

The Market's Place in the Provision of Goods

***THE MARKET'S PLACE
IN THE
PROVISION OF GOODS***

De plaats van de markt in de voorziening van goederen
(met een samenvatting in het Nederlands)

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INTRODUCTION

Which goods should we be able to buy and sell on the market and, alternatively, which goods should remain sheltered from the market? The question has proven to be a sticky one. It has survived the success the market had in creating prosperity, ever since its rise in early-modern Western societies. It has also survived the emergence of the post-war welfare state, that is, the more or less successful reconciliation of the market with a basic standard of living for everyone. It has survived the demise of socialism, which brought to an end what was generally considered the most viable alternative to a market-based system. It has survived the “victory of liberalism,” that is, the acceptance of a largely market-based economic order. The question still lingers: is everything up for sale? If not, where should the lines be drawn?

During the 1990s and early 2000s vehement public debates took place in the Netherlands about the privatization of public services such as telephony, public transport and energy. The introduction of a market-based system for health care in 2006 sparked a new round of debate about the market. Also, discussions about the sale of organs, genetic material, babies and sexual services routinely occupy the newspapers columns. Finally, elusive fears about the social impact of “commercialization” continue to be widespread. Even in those cases where few propose withholding a good from the market, there are lingering doubts about the value of such markets. The question remains open as to which opportunities for new markets should be welcomed and which should be frowned upon. This is a confusing predicament, worsened by the tendency for debates about the market to be highly politicized (where articles of faith figure as arguments) and fed by emotions rather than by reasons. Even for those without strong convictions on the question it is hard to make sense of this confusion and to gain clarity about the validity of diverse reasons for accepting or refusing marketization.

In philosophy a debate about the “moral limits of the market” emerged, following the publication of Michael Walzer’s *Spheres of Justice* (1983). The question central to that debate is: *Which goods should be on the market and which goods should not?* This is the main question of the present study as well, and I shall refer to it as “the market question.” The challenge is to understand how the market – with its specific way of bringing together producers, consumers and the

goods that they exchange – relates to (and sometimes clashes with) our aspirations, convictions and concerns about the goods involved.

The formulation of the market question implies a substantive theoretical choice for an analysis at the level of specific goods, *not* at the level of the social order as a whole. This starting point evidently contrasts with the older debates about capitalism versus socialism, which conceived of the market question as a generic question of social order. The contemporary challenge is one of more nuanced debates about the desirable institutional design of smaller bits of social reality. On the whole there are two ways of approach. One approach is to enter the debate with a general preference in favor of the market or in favor of an alternative mechanism of allocation. In that case, all goods should be provided through the market (or the preferred alternative), on the ground that it is in general superior in value to its rivals. The value in question can be welfare, or freedom, or political stability, or any other value. This study's first aim is to show that this strategy – which I will call the “general approach” – presents an unfruitful way of confronting the market issue. Rather, or so I will argue in the first chapter, we should adopt a “contextual approach.” This approach proposes to find an answer to the market question, not by devising an a priori argument for or against the market but by constructing a framework for the evaluation of the marketization (or commodification) of goods.¹

The construction of such a theoretical framework is the second aim of this study. Three chapters in Part I (Chapters 2 to 4) are devoted to this task. One of the main points I will put forward in this part concerns the analysis of institutional strategies. In his theory of justice Michel Walzer held that we should assign the allocation of some goods to the market sphere and others to non-market spheres, resulting in a pluralism of social spheres. I will show that this kind of “Walzerian pluralism” is insufficient for thinking about the market. In many cases several spheres – both market and non-market – might be relevant to the provision of one and the same good; these goods are provided in an “institutional pluralism.” This “pluralizes” our understanding of the interplay between market and non-market in a sense that is additional to Walzerian pluralism (Chapter 3). Another major point

¹ I will use the terms “marketization” and “commodification” as synonyms, as is done in part of the literature. Some authors diverge from this usage and identify commodification with one more specific problem raised by marketization (roughly equivalent with one of my frames: the constitution of goods as commodities, i.e. entities exchangeable and commensurable with others – see Section 2.2). The latter use of commodification as a subspecies of marketization seems to me to narrow the problem of the market unnecessarily. Moreover, it is awkward because the notion of commodity is usually defined in terms of the market: a commodity is a good exchanged (or up for exchange) on a market. I will therefore continue to use the terms interchangeably: commodities are market goods, commodification is marketization, to commodify is to marketize, etc.

is that on the level of moral theory I will criticize approaches that try to draw moral conclusions from a conception of the internal goods of practices. Instead, I will propose a capability theory directed at the formulation of the appropriate ends of those practices in which goods are provided. By selecting and classifying the relevant capabilities we can determine what ends these practices should serve and what role the market can and should (not) play in realizing these ends (Chapter 4). For a more detailed and systematic introduction of the different parts of the theoretical framework, I refer the reader to the end of Chapter 1 (Section 1.4).

The third aim of this study is to show the fruitfulness of the professed contextual discussion of markets by actually engaging in such discussions. Therefore in Part II (Chapters 5 to 7) I discuss markets for three socially important goods. The first example is that of security, that is, services of protection such as they are regularly offered both by public police forces but also by commercially operating security providers. The second case concerns media products, which are provided by market-based media corporations but also by public broadcasters and other non-market parties. Finally, the last application is that of caring activities for dependents (children, the elderly, the disabled), which sometimes take place through informal provision by family members, neighbors and friends, and sometimes by market-based professionals and care institutions (in a separate introduction preceding the chapters in the second part of the book I will explain the reasons for my selection of these three goods). In these chapters I do not aim to deliver a simple step-by-step checklist for policy makers. Tough dilemmas that require practical wisdom will remain just what they are. Nonetheless, I do hope to show that the theoretical framework can help us think more clearly about the conceptual problems that underlie practical questions of marketization for these three practices.

In the last part of this study I first offer a systematic conclusion in which I reflect upon the results of these applications in Part II, drawing comparisons between the three cases and showing what they have taught us about the theoretical framework developed in Part I. In the last chapter I will relate the reflection on the market as developed in this study with the capitalist nature of markets in modern societies. The aim of this final reflection is twofold. The unofficial aim is to relate the results of this study to a line of reasoning that has been highly influential in the philosophical tradition of reflection on the market, running from Aristotle through Marx, which is highly skeptical about its contribution toward the good life (Aristotle) or opportunities for self-realization (Marx). The official aim is to counter an important objection that could be made from this line of thought to the institutionally pluralist arrangements in whose favor I have argued for the goods discussed in the second part. This objection is

that the capitalist dynamic provides a fatal threat to the stability of these arrangements; if left unchecked this dynamic will overrun all non-market arrangements that are left. This objection would force us to reach a much more radical conclusion: we should abolish or restrict markets to a much larger extent than I have argued. In response, I will try to show that we have good reasons for thinking that institutionally pluralist arrangements can be saved. To that end, several strategies to counter the threat can be devised. I will argue that the most promising ones are to tax capital to support non-market provision and to restrict the volume of market operations by a gradual reduction in working time that is proportional to the productivity increases that capitalist markets engender.

These debates about the most promising way to “tame” capitalism need not occupy our minds for now, however. Let us start by sketching the debate between two rival ways of dealing with the market question – the general and the contextual approach.

CHAPTER 1

DEBATING THE MARKET

There are two mutually incompatible approaches that one can take toward the market question – I will refer to these as the “general approach” and the “contextual approach.” Both approaches aim to answer the market question, i.e. to make concrete judgments about the desirability of having markets for the provision of specific goods such as health care or education, sexual or reproductive capabilities, arts or sports, etc. For either approach, the desirability of the market is to be judged against that of rival institutions. The end result would be to provide a “map” of each institution’s scope in the provision of goods. Their argumentative strategy in answering the market question is different however. Since in this study I aim to develop my own version of the contextual approach, it is worthwhile to ask why this approach (whatever more specific version of it one pursues) should be considered better than its main rival. Therefore in this chapter I aim to justify and defend the contextual approach by showing the defects of the general approach. Let me first reconstruct both approaches in their ideal-typical form.

The general approach tries to answer the market question by arguing, first, that at the general level the market (or a rival institution) is superior to its alternatives in realizing one or more general values (or disvalues); values such as freedom, welfare, stability and justice.² In the most radical variant of the general approach the market is the only institution possessing those values. For example, according to some libertarian or anarchistic theories only market exchange can be legitimate – all other alternatives fail. In a weaker variant, the market possesses one or more of those values to a superior extent compared with its rivals (in the following I will take this weaker variant as representative for the general approach). The second step in the general approach is then to argue that this translates into a presupposition of priority in debates about specific goods.³ In this

² I add “or disvalues” because, even though here I focus on the market, the same approach is available to anyone arguing for the general superiority of a rival institution, such as state planning. The general approach is at stake, not its use in favor of the market per se – although that will be my leading example in this chapter.

