# CONTESTING THE MARKET: AN ASSESSMENT OF CAPITALISM'S THREAT TO DEMOCRACY

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**Abstract**:

I argue that capitalism presents a threat to "democratic contestation": the egalitarian, socially distributed capacity to affect how, why, and whether power is used. Markets are not susceptible to mechanisms of accountability, nor are they bearers of intentions in the way that political power-holders are. This makes them resistant to the kind of rational, intentional oversight that constitutes one of democracy's social virtues. I identify four social costs associated with this problem: the vulnerability of citizens to arbitrary interference, the insensitivity of markets to relevant interests, failures of trust in the market system, and the inhibition of social deliberation about matters of public concern. I make general two suggestions about how we might ameliorate these problems: First, as a way of introducing some measure of intentionality to large-scale patterns of business activity, the reconceptualization of such activity as participation in larger group actions; second, the development of deliberative bodies that bring together business actors, policy experts, and diverse citizens in an effort to better characterize and transmit the public values that business should serve.

## 1. Introduction

Whether or not capitalism is ultimately compatible with democracy, there are at least very powerful tensions running between these two forms of social organization. There is a grand intellectual tradition running through Aristotle, Tocqueville, Marx and many others observing the various ways in which economic inequalities translate into broader inequalities of social participation, access, and influence that present deep challenges to democracy. Capitalism also tends to reorder social attitudes and relationships in ways that undermine the kind of public ethos that democracy requires (Bowles and Gintis 1986, Dryzek 1996).

Here I am to identify and size up a different kind of threat that capitalism presents to democracy, one that has not received due attention in the traditional dialectic of inequality. I will argue that, independently of the concerns identified above, capitalism threatens the ideal of what – drawing on the work of Philip Pettit (1997, 2012) – I shall call "democratic contestation": the particular manner in which democracy structures decision-making about matters of social significance. Markets are by nature resistant to the kind of rational, intentional oversight that constitutes one of democracy's social virtues. As I will try to show, there are social harms associated with failures of this oversight even under conditions of optimal democratic equality and public-spiritedness. My primary objective will therefore be diagnostic: I hope to illuminate the distinctive nature of the challenges we confront in reconciling capitalist markets with democracy. As a secondary aim, I will make some suggestions towards the end of the paper about what might be involved in responding to the challenges identified.

## 2. The Threat of Market Power

At a minimum, the ideal of democratic governance involves the broad and equitable distribution of basic political powers on terms of freedom. Following Philip Pettit's rich work on republicanism (I discuss Pettit in more detail later on), my suggestion is that we can usefully characterize this arrangement as the institutional realization of the egalitarian social contestation of power. By *contestation*, I mean a process in which the contesting agents, either collectively or individually, have some significant capacity to affect how, why, and whether power is used (Pettit 1997, 2012). By *egalitarian*, I mean that the relevant capacity is to be equally distributed to the greatest extent possible within relevant practical and moral constraints, and beyond some minimal threshold of sufficiency for all individuals. So *democratic contestation* is egalitarian social contestation. Under the right conditions, the egalitarian social contestation of power tends to realize the goods of freedom and equality, and that provides at least one of the core motivations for democratic procedures and institutional structures.

My central contention is that capitalism presents a threat to democratic contestation, and that this is something we have significant reason to worry about. To begin, then, I'd like to bring into view five examples of the distinctive manner in which this threat is expressed:

(1) The widespread, unanticipated loss of employment following the 2008 financial crisis.

(2) The existence of "food deserts," i.e., areas in which citizens confront significant obstacles to accessing healthy foods.

(3) The fact that racial minorities in the United States are far more likely than whites to live close to environmental hazards (Maantay 2002).

(4) The fact that "malaria, pneumonia, diarrhea, and tuberculosis combined constitute 21% of the global disease burden, but receive .31% of all health research funding" (Reiss and Kitcher 2009).

(5) The fact that we continue to increase our global consumption of fossil fuels at a rapid pace in spite of clear evidence of its catastrophic consequences, and in spite of the fact that there are means readily available for significantly reducing such consumption.

Case (1) – the example of the 2008 financial crisis – illustrates the most obvious respect in which capitalist markets play a vital causal role in the determination of human welfare and its distribution: our wealth and opportunities rise and fall with the value of goods and services that the market determines. Cases (2) and (4) both illustrate the way in which the incentives created by market forces frequently tend to produce gross inequalities – and inadequacies – in the accessibility of vital goods and services across different segments of the population. Case (3) also illustrates this phenomenon, though it is complicated by the role of those who are disadvantaged by the phenomenon in its own creation. The fact that racial minorities are disproportionately burdened by environmental hazards in the United States is in part a consequence of the economically motivated choices they make about where to live. Case (5) illustrates the way in which the inexorable logic of capitalist markets can prove enormously difficult to overcome, even when it brings about outcomes that are extremely bad for everyone.

