever have such monopoly. The consequences of the increasing role of commercial agents for the argument from justice are ambivalent: these consequences depend on the extent to which commercial agencies are more (or less) reluctant to cooperate with the police in prosecuting offenses in the name of justice than are members from informal communities. This is a rather different conclusion than the notion of unequivocal loss of justice-related concerns that is lamented from the perspective based on the decline of an original state monopoly. Moreover, the state monopoly appears not only historically disputable but also normatively undesirable. For if both preventive and repressive security measures would be the sole responsibility of the state, a quasi-totalitarian permanent intrusion of the police into daily life would be required. Cooperation with individuals and groups that “keep an eye on each other” and inform the police in cases of crime become indispensable if we want to avoid that kind of dystopian state. Of course the leeway that such cooperation gives to civil society may provoke the danger of self-serving injustices of some citizens against others; but this seems the lesser price to pay. The alternative is as unfeasible as it is undesirable. I will get back to cooperation as a condition for the co-existence of market and state security later (section VI). But first, let us turn to the other major argument for public provision.

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19] Their criticism is largely acknowledged by a group of writers who try to reformulate the mass private property thesis so as to take account of it. See Kempa, Stenning, and Wood 2004.

20] For an overview of these “responsibilization strategies,” see Garland 2001, 124-27.

## VI. THE COMMUNITARIAN ARGUMENT IN FAVOUR OF STATE PROVISION

The second argument in favor of state provision is what I will call the communitarian argument. It is prominently advanced by Ian Loader and Neil Walker. They defend that security should be understood as a public good in a “thick, sociological sense” (not to be confused with the economic public good argument mentioned in section II. The provision of security has a constitutive function in the constitution of “the social” or “the community.”<sup>21</sup>

According to Loader and Walker, stable communities have importance for their members for two sets of reasons. There are instrumental reasons, which refer to the community’s power to solve collective action problems. In addition there are affective reasons, which refer to the importance of the community in the consolidation of a social sense of self. An appeal to instrumental reasons is usually not enough to sustain a community. An affective “glue” is necessary to overcome individuals’ “ambivalence about collective commitment” because of reasons of “short-term self-interest, poor information and low trust” (Loader and Walker 2006, 190). This glue is created through a sense of “common purpose,” in turn created by a concrete commitment to a set of shared goods. Language and territory are often-mentioned examples of such shared goods, and arguably the collective provision of security is also one of them. Security is “so pivotal to the very purpose of community that at the level of self-identification it helps to construct and sustain our ‘we feeling’ – our sense of ‘common publicness.’” (Loader and Walker 2006, 191)

According to this conception the form in which security should be provided is as an indivisible good, i.e. a good not separated into discrete units (as market goods typically are) but delivered to all persons indiscriminately and simultaneously. Security as public good provides a common pool, to which citizens have free and open access. Essentially they can all draw from it in as far as they need it. If security is provided in this way, the motivational conditions are different from those pertaining when security is a commodity. Beneficiaries of public security provision are put in relations of citizenship toward one another. Exactly the opposite would happen in markets, where, as Steven Spitzer argued, “[t]he search for security through commodities – like the search for other forms of fulfillment within the commodity system – becomes a fundamentally ‘alienating’ experience in its own right. Instead of bringing us closer together and strengthening the bonds of community and society, the security commodity becomes a means of setting us apart.” (Spitzer 1987, 50)

I would like to make two observations with respect to this argument. First, my labeling it as ‘communitarian’ should not be taken in an anti-liberal sense. Indeed, the argument is complementary to the argument normally raised in favor of liberal nationalism. The liberal nationalist idea, as expressed for example by David Miller, is that when citizens

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21] The following paragraph draws upon a more extensive discussion of Loader & Walker in Claassen 2007. For a similar community-based argument to object to the privatization of the military, see Pattison 2010.

feel they share a collective identity, they are much more willing to trust each other and the state, which makes it easier to deliver public goods as well as institute redistributive schemes (Miller 1995, 91-94). Interestingly, Loader and Walker's argument reverses the order: to be able to form a community in which we mutually trust each other, we need certain public goods which give substance to our being together in one community.<sup>22</sup> Taken together, we seem to be faced with the threat of circularity, where it is unclear whether the causal link runs from public goods provision to mutual trust and collective identity or vice versa. This is reason for some caution, but not, I think, enough to dispense with the argument altogether.