³ A defender of the general approach may want to argue that his approach does not aim at facilitating debates about the marketization of specific goods. The hierarchy of institutions

set-up, the hierarchy of institutions is a flexible one; the market has mere prima facie priority over alternatives. One assumes that the market should govern the allocation of a specific good unless it is proven that in the specific context an alternative institution performs better. Crucially, this puts the burden of proof on those who want to argue in favor of that alternative.

The contextual approach is mostly referred to as the approach debating the moral limits (or boundaries) of the market. The term “limits” should not be misunderstood as implying that this approach is in some sense a priori negative toward the market. The concept of a limit presupposes *both* that a phenomenon has a legitimate space of its own *and* that there is a space into which it should not extend. This is not only true for the market, but also for the market’s alternatives, which occupy the remaining social space. Each institution can be put to valuable uses in some situations while it will have to concede superiority to other institutions in other situations. The exercise to determine the best institution for a specific good therefore is a comparative one: to decide which institution is *relatively* best in that context. What distinguishes the contextual from the general approach is that no general superiority of one institution is assumed toward that end; the burden of proof is allocated equally to both sides in case of a dispute. Hypothetically, in this approach it is even possible – though highly unlikely – that the map showing the scope of all institutions would display only one institution governing the provision of all goods; but then superiority of that institution is established post facto, after an investigation that started without presupposing that superiority from the outset.

In this chapter I will argue that the market cannot claim general superiority over other institutions; a claim that is to hold *mutatis mutandis* for the market’s rival institutions. If this claim is successfully defended, this will reinforce the need for a contextual approach which studies the market question as a confrontation of the market and its alternatives – conceived as value-neutral institutions – with considerations about specific goods. I will discuss three different subspecies of the general approach, that is, three different kinds of prima facie superiority. My strategy will be to show that every time, if one looks more closely at the proposed kind of superiority, that is, at the specific value attributed to the market, one sees that the same consideration (the same value) can also be turned against the market. This amounts to a strategy of internal criticism: for the sake of argument I do not dispute the relevance of the proposed value, but rather I try to show that it cannot be associated unambiguously with the market (or with a

would be valuable independent of its use for contextual debates. However, this makes the establishment of such a hierarchy into a self-contained exercise, for which it is hard to see what its value consists in, given its – admitted – uselessness for making decisions about the market in practice.

rival institution). The effect is that the relevance of the general approach is largely discredited.

An exhaustive defense of this position would require me to show for *all* possible values that they do not admit the establishment of the prima facie priority of the market (or of an alternative institution). In the context of this chapter that is impossible. I will therefore restrict myself to three of them. First I will investigate the economic priority given to the market on grounds of welfare, by looking at the welfare-based argument in institutional economics for lowering transaction costs to market exchange (Section 1.1). Second, I will discuss the moral priority given to the market on the basis of the alleged freedom it gives to market participants. Here David Gauthier's account of the perfect market will be my leading example (Section 1.2). Finally, I will discuss the political priority of the market on the basis of its contribution to peace and stability. Here Friedrich Hayek will be my leading example (Section 1.3). In all of these discussions, my main aim is to provide a map of the landscape of contemporary debates about the market. I will engage in close reading and quote arguments and theories, sometimes extensively, to show how the market has been conceived and to be able to argue in detail which positions are more attractive – in my view, at least – than others and why. While the primary aim of this survey will be to show that the positions rejecting market priority hold the better cards, a secondary aim will be to introduce several of the themes that will be more fully elaborated in my constructive Chapters 2, 3 and 4. The present chapter will finish by tying the threads together and unfolding the plan for the next three chapters (Section 1.4).

1.1 Economic Priority: Welfare and the Problem of Transaction Costs

The economic case for general market priority – at least in the neoclassical tradition – rests on the value of welfare. Markets should be prima facie favored over other institutions because their ability to enhance welfare is superior to that of these other institutions. The argument for this claim is in terms of the Pareto-optimality of perfect markets. Given certain assumptions, it can be shown that markets will reach a state of general equilibrium which is Pareto-efficient: no transactions can be concluded which would make some market participants better off without making others worse off. This result is known as the First Fundamental Theorem of Welfare Economics.⁴ One thing to note about this result is that it is rather modest. Pareto-efficiency is used as welfare criterion because

⁴ For an accessible presentation of this result, see Hal R. Varian, *Intermediate Microeconomics. A Modern Approach*, 6th ed. (New York: W.W. Norton & Company, 2003), 553-58.

comparing the utility of different market participants is supposed to be impossible. Thus, it might be that welfare is greatly enhanced by taking redistributive measures that disadvantage some market participants to the benefit of others. However, given skepticism about interpersonal comparisons of utility, we have no way of knowing for sure, because we cannot judge how much welfare each agent derives from an increase in his monetary holdings. Hence the retreat to a welfare criterion which requires that all agents benefit (or at least are not disadvantaged).

The most important point about the welfare argument is that the assumptions underlying the model of perfect competition are highly restrictive. These assumptions are that all agents are fully informed, that there are no transaction costs, that agents have consistent and transitive preference orderings, that products are homogenous, competition is perfect and there are no externalities.⁵ In reality, these assumptions are almost never realized: the perfect market that satisfies the Pareto-criterion is nowhere to be found. Market failure, that is, the failure to realize one or more of the assumptions, abounds. Even so, one could admit this and still insist that it does not discredit the welfare argument. For if reality is reformed to bring it in line with the assumptions of the model as much as possible, then the market will approach the Pareto-optimal state sufficiently closely; at least better than any alternative institution could. This second version of the argument frequently drives economists to a policy advice to reform markets by giving market participants more information, break down monopolistic barriers to competition, lower transaction costs and internalize externalities.

Below I will review one of the ways in which this second version of the welfare argument could be pursued, that is, with respect to one of the assumptions: the absence of transaction costs. The choice for focusing on this assumption is not arbitrary. Indeed, many economists have argued that *all* market failures can be presented as giving rise to transaction costs. Kenneth Arrow for example wrote:

Market failure is not absolute; it is better to consider a broader category, that of transaction costs, which in general impede and in particular cases completely block the formation of markets.... Transaction costs are costs of running the economic system.⁶

⁵ John O'Neill, *The Market. Ethics, Knowledge and Politics* (New York: Routledge, 1998), 65. See also Alan Buchanan, *Ethics, Efficiency, and the Market* (Oxford: Clarendon Press, 1985), 14-15.

⁶ Kenneth Arrow, "The Organisation of Economic Activity: Issues Pertinent to the Choice of Market Versus Nonmarket Allocation," in *General Equilibrium. Collected Papers of Kenneth J. Arrow*, ed. Kenneth Arrow (Basil Blackwell), 134. See also the discussion of this point in Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), 8-9.

We get a more elaborate version of this idea from Douglas North, one of the major figures in institutional economics, which is the branch of economics specialized in thinking about the implications of transaction costs. He puts it as follows:

The costliness of information is the key to the costs of transacting, which consist of the costs of measuring the valuable attributes of what is being exchanged and the costs of protecting rights and policing and enforcing agreements. These measurement and enforcement costs are the sources of social, political, and economic institutions.⁷

This quotation brings out the link between transaction costs and one of the other assumptions of the model of the perfectly competitive market, that of perfect information. When agents on the market do not have perfect information, expenditure is needed to acquire it. Similarly, the assumption about the absence of externalities can be linked to transaction costs. When externalities are present, transaction costs will be incurred to overcome them (in turn, the absence of perfect competition due to monopoly is a special case of externality).⁸ As the most general concept in which the phenomenon of market failure can be described, then, let us focus on the welfare argument in terms of transaction costs. It does not take a world in which the model of perfect competition is realized as benchmark, for no such world can ever exist. However, it does take the view that welfare is enhanced by lowering transaction costs that impede market exchanges or even make them impossible. Lowering these costs will bring about movements toward the Pareto-optimum.⁹

The primary way in which this idea is elaborated in institutional economics is in its explanatory guise. It appears as the hypothesis that people act so as to maximize their welfare by devising institutions that lower transaction costs to

⁷ Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), 27.

⁸ "One may then enquire why market transactors are unable to make the emitter of an externality internalise the costs of his actions. The only reason why wealth-maximizing economic agents do not undertake these transactions must be that the cost of carrying out the actual transaction is greater than the expected benefit. Ultimately, the relevance of externalities must lie in the fact that they indicate the presence of some transaction costs." Carl Dahlman, "The Problem of Externality," *The Journal of Law and Economics* (1979), 141-42. Similarly: "In essence, externalities come into being because the transaction costs of resolving them are too high." Richard O. Zerbe and Howard E. McCurdy, "The Failure of Market Failure," *Journal of Policy Analysis and Management* 18, no. 4 (1999).