So these cases all illustrate, at a minimum, the vital causal role that capitalist markets play in morally and socially significant states of affairs. By *capitalist markets* (or simply *markets* for short) I refer to systems in which goods and services are freely exchanged according to the norms established by some conventional notion of property rights. But I want to suggest that, beyond the causal role that markets play, they also manifest through their causal role something very much like an exercise of power. In the moral and political context, conceptions of power typically make essential reference to notions like will, goal-directedness and other essential tokens of human agency.[1] In this respect, the sense in which markets themselves wield power is unclear, since markets do not have minds or manifest intentions in the way that

[1] Thus, for example, on Robert Dahl's (1957) proposal "A has power over B to the extent that he can get B to do something that B would not otherwise do."

managers, political representatives, corporations, or political parties seem to manifest intentions. Intentions can plausibly be attributed to groups, but only under conditions in which the individuals who constitute them form the relevant kinds of joint intentions (Gilbert 2000). Markets are distinct from groups in this respect because what markets do is an unintended and, indeed, often unforeseen byproduct of individual actions whose intentions are directed at other ends. Nonetheless, like the process of natural selection, the behavior of markets under the right conditions mimics intentional or goal-directed action. This is the point of Smith's elegant "invisible hand" conceit: the aggregative consequence of individuals making local decisions directed at their self-interest are patterns of production and distribution that are dynamically responsive to social aims not held in mind. Thus, the motivation for talking about markets as power-wielders derives from the explanatory role of market-talk in accounting for economic phenomena that are (imperfectly) responsive to important social values (though the values to which they are responsive are not all good). Markets reflect the *as-if* agency of Smith's invisible hand. In my usage, *market power* is constituted by the distinctive causal role that markets play in (a) bringing about socially significant events and states of affairs and (b) doing so in a manner that is dynamically responsive to at least some socially valuable aims.

With these preliminaries out of the way, let us proceed with the primary line of argument. The suggestion that market power poses a distinctive threat to democratic contestation proceeds from two observations. The first concerns the massive significance of market power in its bearing on human interests around the world, as cases (1)-(5) all illustrate.[2] The increasing

[2] This statement is not intended to overlook the fact that markets also bear very significantly on non-human interests. But this fact does not bear on its threat to democratic contestation, at least in this context.

globalization of markets has only made their power more significant in recent years as, for example, national economic and social policies are influenced by the threat of capital flight (Dryzek 1996), consumer behavior is shaped by the expansion of international corporations into new markets, and indigenous cultures confront economically driven pressures on their ability to sustain traditional ways of life.

The second observation regarding the threat of market power to democratic contestation concerns the peculiar nature of market power itself. In the political context, genuine contestation is possible in virtue of two features of government institutions:

(i) First, political agents and institutions are *accountable*. That is, they are susceptible, via institutional design, to meaningful influence by those over whom they exercise power. Political agents can be subjected to public evaluation and review, can be removed through the power of the ballot, and can be placed within a bureaucratic management structure that fosters meaningful (if imperfect) accountability for the service of public goals.

(ii) Second, and relatedly, the operation of political agents and institutions is *intentional*. It typically reflects to some meaningful degree, the operation of goal-directed agency, though this is often only on the scale of a large bureaucratic organization rather than the individual. The making and enforcement of laws, the operation of political organizations, and the movements of individual political officials are normally manifestations of intentions to do what is done (though this does not exclude the inevitability of unforeseen consequences of those actions).

Accountability is indispensable to the prospect of contestation because the capacity to affect the use of political power requires some institutional mechanisms through which influence is to be exercised. Intentionality is indispensable to the prospect of contestation because intentionality makes possible the intelligent adjustment of activities in response to concerns and preferences. Market power, however, lacks both of these properties. Though, like intentional agents, markets display a dynamic sensitivity to at least some social goals, that sensitivity arises as a byproduct of aggregate individual intentions directed at other concerns. Indeed the relevant point is even stronger than this since – on the logic of the invisible hand – the sensitivity of markets to social goals is at least partly dependent on the fact that the individuals involved do not directly aim at serving those goals. Service of those goals is in this sense not merely a byproduct, but rather what Jon Elster (1983) calls an "essential byproduct." The most significant consequence of this fact is that, while markets are dynamically sensitive in their behavior to matters of supply and demand, their as-if intentionality breaks down when considerations not already represented in the price signal are introduced. Thus when markets perpetuate patterns of racial disadvantage, devastating environmental damage, or a catastrophic decline in the value of real estate, there is no apparent route to converting those concerns into modifications of market behavior, except by proceeding via forces (such as political regulation), external to the market's operation.

Markets also lack accountability, or at least present important challenges to accountability. They lack accountability in part as a consequence of their lack of intentionality. When a system is not dynamically responsive to external goals – goals not already represented in the normal operation of the system – the usual mechanisms of accountability with respect to those goals fail. One cannot shame the market into reversing course with respect to environmental racism, nor can one appeal to the market by explaining why racism is morally bad. But the market's lack of intentionality is not the only cause of its lack of accountability. There are two other features of markets that are relevant in this respect.

First is a point closely related to, but distinct from, the fact that markets lack intentionality. This is the fact that market behaviors are *radically distributed* phenomena. They are vast collections of individual and smaller-group behaviors which are themselves not coordinated in any intentional way. Calling markets to account therefore requires calling to account a vast, and vastly distributed, group of independent agents whose activities lack agency or responsibility with respect to the phenomena in question. Individual firms and actors are of course responsible for all sorts of things within the boundaries of the market. Companies that pollute the air, mistreat their workers, or create new jobs are responsible for what they do. But there is no particular person or firm responsible for food deserts, environmental racism, or the under-representation of the developing world's needs in the scientific research agenda.

In response one might note that, though firms may lack individual responsibility for the global distribution of scientific research efforts or the exposure of American minorities to greater levels of pollution, they bear responsibility for their individual contributions to these phenomena. I think there is some promise in this observation, and will return to pursue it later in the paper. But for now this point only underscores the peculiar difficulty created by the vast distribution of market phenomena across individual agents. Though we can surely call individuals and individual firms to account for their contribution to market phenomena, creating accountability for the phenomena as a whole would require calling the vast, and vastly distributed set of individuals and firms to account in a systematic way.