Second, the communitarian argument is bound up with egalitarian provision. If the police would explicitly and consistently favor some groups over others in its activities, it is likely that the "affective glue" that security provision is to bring to its citizens will not become available. Security then will not be experienced as a shared good upon which the trust that other opportunities for collective action are feasible can develop. Remember that I took as my normative starting point each individual's basic level of security (see section II). The problem here is that – whatever level is chosen as the basic one – the distributive question is still open whether this will be available to each person as a *minimum* level or as an *equal* level. The second option is more stringent, while the first option allows for individual variations in security levels above the minimum. The communitarian argument may seem to imply that security should be provided in equal proportion to all without allowing opportunities for realizing more than the basic level; but is that really the case?

Two challenges potentially undermine the practical realization of a strictly equal level of security for all. First, security as a public good provokes an instance of the infamous "tragedy of the commons" problem. Free access may lead to overconsumption and congestion. For public policing this has proven to be a non-negligible problem:

Over recent years, demands upon police time have grown significantly... Consequently, police forces around the country are routinely required to ration response by screening out what might be regarded by many members of the public as serious crimes.... This is a form of exclusion from the public good of a police response, whether it is by the decision of a call-handler on the basis of information against criteria set or through the exercise of discretion by a police officer. Like many forms of exclusion it can be self-perpetuating. The experience of a lack of, or an inadequate, response by the police to a call or request by a member of the public may mean that the individual concerned might not call upon the police on a future occasion. (Crawford 2006, 119-20)

The kind of rationing to which the police is forced requires great effort to prevent that some individuals, groups, companies or interests are systematically advantaged above others. It also gives rise to another exclusionary tendency, namely that the police

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22] A similar argument is made by Jonathan Wolff when he discusses the rationale of welfare state services being sheltered from the market. See Wolff 2004.

start charging fees to some users for their services (one may wonder whether that is still public provision or rather market provision by public providers). Both rationing and charging fees undermine the commitment to equal provision.

A second challenge is that, however high the level is set that is provided equally to all, some individuals or groups will start providing a surplus amount of security for themselves. These groups may complain that the public good conception presents too monolithic an understanding of “community.” Undoubtedly, it is useful that a public be constituted at the highest possible level of inclusion (normally the nation state). But this does not render obsolete the specific need of sub-national communities to have shared goods that symbolize and reinforce the social basis of *their* constitution. Why could additional security markets not contribute to the constitution of such lower-level communities? (in economic terms, this part of security would then be a “club good”). This is what actually happens in the case of the so-called “gated communities,” which are at least partly based on the desire to find a sense of community not available in many other neighborhoods.<sup>23</sup> Proponents may claim that a minimum level of shared security provision is sufficient to provide the affective glue sought for the whole community; an equal level is unnecessary. Why not have such a minimum level provided by the public police, while allowing citizens to purchase additional security and found lower-level communities as they choose to?

These two challenges show that the state, when it wants to be the exclusive provider of security, will have to carry two burdens. First, it will have to be *internally effective* in taking care that its police is sufficiently staffed to respond to all reasonable demands and is not captured by some groups to the detriment of others. Second, it will have to be *externally coercive* in prohibiting lower-level communities to engage in their own forms of security provision. While it may be argued that the first burden is something we have to accept, this is different for the second one. The main reason we have already encountered in the previous section: it is as unfeasible as it is undesirable to prevent individuals and communities from engaging in efforts to enhance their own security. In the previous section, this led us to pose a condition of adequate cooperation between state and private security providers. Here the focus is on equality. Additional security efforts by private parties violate strict equality. This too leads to a condition upon the co-existence of market and state. As I will argue in the final section, if such an inequality needs to be tolerated, toleration has limits of its own.

## VII. CONDITIONS FOR A LEGITIMATE CO-EXISTENCE OF STATE AND MARKET SECURITY

Two conclusions emerge. First, there are good reasons to make security a *primary* state responsibility: the state should deliver a minimum level of security that is adequate to realize the morally required part of the capability to be secure. To this end, the discussion

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23] The movement to live in gated communities is inspired both by a positive desire for community and by fears of insecurity about the outside environment. See Blakely and Snyder 1999.

of the communitarian argument showed that security is vital to the constitution of the community in the sense of the most-inclusive public conceivable (currently the nation state). The discussion of the argument from justice showed the pivotal role of the state in realizing the combination of preventive and repressive efforts that is necessary for successful security provision. Second, however, the discussion of both arguments also provides reasons for a claim against *pure* state provision. From the discussion of the communitarian argument emerged a claim on the part of lower-level communities that they are allowed to engage in additional security provision, after the state has fulfilled a minimum level for all. The discussion of the argument from justice showed that such room would anyway be there for these local communities – unless the idea of a state monopoly is taken to its extreme (quasi-totalitarian) conclusions.