⁹ This is the implication of Coase's groundbreaking contribution to transaction cost economics, in the explanation given by Dahlman. See Dahlman, "The Problem of Externality," 160. R.H. Coase, "The Problem of Social Cost," *The Journal of Law and Economics* III (1960).

market exchange. This takes the market as the most natural kind of interaction. People are predisposed to act as market agents; it is only when and to the extent that the market fails that other institutions (moral, social, legal, political) arise.¹⁰ Transaction costs are interpreted as barriers that people run into. These may have been erected by nature, by lack of technology, by other people, etc. Given these barriers people will act as efficiently as they can and as soon as they are able to overcome these barriers or to remove them they will do so. The normative interpretation (that is, the welfare argument) is parasitic upon this explanatory hypothesis. It trades “natural” for “normatively best” and sanctions the behavior just described by prescribing welfare maximization through the lowering of transaction costs; that is, through efforts to bring about markets wherever possible and as perfectly functioning as possible. I will now first concentrate on the primary, explanatory version of the argument and come back to its implications for the welfare argument at the end of this section.

The explanatory hypothesis can be subdivided into two parts. The first is the transaction cost *method*: that institution will be chosen that maximizes output, given current transaction costs.¹¹ One could object that the connection between this method and the market is entirely contingent; that the transaction cost method borrows the hypothesis of cost minimization (or output maximization) that has traditionally been conceived to explain outcomes on the market, that is, *within* the institutional framework offered by the market. Put differently, the connection is that a certain calculative logic used to explain market behavior is transposed to explain the choice *across* several institutions, one of which is the market.

¹⁰ For a nice illustration, see a recent book on public policy design by three prominent Dutch economists, who write: “Our starting point is that the broad menu of institutions has been essentially created in an attempt to decrease transaction costs. These transaction costs find their origin in the inability of contracting partners to bind themselves to their promises, both in time and toward the community. These two problems of binding oneself in time and binding oneself to the community, in ever changing shapes, led to the rich pattern of institutions that we can discern in modern society.” (translation mine, R.C.). Coen Teulings, Lans Bovenberg, and Hans van iDalen, *De cirkel van goede nenties. De economie van het publieke belang* (Amsterdam: Amsterdam University Press, 2005), 25.

¹¹ Two pertinent illustrations are given by North and Posner. Douglas North, whom I quoted above, reacted to Karl Polanyi, who tried to question the equation of economics and markets by giving a theory of four basic economic institutions, only one of which is the market. Karl Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001[1944]), 49-61. In response, North maintained that the explanation of the presence in history of each of these institutions could still be explained by the absence and presence of transaction costs. Thus, according to North for example, societies in which reciprocity is dominant “can be considered as a least-cost trading solution where no system of enforcing the terms of exchange between trading units exists.” Douglass C. North, “Markets and Other Allocation Systems in History: The Challenge of Karl Polanyi,” in *Economic Sociology*, ed. Richard Swedberg (Cheltenham: Edward Elgar, 1996), 165.

Nonetheless, for the sake of argument I will not quarrel with the transaction cost method (that is, I choose a strategy of internal criticism). For the method itself conceives of the market as only one among several institutions without giving it a privileged place. The problem is not in the hypothesis that people search the least-cost solution (or so I will grant). The problem lies in the additional hypothesis that *the least-cost solution is market exchange, were it not for the presence of transaction costs*. Only combined with this additional hypothesis can the conclusion be reached that people will attempt to lower these transaction costs and establish market exchange wherever possible.¹² This additional hypothesis is unwarranted, however, as I will now argue by commenting on the ideas of two authors whose arguments bring out very neatly what is so problematic about this hypothesis.¹³

First, Jason Johnston has proposed a “positive theory of restricted exchange.” Johnston wants to explain the prohibition of money exchanges within certain personal relationships, such as between friends and lovers, colleagues and neighbors, etc. The first step is to note that these relationships are characterized by “delayed, in-kind reciprocity.” People in these relations do exchange goods, services and favors. If one would never reciprocate, the relation would break down. But people do not reciprocate immediately and they do not reciprocate a precisely calculated equal value (as in money exchange). Johnston notes that this kind of non-market exchange is risky: one has to trust one’s exchange partners without having guarantees that they will perform their part. This is where the prohibition on money exchange (a social, not a legal norm) comes in:

The restriction on money exchange within the relationship puts a premium on acquiring information about the potential mate. Since the relationship involves bartered exchange... each party has a strong incentive to learn about the human resources and capabilities of the other – what the other has to give – before committing to the relationship. Since the bartered exchange typically will be delayed... each party

¹² For a critical view within institutional economics, see Hodgson, who attacks leading institutional economist Oliver Williamson for taking the market as an “institution-free beginning” that serves to explain non-market institutions such as hierarchies and firms. Geoffrey Hodgson, “The Approach of Institutional Economics,” *Journal of Economic Literature* 36, no. 1 (1998), 182.

¹³ Elinor Ostrom gives another nice illustration of the point that I will make here in her study of the governance of the commons. She shows that the solution of privatizing the commons is not necessarily more efficient than alternative solutions such as establishing centralized state control or systems of self-governance. Elinor Ostrom, *Governing the Commons. The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

has a strong incentive to learn whether the other person is trustworthy and will in fact commit to the relationship and provide what she has to give on fair terms.¹⁴

The restriction on monetary exchange, Johnston notes, “creates vulnerability and increases risk.” In the terms of our discussion, the prohibition *creates* transaction costs. Johnston notes this:

Parties to such relationships might well find the prohibition on money exchange to be a burden, an obstacle to transacting. Indeed, they might be tempted, as in the case of prostitution, to go outside the relationship and make money purchases of services conventionally provided within it. However, by so doing, they reduce the set of services exchanged within the relationship, thus reducing dependency upon it.... To the extent that such reciprocity no longer is valued, because the reciprocal service is provided by some other outside money exchange, commitment is lessened. As commitment falls, so too does the possibility of ensuring reciprocity within the relationship.¹⁵

Both partners in these kinds of personal relationships deliberately lock themselves into the relationship: it is costly to form such a relationship, and therefore costly to end. Here transaction costs are deliberately devised to uphold a scheme of interaction that would otherwise be impossible. This shifts the question of explanation: why would people do so? Why would we have such relationships at all, why not simply go for the alternative of monetary exchange? Indeed, Johnston notes that one could take his theory to show that such relationships and the restriction on monetary exchange that they depend on, are “simply inefficient.” Nonetheless, he notes, “Apparently, for many people, the value of being able to trust their intimates to reciprocate exceeds whatever temporary cost such imperfect and delayed exchange entails.”¹⁶ This is not really an answer, of course. Somewhat later in his text, Johnston does offer a tentative explanation, but I will postpone that for the moment and first introduce another account of the attack on explanatory market priority.

¹⁴ Jason Scott Johnston, “Million-Dollar Mountains: Prices, Sanctions, and the Legal Regulation of Collective Social and Environmental Goods,” *University of Pennsylvania Law Review* 146 (1998), 1338.

¹⁵ *Ibid.* 1339. The same mechanism is described by Dworkin in the context of a discussion of the value of increasing available choices. Gerald Dworkin, “Is More Choice Better Than Less?” in *The Theory and Practice of Autonomy*, ed. Gerald Dworkin (Cambridge: Cambridge University Press, 1988), 75.

¹⁶ Johnston, “Million-Dollar Mountains: Prices, Sanctions, and the Legal Regulation of Collective Social and Environmental Goods,” 1339. In the remainder of his article, Johnston extends the same argument from personal relations to environmental resources, arguing that restrictions on pricing (access to) these resources serves to “force us into mutual dependence with the environment.” Johnston, “Million-Dollar Mountains: Prices, Sanctions, and the Legal Regulation of Collective Social and Environmental Goods,” 1344.

Jules Coleman takes issue with what he calls the “market paradigm.” In his definition of this paradigm we easily recognize the institutional economist starting point sketched above:

In the market paradigm, the perfectly competitive market is taken as a logical and normative point of departure for the analysis and justification of nonmarket, usually legal, political and moral institutions. In this view, law, politics, and morality are to be justified as solutions to the general problem of market failure. When competition fails, collective, cooperate action is necessary.¹⁷

For Coleman, this logical priority of competition is questionable. He maintains that it is just as possible to reverse the construction and to construct cooperation as logically prior to competition. This can be done in two different ways. First, competition occurs wherever the attempts of producers to cooperate with each other in a mutually beneficial price-fixing strategy fail:

So the need for collective action does not depend on the failure of markets; rather impersonal markets emerge because large-number bargaining games embedded within Prisoner’s Dilemma payoff structures are, in general, not solvable and, if solvable, unstable. In this view, nonsolvable collective-action problems are “solved” by competitive mechanisms. Collective and competitive action are plausibly seen as potential solutions to problems of social organization. Neither has any claim to theoretical primacy in the explanation of the emergence of institutions.¹⁸

Competition in this example is shown to be dependent on failed cooperation. Coleman adds a second example. This is the more familiar observation that it is necessary for a competitive market to exist that a stable system of property rights is in place, as well as minimal guarantees as to the absence of force and fraud. In this sense, successful cooperation is a prerequisite of market competition. In both ways, the argument for the logical priority of the market is undermined. Summarizing both observations, Coleman draws the following conclusion: “In the first place, competition itself arises only where cooperation fails, and, second, even where competition succeeds it requires that collective action succeed first.”¹⁹

¹⁷ Jules Coleman, “Competition and Cooperation,” *Ethics* 98, no. 1 (1987), 76.