Complicating matters is once again the peculiar gap between the local goals that motivate individual actors and firms, and the larger-scale social consequences of the aggregation of those behaviors. The primary cause of food deserts is not that grocers are biased against certain neighborhoods.[3] They arise because grocery chain owners are trying to make money and certain geographic areas, for familiar reasons, tend to have difficulty sustaining profitable enterprises that sell healthy food. On top of this, according to the conventional logic of market economics, a firm that sets aside the primary question of profit in order to address questions of social justice and progress will at best suffer a competitive disadvantage in the struggle for growth, capital, and survival. Moreover, as the problematic history of nationalized industry suggests, attempts to treat public values as a priority often introduce ambiguities in managerial aims that foster malfeasance and incompetence (Heath and Norman 2004). Finally, diverting one's efforts to some social value other than profit can often be ineffectual or even counterproductive without the coordination of other actors. Thus, for example, when musical artists set ticket prices at below-market rates as a token of good will towards their fans, the result is typically the creation of incentives for scalpers to buy those tickets and then resell them at whatever the market will bear for a neat profit. The only beneficiary of the musician's good will becomes the scalpers.

For all of these reasons, holding individual firms accountable for their contribution to the realization of social values rather than profit is at best problematic. Alleviating these problems would require mechanisms that hold entire industries (and perhaps even entire economies more broadly) accountable in a simultaneous and coordinated fashion. Later in this essay, I explore what that might mean. For now, I want simply to mark this as a significant challenge for democratic contestation with respect to market behavior.

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[3] Though, admittedly, one shouldn't be surprised if some such bias played a role in this dynamic. At a minimum, the relevant point is that such bias is not the dominant causal factor in play.

Thus one consideration telling against the accountability of markets is the broad distribution of individual responsibility for market phenomena across discrete individuals and groups, motivated by diverse goals. Whereas political responsibility can be attached to clearly identifiable individuals and groups of individuals, market responsibility seems to be born by everyone and no one. A second consideration telling against market accountability concerns the *privacy* of its constitutive activities. Systems of free exchange are defined as such in virtue of private property rights that protect the ability of actors to buy, sell, and use the things they own as they wish, though within some reasonable set of moral and legal constraints. Such property rights are private only insofar as they can be exercised at the discretion of individual owners.

To the extent that free markets are properly conceived as systems of private exchange, there is an obvious tension with the imperatives of accountability in both moral and institutional respects. From an institutional standpoint, the privacy of property rights entails the reasonable entitlement, barring the violation of established legal constraints, to keep secret one's records and the motivations for one's actions. It entails that one's institutional obligations to publicly explain one's actions and hear out objections to them are limited. A company that illegally dumps toxins in a river, exploits child labor, or engages in racial discrimination violates moral and legal constraints and will normally incur legal punishment and moral disapprobation. But failing to build a supermarket in a poor neighborhood, consuming large amounts of fossil fuel that one has fairly purchased, or devoting one's research budget to pills that alleviate sexual dysfunction rather than the effective treatment of malaria are all activities that fail to violate conventional moral and legal constraints on the use of private property, and thus require no explanation to the public. The legal and moral constraints that apply to markets are oriented principally towards the identifiable harms of individual actors within the market. But the causally significant behavior of markets, taken as a whole, is often constituted by individual behaviors which are themselves not causally or morally significant.

So market power is by nature resistant to the model of accountability required by democratic contestation. Such contestation, as I noted above, is premised on the existence of institutional mechanisms that facilitate challenges to the use of power, and an institutional ethos that fosters at least some measure of responsiveness to those challenges from public officials. Relatedly, it is premised on the exercise of genuine agency among power holders who direct their activities towards service of government's characteristic aims. Markets thus present additional challenges to accountability in virtue of the way in which agency is radically distributed across individual actors. Market power also lacks intentionality and thus proves difficult to reconcile with the kind of adaptation to diverse objectives that democracy requires.

## 3. The Distinctive Value of Contestation

I have been arguing that markets present distinctive challenges to the ideal of democratic contestation. I turn now to examine more carefully why we should regard these challenges as problematic. The first step in that project is getting clear about why the ideal of social contestation is good in the first place, and why we should think it appropriate to extend that ideal to markets.

There is of course a well-established strain of classical liberalism which holds that private markets are valuable precisely because they provide us with the means to manage matters of essential human concern without engaging in coercive interference in the lives of individuals. In support of that tradition Hayek (1945) argued that, independently of any moral imperatives to respect private property rights, markets alone were capable of solving the epistemological problems associated with efficient production and distribution on a mass scale. Given the enormous range of considerations bearing on these aims, central planners lacked the means to gather, synthesize, and react to dynamically evolving economic conditions. On this logic, the market solves problems best when left free of governmental interference.