Overall, then, this means that the state cannot provide more than a minimum level of security to its citizens. To be sure, that level is not necessarily minimalist; it can be quite generous.<sup>24</sup> On the other hand, non-state agents may always want to go further and provide extra security for themselves – and the state has no basis to deny these other agents their efforts. An “institutional pluralism” of security providers is thus the most appropriate security landscape.<sup>25</sup> Nonetheless, it has problems of its own. For an additional market in security to co-exist with the state’s central role in providing a minimum level of security for everyone, several conditions need to be met. I will discuss the three most important ones in this section.

A first condition is adequate *regulation* of the market (relating to the objections discussed in the second and third section). An additional market would need publicly established controls so that attempts by security firms to practice extortion and stimulate criminal activities are declared illegal and effectively combated. Although it is hard to declare the manipulation of consumer perceptions of crime illegal (given the legitimate scope of free expression that market agents have), here too the state should discourage these practices and hold the market’s worst excesses in check. I will not discuss these matters in any detail here. Suffice it to say that the difficulties in regulating the market should not be underestimated, but they are probably not so insurmountable as to justify prohibition of an additional market.

The second condition is *cooperation* (already briefly mentioned in the fourth section). Private security firms are required to cooperate in law enforcement, even if that is not in their immediate interest *and* to do so without transgressing their restricted legal powers. If they fail to do so, both these firms and the state will be faulted for failing to uphold

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24] The exact determination of the minimum level to be provided by the state is dependent, theoretically, on what is needed for guaranteeing the absence of impediments to the exercise of the capacity for agency in a given society, and practically, on the constraints in resources available to realize this. While this would define a morally required minimal level, a democratic decision to provide a more generous level is morally permissible as well.

25] Some authors speak of “plural governance,” “plural policing,” “security networks.” See Shearing and Wood 2003; Wood 2006

elementary exigencies of justice – which might ultimately have effects on the legitimacy of having a system of shared responsibility. It is questionable whether and to what extent private and public police forces have so far been able to meet this condition. Some hold that the relations between public police and private security companies are mainly cooperative. From this perspective the private security industry is often described as a “junior partner” carrying out tasks adjunct to the – larger and overarching – tasks of the public police (Shearing 1992, 411). Others maintain that competition, hostility, “mutual suspicion and avoidance” are dominant (Johnston 1992, 194). Still others argue that there is neither much cooperation nor much competition; rather, both operate in independent spheres in a relation of “benign coexistence” (Jones and Newburn 1998, 169 ff). No matter which of these empirical judgments is correct, a stable and legitimate co-existence of private and public security arrangements requires successful cooperation.<sup>26</sup>

The third condition is a *balance* between both forms of security that does not undermine the minimum level provided by the state (relating to the matters discussed in the fifth section). While additional security efforts by lower-level communities should be permitted, opportunities for the erosion of the state-provided minimum level delivered to all citizens must be effectively counteracted. Since normatively this is probably the most delicate condition, let me spend the remainder of this section on it.

One danger is that members of lower-level communities try to evade their contributions to state security. The basis for state security is weakened as soon as particular groups in society no longer profit – or perceive that they no longer profit – from it and start to request exemptions from their obligation to contribute (tax deductions).<sup>27</sup> This is probably the most sensitive issue in public opinion, connected as it is with the rise of “gated communities” in the US, but also in many other countries like Brazil, South Africa, etc. It is no coincidence that this issue is linked to the presence of physically segregated territories. In such territories the complementary relationship of private and public security forces is distorted in a way that it is not for other territories. Compare a typical gated community to a typical shopping mall. While commercial firms may do actual policing for both territories, these will still regularly have to cooperate with public police forces in the shopping mall, while contacts with the public police may be minimal for the gated community. The difference lies in the fact that the shopping mall is publicly accessible while the gated community is not. The latter therefore upholds justice simply by physically excluding possibilities for violations. This difference demarcates the point at which non-state efforts in security provision become exclusionary, rather than additional to state efforts; in other words, where the establishment of lower-scale communities is to the detriment of support for the national community.

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26] Empirically, there is no agreement whether such cooperation is achievable or has been achieved. For an optimistic view, see Stenning 2000. For a pessimistic view see Zedner 2006. To make matters even more complex, some forms of effective cooperation are objectionable in their own right. See Hoogenboom 1991.