¹⁸ *Ibid.* 82. This leaves open the question whether cooperation can be explained within the economic method. While Coleman tries to show that cooperation is mutually beneficial (but sometimes unstable), Elizabeth Anderson holds that to explain cooperation we have to go beyond consequentialist reasoning: “When people face a genuine prisoner’s dilemma... cooperation can only be rationalized in terms of a non-act-consequentialist principle of rational choice.” Elizabeth Anderson, “Unstrapping the Straitjacket of ‘Preference’: A Comment on Amartya Sen’s Contributions to Philosophy and Economics,” *Economics and Philosophy* 17 (2001), 27.

¹⁹ Coleman, “Competition and Cooperation,” 83. A similar argument is given by Jules Coleman, *Risks and Wrongs* (Cambridge: Cambridge University Press, 1992), 59-62. More

This brings us to the question mentioned earlier: Why do people cooperate and act in non-market institutions? Johnston and Coleman provide a completely different answer. The opposing directions that they take at this turn are highly instructive. Johnston argues why restrictions are set on monetary exchange in some personal relationships:

It is not every relationship in which such restrictions are imposed, for the point of most relationships is not to develop trust, but rather to exchange goods or services. Yet the qualities of trust and reciprocal cooperation that are learned in our most personal relationships are of enormous social value in lowering the cost of market and money transactions. By forcing vulnerability and commitment in some relationships, restrictions on money exchange actually lower the social cost of forming and performing relationships that do involve money exchange. These restrictions are imposed and supported by social and/or legal sanctions, because they increase the cost of violating trust, and thereby support its development.²⁰

In contrast, Coleman maintains:

In the view I am advancing, the political, legal, and moral realms exist at least in part to resolve disputes for which markets are inappropriate and to articulate commitments markets are poorly suited to express. Unlike market exchange, political and moral institutions are deliberative practices. By conceiving of nonmarket institutions as rational responses to market failure, the market paradigm not only mistakenly implies that cooperation is parasitic upon failed competition, but it also deeply distorts the role of the political, legal, and moral domains within a liberal social-political culture. Rather than being designed primarily to capture gains unattainable by competition under conditions that normally obtain, they are deliberative practices through which values are articulated and communal identity sharpened.²¹

In Johnston's explanation, the importance of establishing non-market relationships is instrumental to the opportunity to realize market exchanges. The trust created in close personal relationships sheltered from the market is necessary to make a market economy function well. Those relationships are seen as a source of cooperative behavior (social capital) that is as much a prerequisite to market

explicitly, he argues against the transaction cost approach as follows: "Even if the fundamental questions of political and moral theory are part of the more general theory of rational social organization, answering them in anything like a useful way requires detailed understanding of a community's history and its culture. It is of no help to argue that the institutions that emerge or would emerge among rational agents at different places and times in different circumstances are a function of 'transaction costs' of one sort or another. For everything that is interesting about a people and relevant to the determination of rational organization among them falls in the category of transaction costs." Coleman, *Risks and Wrongs*, 67.

²⁰ Johnston, "Million-Dollar Mountains: Prices, Sanctions, and the Legal Regulation of Collective Social and Environmental Goods," 1340.

²¹ Coleman, *Risks and Wrongs*, 65.

interaction as the legal system of property rights. In contrast, Coleman provides a rationale for non-market institutions that does not reduce their value to instrumentally serving the market. Rather, they serve to express commitments, values and identities that the market cannot express.²² So who is right? It seems to me that the position taken by Coleman is the more defensible one. The rationale for non-market institutions should not exclusively be found in supporting market institutions. To make that reduction means to interpret the organization of all social life as an effort to facilitate market transactions, which would distort an interpretation on their own terms of all kinds of non-market values, motives and practices. Moreover, we do not need to argue for such a general reduction to accommodate the contribution of non-market institutions to the market. We can refuse this reduction and still admit at least three important contributions.

First, we can grant the fact that non-market institutions *occasionally and coincidentally* also contribute to the psychological, legal and other requirements of market exchange. Trust may be generated in personal relationships and henceforth benefit economic transactions (as well as a host of other interactions), even though it was not generated for that purpose. Second, we can grant the possibility that non-market institutions sometimes also *explicitly* aim to serve those requirements, besides serving other purposes. For example, a system of legal dispute settlement may aim to serve justice as well as predictable economic relations. Finally, we can grant the fact that *some* non-market institutions *exclusively* serve economic transactions, such as the creation of a scheme of property rights. Given the acknowledgement of all these different connections between non-market institutions and market exchange, there is no further need for a general reduction of the former's function to the latter's functioning.²³

²² Strikingly, these positions of both authors do not seem to be strictly dependent on their underlying explanations. It is very well possible to imagine that Johnston would have argued for the conclusion that personal relationships are maintained for their own sake (e.g. because people have a psychological need for maintaining such relationships), or even for the reverse conclusion that monetary exchanges are a prerequisite for the sustenance of personal relations. Equally, Coleman could have argued that cooperation, even while it logically has the same status as competition, serves the purpose of facilitating the market. Indeed, his second particular example of cooperation (legal creation of property rights schemes) does go in that direction, while his first example (collusive behavior between producers) is one of a form of cooperation which, even while it does not serve competition, does serve economic production, not the broader non-market commitments, identities and values to which he alludes later.

²³ Again, I would like to emphasize that although I focus on the explanatory priority accorded to the market, this is only as an example of the general point that no economic institution should be prioritized. Theories that defend the priority of another economic institution are similarly problematic. As an example, take Anatole Anton, who maintains that all goods should be conceived as public goods or "commonstock," rather than private market-exchanged goods. He maintains that the notion of public goods as commonstock is "logically and temporally prior to the economists' notion of a public good. When a society

Now we can return to the welfare argument, which, as I said earlier, is parasitic on the corresponding explanatory hypothesis. The failure of the latter means that we can no longer presuppose that people create non-market institutions merely in order to facilitate markets. If we combine this with the transaction cost method, that is, if we continue to presuppose that people act so as to enhance their welfare, then we get the following result: we can now no longer presuppose that facilitating markets – by removing transaction costs – enhances welfare. Unless people are acting irrationally, there must be something welfare enhancing about creating non-market institutions for their own sake.

Take an example of an institution from Johnston's sphere of personal relations, the laws of marriage and divorce. These laws erect barriers (transaction costs) against exchanging one partner for another. A normative dispute about such laws, say a dispute about a proposal to facilitate divorce, can now no longer be resolved by prescribing that existing transaction costs should be lowered. The dispute is exactly about the desirability of having such transaction costs; that is, about the desirability of making it possible for people to be locked-in in a close relationship versus the desirability of being able to switch relationships at any time (which would mimic a market for relationships). Such a substantive argument about the merits of either situation cannot presuppose from the outset that these transaction costs are barriers that have to be broken down, nor presuppose that they are walls that have to be retained. For then it presupposes what it must establish and becomes circular. In other words, we can remain within the economic method and presuppose that people aim to minimize costs, but argue that what they aim at is still undecided. If they aim to create personal relationships, erecting legal barriers might be a least-cost method to achieve that goal. For example, it might be more costly to establish police controls on their personal relations. Anyhow, whether welfare is served by creating markets or by creating some alternative non-market institution cannot be decided in the abstract.

considers the question of whether to commodify or not, of whether to privatize or not, that which they consider is a commonstock.... The presumption ought to favor the commonstock and place the burden of argument on the shoulders of those who would privatize rather than those who would socialize." Anatole Anton, "Public Goods as Commonstock: Notes on the Receding Commons," in *Not for Sale. In Defense of Public Goods*, eds Anatole Anton, Milton Fisk, and Nancy Holmstrom (Boulder, Colorado: Westview Press, 2000), 12. This theory is right insofar as any decision to bring a good on the market is a social decision, which has to be established and sustained by (political) cooperation. In that sense, the fate of every good is "in common hands:" whether it is to be a market good or not is decided by the relevant community that is authorized to take such decisions. However, it is hard to see why this would mean that *normatively* the burden of argument should be on those claiming that marketization for a specific good is desirable. Rather, the burden of argument should be on every side that proposes a specific institutional arrangement of whatever kind. A presupposition of publicness is as unhelpful as the contrary assumption.

The results of this section are important for the next chapter, where I will build a framework of five ideal-typical modes of provision (one of which is the market) among which we have to make choices. In accordance with the conclusions reached here, none of these five modes of provision will be presented as explanatory prior to one of the others and none of them will be presented as being *prima facie* superior in terms of realizing the value of welfare.