Hayek's perspective essentially supports the general argument that I have been pursuing. Market power is wielded in a way that is radically distributed across individual agents whose activities are not intentionally directed towards the net social consequences to which they contribute. Making it socially contestable in the way that political decisions are socially contestable would seem to undermine precisely the thing that makes markets successful in organizing social behavior. One hears echoes of this argument in the anti-government zeal of some American conservatives on economic matters. If the government subsidizes a start-up industry like solar energy, for example, it is prematurely "picking winners." On this logic, if there is real social value in solar energy, then it will eventually be represented in the price signal, which will facilitate any needed investment. I will shortly consider some of the problems with this perspective. But the point for the moment is that, even if social contestation is a good thing in the context of political decisions, we should proceed carefully before making the assumption that it is a good thing across the board. What is it about social contestation that is desirable, exactly, and why should we worry about a lack of social contestation in the economic context? This question must be approached from a number of different angles, which together constitute most of the core rationale for democracy.

### 3.1 Vulnerability to Arbitrary Interference

In *Republicanism* and a series of related works, Philip Pettit defends a republican conception of freedom as "non-domination." One is dominated, on Pettit's view, insofar as one may be subjected to the "arbitrary" will of another, i.e., when another has the capacity to interfere with one's choices in a manner, and on terms, that one cannot control. One is free when one has the capacity to contest the way in which one is subject to power, and Pettit thus conceptualizes democracy as a set of institutions which enable social contestation (1997, 2012). The conception of democracy that I employ in this paper is therefore essentially Pettit's.

The dialectic that Pettit employs in support of this conception of freedom is directed principally in opposition to the conventional liberal understanding of freedom as non-interference. From that point of view, we are free to the extent that our choices are not subjected to interference by another's will. Pettit observes, however, that the mere absence of actual interference is not sufficient to secure an attractive form of freedom. That is because the absence of actual interference is compatible with the capacity to interfere arbitrarily, and the capacity to interfere arbitrarily can, in certain domains, create forms of abject vulnerability. Thus, whether or not poor, unskilled workers are able to hold on to their jobs on the basis of their merit as workers, they must typically live with the knowledge that, were their manager to decide to fire them, they would suffer extreme hardship as a result.

This sort of dynamic is problematic in at least two ways: It is problematic, first, insofar as workers must bear the psychological and material costs associated with the unknown prospects of material privation. The point in this case is that, even if one does not suffer from material privation, one must plan and act around that possibility, thus foregoing valuable opportunities and typically dealing with some degree of resultant anxiety. The dynamic between unskilled workers and managers is problematic, second, insofar as workers must adopt a strategy of abject servility in an attempt to avoid incurring the disfavor (whether appropriate or not) of their manager. Under such circumstances, their agency and ability to represent themselves with meaningful integrity is sharply reduced, even if their manager always treats them justly. It is the capacity of the manager to terminate their position without good reason, rather than the exercise of that capacity, which is enough to undermine an attractive form of freedom.

It is not hard to see how this sort of logic can be pursued to make an argument for democratic contestation: citizens are free to the extent that they are not subjected to the arbitrary will of their rulers, and arbitrariness is eliminated through procedural mechanisms and institutions that provide citizens with a meaningful power to participate in control over how political power is used (Pettit 1997, 2012). One of the distinctive goods of social contestation, then, concerns its capacity to mitigate or eliminate the harms associated with being subjected to the arbitrary will of others.

One of the concerns about the capacity for arbitrary interference extends to market power. The other does not. Non-domination shields individuals from the humiliating interpersonal dynamics associated with vulnerability to another's will. But since markets do not themselves have a will, and since they are not agents in either the corporate or personal sense, this concern does not appear to apply in this context. One cannot suffer from servility to a market in the way that one can suffer from servility to an individual manager or firm. This is one respect in which the distinction between market power and will-based notions of power is significant.

But markets do nonetheless expose individuals to the psychological and material costs associated with substantial uncertainty as concerns their basic interests. As the example of the

2008 financial crisis illustrates, people who occupy the bottom rungs of the economic ladder are subject to the same kinds of economic and psychological costs as our worker confronts in the hypothetical case just described. The point in that case is that the fear of such a crisis would itself be a significant hardship for workers, independently of its actual occurrence. Particularly in nations where the social safety net is weaker, the uncertainty associated with this kind of economic vulnerability is itself a significant material and economic hardship. Likewise, to choose a different sort of example, the citizens of Bangladesh and other low lying parts of the world must live with a greater or lesser (these days: greater) vulnerability to extreme flooding as a consequence of trends in the world market for oil. That kind of vulnerability is not only bad for individual citizens, it is also bad for the nation collectively in its ability to attract and efficiently deploy investment capital.

Of course, no economic or political system can comprehensively eliminate every form of harmful uncertainty. Risk is a fact of life. But some sources of risk are artifacts of human institutions and some are not. Weather patterns as such are not sufficiently subject to human control, and are not artifacts of human institutions. In contrast, markets are entities that we create, and adherence to their logic reflects choices we make about social organization.

In any case, the point at the moment is not that we should reject markets because they introduce forms of uncertainty that are harmful to human flourishing. The point is to represent this uncertainty as a significant cost, one that we have been able to mitigate in the domain of governance.

### 3.2 Insensitivity to Relevant Interests

There is a more obvious respect, however, in which social contestation is desirable. As John Stuart Mill observed in *Considerations on Representative Government* (1991), the likelihood that the ruling class will serve the interests of the ruled is rather low except in circumstances where the ruled have some meaningful opportunity to give expression to their interests, and where there are institutional mechanisms that hold the ruling class accountable to them. Social contestation, in short, is an obvious and necessary measure for ensuring that power is used in a way that tracks the interests of those affected by it. There are at least two reasons for this. One concerns the tendency of power-holders to serve their own interests at the expense of those over whom they hold power. Social contestation provides a mechanism that at least mitigates this tendency by creating incentives to put the public interest first, and by creating mechanisms that allow for the removal of self-serving officials. Social contestation has a *motivational* benefit in this regard. Social contestation also has an *epistemic* benefit. As Mill also observed, even the most benevolent dictator will be confronted by insuperable difficulties in gathering and assimilating the enormous body of information required to serve the interests of a large, diverse public (Fuerstein 2008, Mill 1991).