27] For a discussion of residents from gated communities claiming tax exemption because of their private payments to security personnel, see Stark 1998.

While this danger concerns the basis for the input (the funds for state provision), a second danger relates to the output. Even if everybody continues to contribute to state security, it might still be the case that if too large a proportion of security provision is not state based, the basic level of security to be delivered by the state is undermined. One reason is that consumption of security may have a *positional aspect*: insofar as extra (market-based) security provision to neighborhood A makes neighborhood B automatically more insecure. The latter's lower level of protection makes it a more attractive target for those who want to commit crimes. In other words, security consumption by A has a negative external effect on B (Gambetta 1993, 30). This kind of interdependence is normally taken to support an argument for providing security as an indivisible good. However, as we saw, even when provided as a public good, security can structurally advantage some individuals or groups over others when some groups are more active in attracting attention from the public police than others – they capture the public service. It may also happen, as in the case of gated communities, when some are able to shelter themselves effectively from their external living or working environment. In either case, differential security efforts directed to A and B cause structural inequalities between these neighborhoods:

Security clubs can, and often have, deleterious implications for state policing as a public good, as well as for the experience of public places. This occurs both through residualization of policing as a congested resource and the segmentation of security risks, as good risks are increasingly policed through additional auspices and bad risks policed by a residual public services. Powerful and exclusive clubs can capture and exploit publicly provided resources. (Crawford 2006, 136)

These inequalities may lead to B falling below the minimum level that the state ought to deliver. That may seem surprising: for if private security takes care of security in A, one would expect the public police to actually have more resources for policing B. However, two developments may counteract this, the first of which we just encountered: a potential pressure by A's inhabitants to press for tax exemptions for public policing in B. A second reason is that the rise in crime for B may be more important than the additionally available resources to combat this. Whether crime will rise for B (and to what extent) depends upon the question whether there is a "fixed proportion of crime" which is either occurring in A or in B or in both neighborhoods combined (A and B then are merely communicating vessels); or whether security provision is capable of actually having a deterring effect on the motivation to commit crime.

In the end, then, the stability of institutional pluralism for security services depends on the extent to which such inequalities in security provision are prevented from arising. This may require denying private initiatives their legitimacy; not because the wish to secure oneself (over and above what the public police provide) is illegitimate in itself; but because of its detrimental effects on the overall security predicament for all citizens. It is difficult to say in general at what point the balance tips and effects of private security become detrimental to publicly delivered security. A community eager to guarantee a minimum level of security for all citizens will have to decide on an adequate definition

of the minimum level, try to realize it in practice and then carefully monitor whether some groups or individuals risk falling below it on a structural basis. These tasks require practical judgments; judgments which can always be disputed. Security will therefore with certainty remain a permanent item on any community's political agenda.

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#### REFERENCES

- Bayley, David H., and Clifford D. Shearing. 1996. The future of policing. *Law & Society Review* 30 (3): 585-606.
- Blakely, Edward J., and Mary Gail Snyder. 1999. *Fortress America. Gated communities in the United States*. Washington D.C.: Brookings Institution Press.
- Claassen, Rutger. 2007. The useful myth of state security. Reflections on the state's special role in security provision. In *Staat van veiligheid. De nederlandse samenleving sinds 1900*, edited by Stephanie Roels, and Madelon de Keizer. Zutphen: Nederlands Instituut voor Oorlogsdocumentatie & Walburg Pers.
- . 2009. Institutional pluralism and the limits of the market. *Politics, Philosophy, and Economics* 8 (4): 420-47.
- Cowen, Tyler. 1992. Law as a public good. *Economics & Philosophy* 8: 249-67.
- . 1994. Rejoinder to David Friedman on the economics of anarchy. *Economics & Philosophy* 10: 329-32.
- Crawford, Adam. 2006. Policing and security as "club goods": The new enclosures? In *Democracy, society and the governance of security*, edited by Jennifer Wood, and Benoit Dupont. Cambridge: Cambridge University Press.
- De Waard, Jaap. 1999. The private security industry in international perspective. *European Journal on Criminal Policy and Research* 7: 143-74.
- Fixler, Philip E., and Robert W. Poole. 1988. Can police services be privatized? *Annals of the American Academy of Political and Social Science* 498: 108-18.
- Friedman, Benjamin. 1994. Law as a private good. A response to Tyler Cowen on the economics of anarchy. *Economics & Philosophy* 10:319-327.
- Gambetta, Diego. 1993. *The sicilian mafia. The business of private protection*. Cambridge, Massachusetts: Harvard University Press.
- Garland, David 2001. *The culture of control. Crime and social order in contemporary society*. Chicago The University of Chicago Press.
- Hoogenboom, Bob. 1991. Grey policing: A theoretical framework. *Policing and Society* 2: 17-30.
- Johnston, Les. 1992. *The rebirth of private policing*. London: Routledge.
- . 1996. What is vigilantism? *The British Journal of Criminology* 36: 220-36.
- Johnston, Les, and Clifford D. Shearing. 2003. *Governing security. Explorations in policing and justice*. London: Routledge.
- Jones, Trevor, and Tim Newburn. 1998. *Private security and public policing*. Oxford: Clarendon Press.
- . 2002. The transformation of policing? Understanding current trends in policing systems. *The British Journal of Criminology* 42: 129-46.
- Kempa, Michael, Philip C. Stenning, and Jennifer Wood. 2004. Policing communal spaces. A reconfiguration of the "mass private property" hypothesis. *British Journal of Criminology* 44: 562-81.