1.2 Moral Priority: The Market as Morally Free Zone

David Gauthier's account of the perfect market as a "morally free zone" combines normative considerations of welfare and of freedom. The welfare-based part of his account is the economic argument that a perfectly competitive market is Pareto-optimal. However, in this section we will be interested in that part of Gauthier's account in which he argues for the moral superiority of the presuppositions of the market in a manner that can be disconnected from the superiority of the outcome in terms of welfare (and therefore still attractive even if that outcome does not materialize). This part of the argument is largely based on considerations of freedom. I will try to show that his argument fails on its own terms. That is to say, I will not dispute the correctness of his account of the presuppositions of the perfectly competitive market. Rather, I will try to show how these presuppositions can be attacked from the same freedom considerations that he uses to defend them. Finally, I will connect this to the broader debate about freedom as a general support for market priority.

When Gauthier says that the market is a "morally free zone" he means that morality "has no application" at a perfectly competitive market. This thesis is understandable only in light of Gauthier's definition of morality as a set of constraints on an individual's rational utility maximization. On the perfect market individuals by definition maximize their utility, so there is no need for morality. Market equilibrium and utility maximization coincide:²⁴

The argument of the advocates of *laissez-faire* may then seem to require the claim that where choice is both utility-maximizing and optimizing, it must also be morally right. But a more profound interpretation of their argument, which we endorse, is that it rests on the claim that morality has no application to market interaction under the conditions for perfect competition. Choice is neither morally right nor wrong, because the coincidence of utility-maximization and optimization in free interaction removes both need and rationale for the constraints that morality provides, which enable us to distinguish choices as right or wrong. Moral constraints arise only in the gap created

²⁴ Gauthier calls this the "optimality of the market." David Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986), 89, 97.

by conflict between the two rationality properties, when mutual benefit is not assured by the pursuit of individual gain.²⁵

In his construction, however, morality plays a role at three levels. These three levels taken together we may call the moral presuppositions of the market, or its “underlying, antecedent morality.”²⁶ First, individuals must *refrain from force and fraud*. This condition makes it clear that the market is not a system of “natural liberty” in a spontaneous sense. Individuals have to recognize the advantages of acting according to the market scheme and accept to refrain from market-incompatible actions that they believe might deliver them advantages at the detriment of other individuals; actions using force or fraud.²⁷ Second, the “operation of the market” according to Gauthier must *exhibit impartiality* to individuals. This condition is essential since actions on the market can only be preempted from moral evaluation because the market as a form of interaction itself has already been evaluated from a moral point of view. Impartiality represents this “moral point of view” and Gauthier argues that the market is impartial, since (a) no one is subject to compulsion – this is the postulate of free individual activity; (b) no one is affected by an activity to which he is not a party – this is the absence of externalities; (c) there is no alternative to the market that is Pareto-superior – the market is Pareto-optimal.²⁸ The third level at which morality plays a role is that of the “conditions of the market.” These must be *justified* or “*non-arbitrary*.” Gauthier argues for the non-arbitrariness of two conditions: (a) a person’s identification with her endowments, which is justified as far as her “basic endowments” (personal capacities) are concerned; (b) mutual unconcern or impersonality of market transactions.²⁹

The potential appeal of Gauthier’s construction is clear: on a perfectly competitive market moral constraints become unnecessary, because each person’s free activity is in harmony with that of others. This means that there is no way for me to have a better outcome than by participating in the scheme (it maximizes my utility). Moreover, others are not made worse off by my activity but instead profit from my participation in our common scheme (it is a scheme of cooperation).

²⁵ Ibid. 93.

²⁶ Ibid. 85. Daniel Hausman distinguishes two interpretations of Gauthier’s claim: “On one interpretation he is saying that moral assessment of the actions of individuals on a PCM is out of place.... On a second interpretation, he is maintaining that moral assessment of a PCM *itself* is out of place.” Daniel M. Hausman, “Are Markets Morally Free Zones?” *Philosophy and Public Affairs* 18, no. 4 (1989), 318. Hausman only discusses the first, weaker interpretation. I follow him in this choice, since it is indeed doubtful whether Gauthier has ever meant to defend the second, stronger claim.

²⁷ Gauthier, *Morals by Agreement*, 85, 92.

²⁸ Ibid. 94-98.

²⁹ Ibid. 99-102.

This makes it the best scheme of interaction. All other schemes require the imposition of moral constraints on individuals and can therefore only be desirable when a market is impossible to maintain: “morality arises from market failure.”³⁰

What to make of this? It is useful to distinguish the level of institutions from the level of actions, where actions are specific moves made according to the rules of an institution. Using this distinction, we could describe Gauthier’s claim as follows. The rules of the market treat every actor impartially – therefore the market is morally neutral toward these actors and their actions. On the level of institutions, however, the market itself – *by virtue of its impartial treatment of individuals and its non-arbitrary conditions* – is morally right, even morally superior to other institutions. But this is only so if the moral presuppositions at the three levels mentioned above are defensible, i.e. if the underlying morality is justified. The overall argument about the market as a morally free zone stands or falls with the defense of these presuppositions. In my view, the argument fails. The main reason is that both the conditions and the operation of the market exercise a constraint on individuals that is not a priori warranted; the market can therefore not simply be taken as the best way of realizing the value of freedom. It is telling that Gauthier himself uses the notion of constraint only when he describes the first level; that people have to refrain from force and fraud. At this level, it is not hard to argue that such a constraint is justifiable. After all, hardly any cooperative institution can come into being without the absence of systemic force and fraud. At the second and third level, the conditions and operation of the market, Gauthier does not use the notion of constraint. However, these conditions and operation of the market constrain individuals just as much as the constraint on force and fraud. At two points we see these constraints emerging in Gauthier’s theory.

A first point is Gauthier’s treatment of “mutual unconcern” as a market condition. On the one hand, he presents a substantive argument for the justifiability of this presupposition: “The impersonality of market society, which has been the object of wide criticism... is instead the basis of the fundamental liberation it affords.” On the other hand, he thinks that his theory provides space for personal relationships: “Against the background of mutual unconcern, particular human relationships of trust and affection may flourish on a voluntary basis.”³¹ The construction seems sympathetic: the market frees people from coercive social bonds, and at the same time gives them the freedom to establish voluntary social bonds outside the market. However, Gauthier cannot have it both ways. In his theory non-market interaction arises only from the failure to have a

³⁰ Ibid. 84.

³¹ Ibid. 102.

market; therefore he cannot simultaneously allow the legitimacy of preferences for non-market forms of interaction. Gauthier recognizes that the market limits options for people who have a preference for being concerned with others, but he fails to notice that such a limit is a constraint. But these limits are indeed constraints that the market puts on individuals' preferred courses of action. The market here appears as a non-morally neutral institution. Freedom will have to reappear at the higher level of the realization of both market and non-market alternatives.

A second example is the presupposition of "free individual activity," which is one of the presuppositions that guarantee the impartiality of the market. This presupposition is part of what Gauthier calls "private ownership" – free activity according to him only extends to an individual's command over his or her privately owned goods. Every good on the perfect market has to take the form of a private good ("consumption of a unit by one person precludes consumption by another") and utility functions have to be independent ("no person gains or loses simply from the utilities of others").³² This implies a constraint for those who have a preference for free action that does *not* take the form of exercising ownership over private goods. As David Miller argues:

The market favours conceptions of the good which are centred on the private enjoyment of commodities, or which have non-commodity elements which run with the logic of the market – for instance, those who enjoy competitive success for its own sake as well as for the income it brings.³³

According to Miller, furthermore, the market cannot handle preferences for public goods, for certain kinds of social relationships (such as friendship) or for the enactment of certain principles like honesty or non-sexism.³⁴ Therefore when people with these preferences are dependent on the market, they will not be able to realize their conceptions of the good life. It is telling that Gauthier himself recognizes that the presupposition of free individual activity limits the possible scope for the market (the market "is not always to be had"),³⁵ but never considers

³² Ibid. 86.

³³ David Miller, *Market, State, and Community. Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press, 1989), 93-94. Similarly, Hausman argues that not everyone would consent to engage in the perfect market, given their different conceptions of the good life: "It is not true that *every* rational agent would consent to the ground rules of a PCM. One reason might be that some agents prefer to live in ways that a PCM and the economic development that results render impossible." Hausman, "Are Markets Morally Free Zones?" 322.

³⁴ Miller, *Market, State, and Community. Theoretical Foundations of Market Socialism*, 82.

³⁵ Gauthier, *Morals by Agreement*, 84.

the possibility that such a limit *constrains* people; that it may limit their abilities to pursue their legitimate preferences. The fact that compulsion is absent for free activity as defined by the market is insufficient to guarantee its justifiability to those with non-market beliefs, values and preferences.