In the case of market power, there are analogs for both the epistemic and motivational problems that obtain in the case of political power. From an epistemic point of view, a Hayekian perspective implies that the epistemological problems associated with production and distribution are solved – not created – via the radically distributed nature of economic activity. Insofar as increasing contestation requires centralizing economic decision-making in intentional actors, it would seem to reintroduce the very epistemological problems that markets are good at solving. But one way of interpreting cases like (1)-(5) above is to point out that, while markets very efficiently manage the particular variety of informational inputs that go into buying and selling, they are blind to a great deal of information that properly bears on the social "actions" that they bring about. Markets create robust incentives for killing elephants in order to harvest their tusks; no one thinks this fact reveals that poaching elephants is a permissible or desirable social activity. Likewise, if markets do not sustain much-needed investment in malaria research, that does not show that we would not do better to increase such investment.

Some familiar observations in this domain: though market demand reflects the existence of some measure of social desire for some good, desires can be founded on all manner of ignorance and selfishness. At the same time, the desires reflected in price signals are reflections of a willingness to pay rather than all things considered judgments about desirability as such. To return to the food deserts example: the fact that there is low economic demand for healthy, ethically sourced food in poor neighborhoods may simply reflect the fact that poor people cannot afford healthy, ethically sourced food, rather than the fact that they do not have a strong desire for such food. Finally, as the climate change example illustrates with devastating clarity, market prices fail to reflect costs that arise as externalities. In light of these observations, one way of understanding the failures of market power to track social interests is in terms of an epistemic failure. Markets do a bad job of pooling and assimilating certain kinds of information that bear essentially on service of the social good.

The motivational problem that contestation solves in the political domain seems obscure in the case of market power given that, as I have repeatedly emphasized, markets lacks minds or intentions. Nonetheless, it is worth bringing back into view the individual producers and consumers – especially large global firms – whose activities collectively constitute market behavior. Milton Friedman's (1970) famous (notorious?) suggestion that firms' defining aim should be the maximization of shareholder value captures a significant moral and organizational consequence associated with market behavior. Market power effects significant social outcomes as a byproduct of behavior directed principally at non-social aims. But to the extent that markets fail in achieving socially desirable byproducts, we ought to consider whether the asocial motivational structure proposed by Friedman (and captured in the invisible hand analogy) needs rethinking. The social failures of markets suggest that, even if we cannot motivate markets as such through contestation, that we might look for ways of altering the motivations of individual market actors via the contestatory model.

### 3.3 Trust in Markets

Whereas Hobbes (1996) rejects democracy by appealing to the dangers of social instability associated with freedom, Locke (1988) observes that those who have the opportunity to authorize and control their government's activities are far less likely to be a source of civil unrest. Freedom achieves social stability, not through fear, but through mechanisms that tend to induce sufficient approval of social and political conditions. Locke effectively identifies the way in which democratic governments succeed, not only through the primary good of fairly promoting citizens' interests, but also through the secondary good of being publicly seen to fairly promote citizens' interests. In this case there is a kind of virtuous feedback loop that arises through the interaction among these two goods: governments that are seen to be fair and competent tend to enjoy benefits of approval and compliance that better facilitate the achievement of fairness and competence (Fuerstein 2013). At the same time, under the right conditions, the superior achievement of fairness and competence should tend to promote the greater (justified) perception of fairness and competence. Democratic governments achieve these complementary goods, not only through egalitarian voting over representatives, but also through the broad spectrum of civic and political activities that allow citizens to wield some measure of influence over political officials.

Of course, one should not indulge in idealistic fantasies about the state of public confidence in democratic governments. Most contemporary democracies illustrate some non-negligible measure of distrust and disaffection towards their public institutions, for both valid and invalid reasons (Pharr and Putnam 2000). The point, however, is simply to highlight the way in which social contestation supports at least a basic measure of confidence in political institutions, such that those who are on the losing end of political battles nonetheless retain the willingness to comply with the law and continue to fight those battles in good faith within the system.[4]

In the economic context, one can see a variety of contemporary manifestations of public alienation from capitalist institutions, most notably the Occupy Wall Street movement in the United States, and the sometimes violent social unrest that has accompanied Greece's recent conflicts with the IMF. While the causes of such opposition are complicated they both embody, not only an opposition to the way in which wealth is distributed, but also a general sense of distrust of capitalist institutions themselves. While that distrust at present does not seem to present any real threat to the global economic order, the tendency of the capitalist system to serve diverse interests depends significantly on the extent to which the public is invested in its success. The general belief that large capitalist actors and institutions are all corrupt and that the economic game is rigged threatens a kind of populist backlash that is likely to be bad both for

[4] Of course democracies are hardly immune to problems in this regard, as recent obstructionism in the American political system, for example, illustrates.

business and social progress itself. Capitalism is far more likely to serve the full spectrum of social interests under conditions in which it secures the justified confidence of the public in its capacity to serve those interests. Contestation serves that aim in essential ways.