- Loader, Ian. 1997. Thinking normatively about private security. *Journal of Law and Society* 24 (3): 377-94.
- . 1999. Consumer culture and the commodification of policing and security. *Sociology* 33 (2): 373-92.
- Loader, Ian, and Neil Walker. 2006. Necessary virtues. The legitimate place of the state in the production of security. In *Democracy, society and the governance of security*, edited by Jennifer Wood, and Benoit Dupont. Cambridge: Cambridge University Press.
- Miller, David. 1995. *On nationality*. Oxford: Oxford University Press.
- Morris, Christopher. 1998. *An essay of the modern state*. Cambridge: Cambridge University Press.
- Nozick, Robert. 1974. *Anarchy, state, and utopia*. Oxford: Blackwell Publishing.
- Pattison, James. 2010. Deeper objections to the privatisation of military force. *Journal of Political Philosophy* 18 (4): 425-47.
- Rothbard, Murray. 1977. Robert Nozick and the immaculate conception of the state. *Journal of Libertarian Studies* 1 (1): 45-57.
- . 1978. *For a new liberty. The libertarian manifesto*. New York: MacMillan.
- Shearing, Clifford D. 1992. The relation between public and private policing. In *Modern policing*, edited by Michael Tonry, and Norval Morris. Chicago: The University of Chicago Press.
- Shearing, Clifford D., and Philip C. Stenning. 1983. Private security: Implications for social control. *Social Problems* 30 (5): 493-506.
- Shearing, Clifford, and Jennifer Wood. 2003. Governing security for common goods. *International Journal of the Sociology of Law* 31: 205-25.
- Spitzer, Steven. 1987. Security and control in capitalist societies: The fetishism of security and the secret thereof. In *Transcarceration: Essays in the sociology of social control*, edited by John Lowman, Robert J. Menzies, and T.S. Palys. Aldershot: Gower.
- Spitzer, Steven, and Andrew T. Scull. 1977. Privatization and capitalist development: The case of the private police. *Social Problems* 25 (1): 18-29.
- . 1977. Social control in historical perspective: From private to public responses to crime. In *Corrections and punishment*, edited by David F. Greenberg. London: Sage.
- Stark, Andrew. 1998. America, the gated? *Wilson Quarterly* 22 (1): 58-79.
- Steden, Ronald Van. 2007. *Privatizing policing: Describing and explaining the growth of private security*. Den Haag: Boom Juridische Uitgevers.
- Stenning, Philip C. 2000. Powers and accountability of private police. *European Journal on Criminal Policy and Research* 8: 325-52.
- Van Steden, Ronald, and Rick Sarre. 2007. The growth of private security: Trends in the European Union. *Security Journal* 20: 222-35.
- Wolff, Jonathan. 2004. Moral limits of the market. Manuscript. [http://sas-space.sas.ac.uk/672/1/J\\_Wolff\\_Market.pdf](http://sas-space.sas.ac.uk/672/1/J_Wolff_Market.pdf) (accessed November 15, 2011)
- Wood, Jennifer. 2006. Research and innovation in the field of security: A nodal governance view. In *Democracy, society and the governance of security*, edited by Jennifer Wood, and Benoit Dupont. Cambridge: Cambridge University Press.
- Zedner, Lucia. 2003. The concept of security: An agenda for comparative analysis. *Legal Studies* 1: 153-76.
- . 2003. Too much security? *International Journal of the Sociology of Law* 31: 155-84.
- . 2006. Liquid security. Managing the market for crime control. *Criminology and Criminal Justice* 6 (3): 267-88.

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