The importance of Miller's consideration can be given more structure if we adopt the distinction introduced by Cass Sunstein and Edna Ullmann-Margalit, between solitary goods and social goods. Solitary goods are goods which have value "independently of whether other people are enjoying or consuming them," while social goods owe their value at least partly to the enjoyment of others. Solitary goods are the familiar kind of private goods. Their enjoyment takes the form of an isolated act of consumption, their value derives from this private form of enjoyment. Social goods are more complicated. Their value partly derives from the act of private consumption, but for another part derives from other people's consumption choices. They can do so both positively and negatively, and Sunstein and Ullmann-Margalit hence distinguish solidarity goods and exclusivity goods: "Solidarity goods have more value to the extent that other people are enjoying them," while "exclusivity goods, in contrast, diminish in value to the extent that other people are enjoying them."³⁶ Examples of solidarity goods include reading books or watching programs that others watch too, visiting museums that others visit too, etc. These provide common experiences that enable one to connect with others.³⁷ On the other hand, exclusivity goods derive their value from their scarcity, such as the consumption of rare antiques or expensive resorts (positional or status goods). All these social goods can be the objects of preferences; but the market may have difficulty providing them (even though it is not always impossible); if so, non-market institutions will be required so that people can choose between market and non-market institutions. Arguably, only where opportunities for such a choice are available are constraints on freedom minimized.

The problem that arises is that to provide for these opportunities in many cases the market itself will have to be constrained to a certain extent. This is most clearly the case with regard to those situations where a block on market exchange

³⁶ Cass Sunstein and Edna Ullmann-Margalit, "Solidarity Goods," *Journal of Political Philosophy* 9, no. 2 (2001), 132. For related distinctions, see Waldron's concept of "communal goods," Jeremy Waldron, "Can Communal Goods Be Human Rights?" in *Liberal Rights. Collected Papers 1981-1991*, ed. Jeremy Waldron (Cambridge: Cambridge University Press, 1993). and Anderson's account of "shared goods. Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge Massachusetts: Harvard University Press, 1993), 144.

³⁷ Several subtypes of solidarity goods can be distinguished, such as club goods, fraternity goods, partnership goods, depending on whether the value of a good derives from the consumption of others in a specific category. Sunstein and Ullmann-Margalit, "Solidarity Goods," 134-36.

is the only way to provide a non-market alternative (think of Johnston's theory about personal relations). It is also true for those situations where a prohibition on market exchange is unnecessary, but a publicly available alternative to the market is required, so that coercive state power is required to tax market outcomes. Libertarians and some liberals have argued that freedom-based considerations cast doubts on almost any such attempt to restrict markets. For example, Gerald Gaus argues:

And there is indeed evidence that people agree that some trades should be blocked; the auctioning of unwanted babies, markets in transplant organs, and buying votes are widely seen as wrong. On the other hand, outside of this basic consensus we find considerable "ideological" disagreement.... So we should be very wary of saying that a certain trade offends "our" moral sensibilities, for "we" have very different attitudes toward the morality of specific trades. Classical liberals are not neutral in this debate: they have insisted that trades that do not harm third parties should be allowed because they are free, and that we should respect people's preferences.³⁸

In this line of thought, the market's freedom consists in the fact that it is a realm of "voluntary exchange," where it is presupposed that other forms of economic organization would lack this kind of freedom. Only harm to third parties would be a legitimate reason to restrict voluntary exchange.³⁹ If this argument is to be endorsed, then the market is to be generally preferred, *even if there are conceptions of the good life that it cannot satisfy*; for the latter conceptions depend for their realization on non-voluntary forms of social cooperation whereas those conceptions compatible with the market do not. This argument goes one step beyond Gauthier's defense of the market, in that non-market conceptions of the good life are now explicitly recognized to exist. Nonetheless, the claim on the part of these conceptions is rejected on the ground of freedom in the sense of voluntariness in exchange. Even though the resulting social arrangement would be explicitly biased toward market-compatible conceptions of the good life, it would be justified on the ground that this is what freedom requires.

The conception of freedom as voluntariness in exchange is often defended through a *moralized* definition of freedom: one is free to do whatever one has a

³⁸ Gerald F. Gaus, "Backwards into the Future: Neorepublicanism as a Postsocialist Critique of Market Society," *Social Philosophy and Policy* 20, no. 1 (2003), 89. I will not investigate the vexed issue of what "the" liberal position is or should be. See Debra Satz, who distinguishes classical and revisionist liberals and argues that even classical liberals such as Adam Smith recognized the need for limits on markets in the name of freedom. Debra Satz, "Liberalism, Economic Freedom, and the Limits of Markets," *Social Philosophy and Policy* 24, no. 1 (2007).

³⁹ Mill himself, however, denied that his harm principle applied to issues of trade. John Stuart Mill, "On Liberty," in *On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, 1991[1859]), 105.

right to do.⁴⁰ This definition has been much discussed in debates between libertarians and socialists over the example of the laborers' freedom to contract with capitalists (and vice versa). On the libertarian position, both laborers and capitalists are free since both act within their rights.⁴¹ The socialist criticism of this position was that it excludes consideration of the number and quality of the options that market agents have. Laborers, although formally free to contract with capitalists (no force or fraud underlies their choices), may nonetheless do so *involuntarily*, in those cases where they lack an attractive alternative.⁴² Thus, even if one goes along with the conflation of freedom and voluntariness, the laborer's choice in those circumstances is to be judged as involuntary. The lacking alternative in these discussions refers to the opportunity for the laborer to make a living outside the market. He has to sell his labor since he has no alternative resources to survive (given capitalism's original sin, the expropriation of small landowners). However that may be, for our purposes the lacking alternatives can also refer to the non-market conceptions of the good life discussed above. A choice for market transaction can hardly count as voluntary if no preferred non-market alternative was available at all. As soon as one rejects the moralized definition of freedom – as it seems we have to do – then freedom considerations do not tilt one way or the other, i.e. toward markets or toward non-market institutions. There is no good reason why market exchanges are by definition voluntary while non-market forms of interaction are by definition involuntary; or vice versa. Rather, it depends upon the availability of alternatives to both whether the choice persons face is to count as voluntary.

⁴⁰ The locus classicus is Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell Publishing, 1974). Amartya Sen distinguishes between two freedom-based arguments. The one derives the defense of market freedom from the protection of original rights (like Nozick), the other from the value of freedom to choose itself (like Milton Friedman). Amartya Sen, "The Moral Standing of the Market," *Social Philosophy and Policy* 2, no. 2 (1985), 3. Milton Friedman, *Capitalism and Freedom*, 40th Anniversary ed. (Chicago: The University of Chicago Press, 2002 [1962]). See also Pettit's treatment of freedom in market exchange in Philip Pettit, "Freedom in the Market," *Politics, Philosophy and Economics* 5, no. 2 (2006).

⁴¹ Gerald Cohen, "Illusions About Private Property and Freedom," in *Issues in Marxist Philosophy*, eds. John Mepham and David-Hillel Ruben (Brighton, Sussex: The Harvester Press, 1981), 228.

⁴² For the standard of an "attractive alternative," see Serena Olsaretti, *Liberty, Desert and the Market. A Philosophical Study* (Cambridge: Cambridge University Press, 2004), 119. She defends this standard by appeal to a criterion of basic needs: "choices made so as to avoid having one's basic needs go unmet are non-voluntary ones." Olsaretti, *Liberty, Desert and the Market. A Philosophical Study*, 140. This objective moral criterion does blunt the edge of the distinction between a moralized and a non-moralized definitions of voluntariness. See Fabienne Peter, "Choice, Consent, and the Legitimacy of Market Transactions," *Economics and Philosophy* 20 (2004), 11.

As may be clear from this discussion, the consideration of the voluntariness of an act (of market exchange) cannot be made in isolation of the available alternatives to that act. Therefore the issue devolves to the higher-level consideration of the institutional menu on offer. Thomas Scanlon discusses the choice between market and non-market institutions from this systemic point of view. He uses a contractarian method and argues that parties in a position to choose a hypothetical social contract cannot unequivocally choose market institutions. The problem, according to him, is that people do not know (a) whether they will be untalented people who would prefer to have non-market institutions or talented people who would do better to opt out of these non-market institutions, and (b) whether or not they will have a preference for “community goods” (comparable to the solidarity goods mentioned above).