### 3.4 The Deliberative Constitution of Public Value

There is a familiar line of criticism extending back to Plato according to which democratic citizens are hopelessly incompetent on matters of public policy, and that their beliefs about government are vulnerable to manipulation by elites (Plato 1992, Schumpeter 1942).
In response to such cynicism, John Dewey argued in *The Public and Its Problems* (1954) that such cynicism was the consequences of a flawed conception of democracy rather than essential features of the democratic public itself. On Dewey's view, insofar as we conceive of democracy principally as a matter of selecting officials to implement the public good, citizens will tend to be passive bystanders to the diverse factors that bear on their good. Without some commitment to cultivating a refined collective conception of the public good, the basic procedural mechanisms of democracy will be inadequate to achieve desirable forms of self-governance. Democracy thus must be understood as a "way of life" and not only a mechanism for selecting officials who will do the work of governance. Specifically, it must be understood to involve a broader spectrum of social norms and institutions so that the public's consciousness of its values, and the challenges that confront those values, can be nourished. So democracy can be thought of as a kind of virtuous feedback loop, in which the values and interests that democracy serves are themselves positively transformed via the practice of democracy itself.

By way of example, consider the case of the environmental movement. The enormous significance that the value of the natural environment has come to assume in policy debates is essentially the consequence of 20th century moral innovations, combined with an explosion in relevant scientific theories. Those moral innovations have been forged through a large-scale process of deliberation, one extended over several decades, about how and why the natural environment should be valued by human beings. The recognition of the natural environment's value has been in part a recognition of imperatives related to our own survival, but has also involved the transformation of human desires and goals, including our understanding of wild places, beauty, and our particular place in the cosmos. In this respect the essential collective interest that we have in respecting the natural environment is a product of the democratic process in two ways: first, it is a consequence of collective inquiry that led to the recognition of the relationship between the natural environment and essential goods (e.g., clean water) whose value we already recognized; second, it is a consequence of transformations in our conception of what sorts of things are worth valuing, and how they should be valued. The development of an environmental consciousness is also illustrative of the distinctive value of public institutions that facilitate vigorous, egalitarian involvement in managing affairs of common concern. The development of a public environmental consciousness is a consequence in this respect of institutions of democratic contestation. And the development of that consciousness, at the same time, is a condition that enables more effective and informed democratic governance.

So democratic contestation achieves the goals of public governance in part by creating conditions in which the animating values of public governance, and the conditions that bear on it, can be better identified and progressively transformed. I have engaged in this digression on environmentalism in order to highlight a particular kind of problem that arises when matters of essential public concern – such as the distribution of scientific research funds, the availability of healthy food, the placement of environmental hazards, etc. – are handled and conceptualized as byproducts of private activities. When activities are conceptualized as private, they are not subject to procedural mechanisms that foster healthy public dialogue, and they are seen as falling outside the full scope of moral and legal responsibility for the service of public aims.

One salient example of this phenomenon is the movement in the United States to privatize many of the most basic functions of the welfare state, including the financial security of the elderly (social security), access to quality healthcare, and the quality of the educational system. When care for the vulnerable members of our society is conceptualized as a government function, responsibility for their welfare is channeled through government agents, and a public debate about our collective obligations to the vulnerable takes the shape of a debate about public policy that entails some measure of responsibility for all citizens. When charity is a private function, however, the responsibility to care for the needy exists everywhere and nowhere. There are no particular agents to be held accountable for collective failures to serve the needy, and public dialogue on questions of social justice is transformed into scattered private conversations about how much of the family budget should go to charity. Dewey's insight about democracy, however, was that when the problems we confront are consequences of collective patterns of behavior, it is essential that we engage in an attempt to forge some common understanding of what in fact the problem is and how to approach it.

## 4. Prospects for Ameliorating the Threat

I have argued that market power is distinctly resistant to the democratic model of social contestation and I have tried to identify some crucial problems that arise from this resistance. The question of how best to deal with this problem hinges on complex matters of law, economic policy, and institutional design that cannot be adequately addressed in the remaining space (nor by the author, who lacks sufficient expertise in these areas). I have tried to offer a diagnosis of some of the ills associated with contemporary capitalism that I hope might at least provide the basis for further inquiry. I will nonetheless conclude by bringing into view the most notable analytical implications of the above, and then turning to consider in general form some ameliorative possibilities.

At the paper's outset, I suggested that there are some widely appreciated threats that capitalism presents to the democratic ideal. Capitalism threatens democracy directly and indirectly through its tendency to produce significant economic and social inequalities. Capitalism also threatens democracy by undermining the kind of public ethos that is essential to the healthy functioning of many democratic institutions.

The arguments above show that democratic contestation would be threatened by market power independently of these issues. Specifically, I have argued that the incontestability of markets (a) subjects individuals to arbitrary effects on essential aspects of their lives, (b) reduces the responsiveness of large-scale social institutions to the full spectrum of essential human interests, (c) undermines warranted trust in economic institutions, and (d) undermines deliberative processes that sustain the identification and positive transformation of public values. In thinking about how to ameliorate the social ills associated with capitalism, we must therefore think structurally about its relationship to the very prospect of social choice and self-determination, independently of matters of inequality and public-spiritedness.

Our diagnosis of the distinctive threat that market power presents to democracy has some more specific implications for theoretical approaches to business ethics. Most conceptions of corporate social responsibility (CSR) introduce some form of obligation to the broader community of "stakeholders," or individuals who are affected by commercial activities. But while an adequate theory of CSR is undoubtedly essential to the amelioration of various problems associated with market power, the model of contestation calls for genuine mechanisms by which control is to be exercised, above and beyond an articulation of moral requirements. Thus, in discussing J.S. Mill's rationale for democracy earlier, I noted his observation that the tendency of political officials to serve the interests of the public depends essentially on the extent to which the public has mechanisms at its disposal to create appropriate incentives and share relevant information. Likewise, aligning the behavior of markets with social aims will require causal mechanisms that facilitate both (a) the transfer of information to firms about how their activities in the marketplace contribute to collective outcomes that bear on public values and (b) some measure of meaningful motivation to serve those values through their contribution to collective market activities. So it is important that our reflection on the morality of individual market behavior is developed in tandem with a conception of institutional and procedural mechanisms that facilitate genuine friction between the public articulation of values and the behavior of firms participating in market activities.

I turn now to consider the practical implications of our discussion: what might be done about all of this? Part of the answer to this question presumably involves democratically governed regulatory structures. Regulatory structures are the definitive institutional device mediating between public expressions of value and the mass patterns of commercial activity that constitute market behavior. Better realizing the ideal of contestation through those structures entails, on the one hand, reforms in the behavior and self-conception of the firms being regulated and, on the other, democratic reforms that better enable effective public oversight of market behavior.

Regarding the behavior and self-conception of firms, I noted above that the invisible hand model of economic activity creates problems for the ideal of contestation. The difficulty is that, to the extent that social progress is a byproduct of something else, there is no intentional organization linking the behavior of markets and market actors to progress. My suggestion, then, is that we need to work out a conception of behavior within markets that reintroduces such organization. Since markets are aggregates of individual behavior, the relevant intentions in this case would be some form of joint intention, i.e., intentions to contribute through one's individual action to goals that are realized through the group as a whole (Gilbert 2000). From this point of view, the normal profit-seeking activities of firms within the market would be justifiable just so long as the collective consequences of those activities can be recognized to contribute properly to the achievement of social goods. This ideal is somewhat distinct from standard conceptions of corporate social responsibility insofar as it focuses, not on the individual consequences of business behavior (though one should not ignore that either), but on the way in which those consequences fit into broader social patterns. Firms are to be held accountable and are to hold themselves accountable by reference to a broader conception of how markets serve social goals.

As a practical matter, taking this kind of accountability seriously would entail more vigorous and less strategic participation in deliberative institutions that serve to articulate and transmit public goals. Such deliberative institutions (I say more about this below) might include formal legislative and economic forums, interactions within commercial organizations and alliances, exchanges with shareholders, and engagement with the broader community. The defining objective in such engagement would be, not the strategic pursuit of individual business interests but, rather, an informed conception of how those profit-seeking activities might contribute to broader social concerns. One suggestive model for what business might look like on these terms is the growing body of "hybrid" firms that seek explicitly to advance socially vital goods through profit-seeking enterprise. Perhaps the most prominent example of this has been the rise of micro-credit organizations that provide small-scale loans to the poor on profitable terms, but there is a now a broad spectrum of organizations that employ the hybrid model in advancing environmental, legal, civic, medical, and other vital goods (Battilana, Lee et al. 2012, Mair, Battilana et al. 2012).

Hybrids, however, do not provide the only model for the conception of profit-seekng activity that I have in mind. One of the crucial obstacles to the alignment of profit-seeking activity with social objectives is that, as part of the conventional logic of market behavior, business firms tend to adopt a deliberately oppositional stance when it comes to regulation. A firm committed to the ideal of collective intentionality would be pro-active in facilitating the pro-social regulation of its own activities alongside the activities of its competitors. An oil company committed to social progress might commit individually to sacrificing some measure of its own profits for the sake of environmental goods. But as a participant in the collective activities of the market, it should endorse gasoline taxes on the presumption that they represent a shared commitment within the industry – and therefore a shared cost as well – to environmental goods that compete with profits. Likewise a pharmaceutical company might take on the individual responsibility of sponsoring unprofitable research that serves the needs of the world's poor. But to conceive of itself as a participant in broader market trends would be to support policy measures that sustain this kind of research across the industry in a coordinated, long-term manner. So improving the democratic contestation of markets seems to entail the reconceptualization of the goals and responsibility of individual firms in a way that introduces some meaningful degree of collective agency to market behavior. To the extent that firms see themselves, and are seen, as intentional participants in collective endeavors, the public will be in a better position to bring them to account through the regulatory system.

But the capacity of the public to wield more effective control over the behavior of markets also implies improvements in our civic and democratic institutions. At present, so much of our economic policy is a consequence of deliberation among policy elites, subject mainly to contestation by organized interest groups whose principal aim is the service of narrow private concerns. To the extent that the public participates in the regulation of markets, it arises too often via paroxysms of populist anger about high taxes, wage inequality, or overseas outsourcing. While such anger is often legitimate, it tends to be at best clumsy and overreaching, and that is likely because of well-documented failures of public knowledge about basic economic ideas among other things (Caplan 2007).