In choosing between nonmarket institutions and market institutions we face a choice between institutions that restrict the liberty of some people – those who would do well to become “émigrés” or those for whom the values of community rank relatively low – and institutions that restrict the liberty of others – those who would be subject to the control of others in a market society or those who set a high value on the goods of community. There is no way to frame institutions so as to satisfy both of these groups. Thus, assuming that each generation will include some representatives of each group, no matter how we frame our institutions, some people will be faced, without their consent, with institutions that, in a most obvious sense, they would not have chosen.⁴³

Scanlon’s conclusion seems to me to be the right one. On account of freedom in the sense of voluntary choice, no general priority of the market (nor of non-market institutions) can be established. At one point, however, the set-up of the dilemma Scanlon presents us with is unnecessarily restrictive. Scanlon contemplates the choice between market and non-market institutions for the economy as a whole and presupposes that *either* market *or* non-market institutions have to be chosen. If we focus on the lower level of specific goods, we will see that for some goods this dilemma can be avoided by having market *and* non-market institutions. Ideally, this leaves everybody the choice – something that should be attractive to both groups in Scanlon’s contractualist thought experiment.

⁴³ Thomas Scanlon, “Liberty, Contract, and Contribution,” in *Markets and Morals*, eds Gerald Dworkin, Gordon Bermant, and Peter G. Brown (Washington: Hemisphere Publishing Corporation, 1977), 62-63. He goes on to argue that there is a contractual argument in favor of the latter group (preferring non-market institutions), on the principle that “what one groups stands to lose is weightier than what the other stands to gain.” Scanlon, “Liberty, Contract, and Contribution,” 64. However, this general priority toward non-market institutions seems to me to be highly speculative (indeed, Scanlon does not provide an argument for it).

Presently I will investigate the attractiveness of this kind of “institutional pluralism” in more detail – most notably, whether this solution itself can have the kind of priority that is not to be attributed to any of the separate institutions – market and non-market ones – making up a pluralist institutional setting (see Sections 3.3 and 3.4). But now we will first investigate the third and last kind of *prima facie* priority attributed to the market, on grounds of social stability or peace.

1.3 Political Priority: Peace and Stability

The general political argument is that the market allows peaceful cooperation between many people who have different conceptions of the good life. This argument recognizes the existence of non-market based conceptions of the good life (as did the argument from voluntariness in exchange that we discussed in the second half of the previous section). Indeed, as we will see, the political argument is closely bound up with the argument from voluntariness in exchange. Nonetheless, we have to treat it as a separate argument, for we can imagine that *even if* market exchanges are not generally more voluntary than their non-market counterparts, they may *still* be preferred on grounds of enabling peaceful coexistence of people to a superior extent. Friedrich Hayek has offered a version of the political argument. He states:

The Great Society arose through the discovery that men can live together in peace and mutually benefiting each other without agreeing on the particular aims which they severally pursue. The discovery that by substituting abstract rules of conduct for obligatory concrete ends made it possible to extend the order of peace beyond small groups pursuing the same ends, because it enabled each individual to gain from the skill and knowledge of others whom he need not even know and whose aims could be wholly different from his own. The decisive step which made such peaceful collaboration possible in the absence of concrete common purposes was the adoption of barter or exchange. It was the simple recognition that different persons had different uses for the same things, and that often each of two individuals would benefit if he obtained something the other had, in return for his giving the other what he needed.⁴⁴

The market does not require that individuals agree on ends (Hayek even stresses the fact that exchange partners can benefit more from each other to the extent that their ends diverge more). Instead, the market allows the possibility of

⁴⁴ Friedrich A. Hayek, "The Mirage of Social Justice," in *Law, Legislation and Liberty. A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982), 109. For a discussion of Hayek's view from the perspective of neutrality, see O'Neill, *The Market. Ethics, Knowledge and Politics*, 27-33.

disagreement and still reconciles these diverging ends through mutually beneficial trade. This increases the freedom of each individual to hold his or her own convictions, plans and conceptions of life; but it also guarantees order and peace over a larger population. The two strands – freedom and stability – are intertwined. The advance of this argument over arguments like those made by Gauthier is that it explicitly admits the limitations of the market noted in the previous section. The market cannot satisfy those who have a preference for a variety of forms of collective action. However, Hayek turns this limitation into a general advantage of the market order, and where he does so the stability argument is crucial:

A Great Society has nothing to do with, and is in fact irreconcilable with “solidarity” in the true sense of unitedness in the pursuit of common goals. If we all occasionally feel that it is a good thing to have a common purpose with our fellows, and enjoy a sense of elation when we can act as members of a group aiming at common ends, this is an instinct which we have inherited from tribal society and which no doubt often still stands us in good stead whenever it is important that in a small group we should act in concert to meet a sudden emergency. It shows itself conspicuously when sometimes even the outbreak of war is felt as satisfying a craving for such common purpose; and it manifests itself most clearly in modern times in the two greatest threats to a free civilization: nationalism and socialism.⁴⁵

A similar argument is advanced by Jules Coleman, who, after rejecting the explanatory priority attributed to the market (see Section 1.1) goes on to argue that the market is able to reconcile people’s actions where “there are fundamental disagreements about what counts as a good life or makes life worth living, where the members of a community are diverse in their backgrounds and histories and where they are dispersed geographically.”⁴⁶ In this regard Coleman contrasts the market with “allocation decisions through public debate,” which according to him “create too much strain on the network of abstract bonds that connect members of the community with one another.”⁴⁷ Just like Hayek, relieving people of the need to come to agreement is valued positively and the market is praised as the best means toward that end.

The stability argument is open to empirical contestation. The market may itself create instability, as some have argued, and non-market action may be necessary to create stability. In his historical study on the political arguments for capitalism Albert Hirschman showed that in 18th- century discussions the doctrine of *doux commerce* was an important rationale in favor of the rising market order.

⁴⁵ Hayek, “The Mirage of Social Justice,” 111.

⁴⁶ Coleman, *Risks and Wrongs*, 69.

⁴⁷ Loc.cit.

The doctrine emerged in an intellectual climate in which passions and interests were increasingly distinguished and opposed to each other:

The opposition between interests and passions could also mean or convey a different thought, much more startling in view of traditional values; namely, that *one set of passions, hitherto known variously as greed, avarice, or love of lucre, could be usefully employed to oppose and bridle such other passions as ambition, lust for power, or sexual lust...* But once money-making wore the label of “interests” and reentered in this disguise the competition with the other passions, it was suddenly acclaimed and even given the task of holding back those passions that had long been thought to be much less reprehensible.⁴⁸

Hirschman shows how the chief danger to social order was thought to be a lack of predictability or inconstancy resulting from the free reign given to the passions. The passion for monetary gain was seen to provide a solution to this problem, for it gave rise to interests – and a man’s interests could be foreseen and thus provided a reliable guide to his behavior.⁴⁹ In addition it was necessary to show that the striving for monetary gain itself was harmless, and this is what the doctrine of *doux commerce* established. This doctrine relied on an understanding of the differential qualities of the different social groups which in itself was not new. However, the doctrine reversed the moral priority attached to the violent passions in the feudal social order:

anyone who did not belong to the nobility could not, *by definition*, share in heroic virtues or violent passions. After all, such a person had only interests and not glory to pursue, and everybody *knew* that this pursuit was bound to be *doux* in comparison to the passionate pastimes and savage exploits of the aristocracy.⁵⁰

The doctrine of *doux commerce* supports very well Hayek’s claims in the passages quoted above. However, Hirschman in his evaluation of the doctrine’s course in the 19th and 20th century notices that other doctrines threw doubts on the stability promised by a market society. Thus, he remarks about new republican theories:

Relative deprivation and *ressentiment* resulting from actual or feared downward mobility are here seen as intimately bound up with the acquisitive society and its tumultuous ways, and these feelings are viewed as breeding ground for the ready acceptance of whatever “strong” government promises to stave off such real or

⁴⁸See Albert Hirschman, *The Passions and the Interests. Political Arguments for Capitalism before Its Triumph* (Princeton: Princeton University Press, 1997), 40-42.

⁴⁹ *Ibid.* 48-56.

⁵⁰ *Ibid.* 63.

imagined dangers. Moreover, commerce creates a desire for tranquility and efficiency, and this may be another source of despotism.⁵¹

From his survey of clashing doctrines, Hirschman concludes that “economic expansion is *basically and simultaneously* ambivalent in its political effects.” On the one hand capitalism may create stability through the mechanisms described by the doctrine of *doux commerce*. On the other hand, it may destabilize society in several ways: through the violent passions of those who experience the disadvantages of the capitalist system; through the repression of popular resistance to the functioning of the economy; or through the chances given to new tyrants as a consequence of the indifference and lack of civic spirit on the part of those engaged in their narrow interest-based economic competition.⁵² The outcome of these countervailing tendencies cannot be predicted in the abstract. No market priority on grounds of stability can be defended.

There is one additional argument in support of the inconclusiveness of the stability criterion. Hirschman goes along quite easily with the views he describes by characterizing contemporary Western societies as capitalist. This grants too much to those who would still hold that, all things considered, over the last two centuries capitalist societies have by and large proven to be more stable than non-capitalist societies. For even if we endorse this conclusion, we can only go so far as to say that what has been stable is a mixed economy. Admittedly, in this mixed economy the market is an important ingredient, but so is government, and so are various domains of non-market interaction (civil society, the family).⁵³ The difficulty in assessing such a mixed economy, if it is stable, is to show which of the ingredients have been the “stabilizers” and which – if any – have been the “destabilizers.” This would be the challenge to anyone holding on to the original view described by Hayek and others, and I do not see how it could be easily met. This is of fundamental importance to the stability argument. If we do not know

⁵¹ Ibid. 121.