The challenge in this context is of course not unique to questions of economics. Scientific regulatory practice is similarly subject to populist misunderstandings about the risks and potential rewards associated with technological innovations. Likewise, our policy debates surrounding issues such as vaccination and climate change are (particularly in the United States) too often overwhelmed by fallacious conceptions of scientific practice and unwarranted distrust of scientific institutions (Kitcher 2011, Specter 2009). Much as these challenges suggest the need for a reinvigoration and reconceptualization of science education (Kitcher 2011), any improvement in the democratic contestation of markets is likely to entail measures that improve the grasp of ordinary citizens on at least the basics of economic theory and its relationship to policy. But a general comprehension of economic issues will not be sufficient to improve democratic contestation without institutional measures that facilitate a more vigorous mutual exchange between the business community and the general public. In particular, we should seek expansions and improvements of deliberative forums in which the public has the opportunity to interact with businesses and policy makers.

At present, a large portion of such deliberative interaction arises (in the United States anyway) via the communal review of specific proposed commercial endeavors, such as the construction of new housing developments or changes in economic zoning regulations, or tax breaks designed to attract new business. A better model would afford citizens and businesses deliberative opportunities to assess the relationship between businesses and public values in a broader sense, and to think about the threats and prospects presented by more long-term commercial trends (Scherer and Palazzo 2007). James Fishkin's promising experiments with deliberative polling – in which citizens are convened in a carefully designed deliberative forum to address vital issues of public concern – provides one general rubric for this sort of thing (Fishkin 2009). There are also a broad range of initiatives under way in Europe at the moment – such as the National Institute for Health and Care Excellence in the UK or "Publiforums" in Switzerland – which are designed to bring policy elites, stakeholders, and a diverse body of lay citizens into dialogue on public matters such as food, healthcare policy, and environmental policy.[5] While these initiatives are still very much works in progress, they suggest a general framework for creating a more substantive dialogue between business firms, policy elites, and the public about ongoing issues of value as they arise in the economic forum.[6]

[5] See Hagendijk and Irwin 2006 for a useful overview of these kinds of initiatives. For an illuminating discussion of NICE in particular see Lever 2012.

[6] On the promise, problems, and complexity of deliberative interactions between experts and non-experts on technical policy matters, see Jasanoff 2005. Jasanoff's focus is on scientific policy, but there are obvious parallels with economic issues.

Earlier, I suggested that regulation served as a crucial intermediary between the behavior of the market and public expressions of value. In this respect, it would be natural to organize the sorts of deliberative efforts just described around the production of government regulatory measures. But it is also worth emphasizing the inevitable limitations of working through the government.[7] Government activity is constrained by the distinctive dynamics of political maneuvering, bureaucratic inertia, special interest pandering, and other familiar social maladies. At the outset of the paper, I characterized democracy as the egalitarian social contestation of power. But so long as effective contestation requires more than the conventional powers and procedures associated with political rights, the democratic ideal ought to encompass a broader spectrum of norms and institutions. In Dewey's words, democracy is a "way of life" in the sense that it entails a broad spectrum of participation in civic life that allows each citizen to realize a fair controlling stake in the social terms of her existence. Although progress in labor conditions, gender and race relations, and the natural environment, for example, has relied in crucial respects on government action, such progress has been just as dependent on the mobilization of public opinion in other forms: consumer pressure, petitioning, journalistic exposure, and worker and shareholder activism, for example. Such mechanisms provide expressions of public consciousness that can be effective even without government intervention, if only because they present a convincing threat to companies' bottom line.

In this respect, it is important to observe that at least some of the kinds of problems exemplified in cases (1)-(5) are consequences of economic disempowerment. There presumably would not be food deserts, for example, if the consumers who occupied the relevant

[7] I thank David Schmidtz and the students in his Philosophy, Politics, and Economics seminar at the University of Arizona for helping me to see the importance of this point.

neighborhoods had sufficient resources to pay for healthy food. One way of improving the public contestation of market power, therefore, is to pursue measures that improve the economic standing of those who lack sufficient resources to express their values in the marketplace.[8] That is a form of democratization, but one that proceeds independently of political rights and duties. On the business side of things, ethically oriented trade bodies – such as the Fair Labor Association – international organizations that standardize codes of ethical conduct – such as the International Organization for Standardization – and the plethora of socially responsible investment funds now available, all provide models for mobilization apart from government regulation. Though (inevitably) imperfect, such institutions illustrate what the voluntary cultivation of a public consciousness might look like in the business world.

As I have already emphasized, these are only very general suggestions that require much more development. And even under the most optimistic of scenarios, the implementation of participatory democratic initiatives is likely to introduce problems of its own. While Dewey's response to the democratic cynics was a clarion call to reinvigorate rather than abandon the democratic ideal, he was probably too optimistic about the consequences of sustained and responsible citizen engagement with the workings of policy. In response, we must continue to experiment with models of institutional design and, where appropriate, consider measures that are less dependent on broad citizen engagement (perhaps through more elitist deliberative bodies, for example).

In any case, whatever the promise of the suggestions recently put forward, it is important to emphasize that the problem in question, by nature, admits of no tidy or obvious solutions. That is, first, because the claim that failures of democratic contestation introduce significant

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[8] I am grateful to Elizabeth Anderson for this point.

social harms does not show that democratic contestation is the sole aim which ought to guide social organization. I take it for granted, at least for the present purposes of argument, that free markets are the overarching economic framework within which we have the greatest prospects for innovation, prosperity, and the creation of value in the long-term. And I assume that there is no way for markets to advance those prospects without retaining some of the features that collide with democratic contestation. So the question of "what to do?" with respect to contestation is not the question of how to comprehensively realize the democratic ideal within the economic domain. It is the question of how to achieve meaningful improvements in our contestation of markets while preserving their distinctive capacity, under the right circumstances, to do the world quite a lot of good.

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