⁵² Ibid. 124. This is his approving summary of the position he attributes to Ferguson and Tocqueville, against the Marxist position that capitalism is necessarily unstable. Hirschman wrote more extensively on these destabilizing tendencies, discussing the theories of Fred Hirsch, Schumpeter, Horkheimer, Simmel, Durkheim, and others, in his summary of the “self-destruction thesis” in Albert Hirschman, “Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble?” *Journal of Economic Literature* 20, no. 4 (1982). Polanyi also strongly believed that capitalism has strong destabilizing effects, but he was more hopeful than Marx that society would be able, in a “double movement,” to re-embed the economy in the broader social system. Thus, he concurs with Hirschman on the openness of capitalism’s score on the stability issue. Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time*.

⁵³ For an attempt to measure the relative parts of each of these in the economy, see Colin C. Williams, *A Commodified World? Mapping the Limits of Capitalism* (London: Zed Books, 2005).

whether the market is a stabilizer or a destabilizer, the market cannot be prioritized on grounds of stability. Hayek's position may provide an argument for having a sufficiently large market order (so that individuals are not dependent on other individuals' ends), but cannot specify how large it should be. Whether or not the addition of new goods and services to the market domain stabilizes the social order further or destabilizes it remains unforeseeable.

Finally, we could also object to Hayek's argument because it makes a mockery of non-market forms of action by associating them with tribal instincts, violent action (war) and totalitarian ideologies (nationalism and socialism). The point of view of Habermas's theory of systems and life world provides one way of formulating this objection. According to Habermas, the kind of systemic integration forged by autonomous subsystems such as the market provides a solution to the growing pressure on the social integration mechanisms associated with communicative action: in the market there is less need for mutual understanding and consensus (cf. Hayek's consensus on common ends). However, these subsystems can also come to colonize the mechanisms of social integration in turn.⁵⁴ Following Habermas, I think that a balance between both types of social integration, rather than a generalized disdain for collective action is more conducive to social stability. In this balance, the market relieves autonomous subjects from the constant need to reach communicative consensus, but it also provides a danger to social integration when it threatens to subject them to its own systemic imperatives.

In the remainder of this study, the issue of stability will reappear at several points (most notably in Section 3.2 and Chapter 8). However, I will define stability somewhat differently. As we have seen, Hayek, Hirschman and others associate stability with the possibilities for peaceful cooperation in pluralist societies. I will presuppose that the peaceful character of the social order as a whole is not directly at stake in debating markets for specific goods. Rather, what is at issue is stability in the more modest sense that institutional solutions do not immediately break down but are able to survive over time. In this more modest definition, the main threat to stability is that normative ends are incompatible with specific institutional strategies to attain those ends. Stability will be a test of the feasibility over time of those institutional strategies that we normatively endorse.

⁵⁴ Jürgen Habermas, *Theorie des kommunikativen Handelns. Band 2 Zur Kritik der funktionalistische Vernunft* (Frankfurt am Main: Suhrkamp, 1981), 272-73.

1.4 Theoretical Demands on the Contextual Approach

In the preceding three sections I hope to have shown convincingly that we should reject the general approach to the market question and its a priori attribution of superiority to the market. The market was shown not to be *prima facie* superior to its rivals, in three variants of that claim: it does not bring more welfare (economic priority), a freer kind of interaction (moral priority) or a more stable and peaceful kind of interaction (political priority). Moreover, we have seen that non-market forms of interaction play a crucial role in each of these three discussions. First, they make it difficult to treat the market as a welfare-inducing benchmark; second, they make it difficult to argue that those with a preference for them are unconstrained in their choices; third, they may be needed to create stability when market interactions render society vulnerable to resentment and indifference to political despotism. Of course, new considerations outside of these three examples could be proposed to establish market priority on other grounds. Nonetheless, I take it that the discussion so far makes plausible the claim that it is more useful to stop searching for such abstract, generalized qualities of the market. Rather, we should engage in debates about the positive or negative contributions the market may make to the governance of specific practices without assuming a pre-established hierarchy of institutions that puts a larger burden of proof on one side than on the other.

Such a contextual approach requires a theoretical framework, and this is what the next three chapters aim to provide. The construction of this framework is guided by the idea that we need three “building blocks,” corresponding to the three questions that anyone who deliberates about the marketization of a specific good must answer. The first question is: What would it mean if we subject this or that good to the market? This is the question as to the *market conception* that we are using. Such a conception should tell us what standard characteristics are entailed by the marketization of a good. Moreover, this first building block should also give us the characteristics of the main rivals of the market. In the present chapter these alternatives have not systematically been explored. But only when we can make comparisons between these institutions can we begin to make informed choices about whether marketization would be a good idea or not. Chapter 2 is devoted to a detailed formulation of ideal-typical conceptions of five main “modes of provision” (as I will call the institutions of the market and its rivals).

On the basis of these understandings the second question is: What are the options concerning marketization that are open to us and how do we compare these options? This is the question as to the available *institutional strategies* and *criteria for institutional choice*, that is, for choosing between these strategies. I

will present four institutional strategies for the market: to bring a good to the market, to prohibit marketization, to bring a good to the market but subject it to regulation, or to bring a good to the market but simultaneously to provide non-market alternatives. These four institutional strategies present us with the various potential outcomes we can decide to adopt; they offer the institutional menu from which we have to choose. Then I will argue for the usefulness of three criteria to guide our choices between these strategies: the value of the outcomes generated by a strategy, the value of the process of participating in that strategy, and the expected stability of that strategy. Both these institutional strategies and criteria are presented in Chapter 3. Moreover, that chapter discusses one of these strategies in detail: the strategy of institutional pluralism. I will argue that there is no general case for institutional pluralism over other institutional strategies, although the enhanced opportunities for choice that it offers make it an attractive arrangement for some situations.

The third building block, discussed in Chapter 4, has to provide a guideline for answering the normative question: Why should or should we not marketize a good; what are the reasons for doing so? This question will be translated in terms of the search for the ends that should guide the practices in which goods are provided. These ends, I will propose, can be formulated using three moral criteria which each relate to enabling a different aspect of person's capacity for agency: the development of agency where it is still absent, the protection of agency (once developed) against violations, and the exercise of agency in a diversity of self-chosen activities. Moreover, each of these criteria requires the realization of a specific set of capabilities and their conversion into actual functioning in the context of practices. After a critical discussion of other moral theories for the evaluation of commodification, Chapter 4 will be devoted to a presentation of the three criteria just mentioned.

This may all sound fairly abstract; but I trust that things will become clearer as we proceed. Above all, these three building blocks will have to show their usefulness in their application. To that end, the three specific practices of providing security services, mass media content and care for dependents will be discussed in detail in the second part of this study. For the selection of these practices, I refer to the separate introduction at the beginning of Part II.

PART I THEORETICAL FRAMEWORK

CHAPTER 2

THE MARKET AND ITS ALTERNATIVES

If we want to make decisions about introducing markets, we first of all have to know what we mean when speaking about markets. We need a *conception* of the market. Without such a conception our normative judgments about the desirability of markets will lack firm grounding. Upon closer scrutiny any normative judgment about the market will reveal its reliance on such a conception, even if it fails to make this explicit. The importance of having a market conception is particularly revealed in the vulnerability of these judgments to the charge that they rely on attributing characteristics to “the market” that are in fact merely accidental to it: “you say that a market for x is objectionable since it implies y , but in fact, we can have a market for x without having y .” To avoid such charges, any normative theory is wisely advised to develop an underlying social theory of the market.⁵⁵ Moreover, that theory should include conceptions of the main alternatives to the market; for the market question involves comparison of those alternatives. This chapter aims to develop such a theory. Most of the characteristics attributed to the market and its alternatives in this chapter are not meant to be particularly controversial. Rather, my aim is to provide a map of the landscape. Many of the items described will hopefully strike the reader as familiar; indeed familiarity is a sign of success, for it would show that the ideal types offered here fit our use of them in real social practices. Nonetheless the assemblage of these items is inevitably somewhat idiosyncratic.

The first section gives definitions of the basic concepts that I will make use of. I will present the market as a “mode of provision,” and modes of provision as a specific kind of institution. Institutions are norms and rules that govern practices. I will first explain what I mean by practices and institutions in general and how they relate to each other. Then I explain what kind of institution a mode of provision is. By way of digression, I will contrast this conceptual framework with

⁵⁵ For general discussions about the problems of defining the market, see Viviana Zelizer, “Beyond the Polemics on the Market: Establishing a Theoretical and Empirical Agenda,” *Sociological Forum* 3, no. 4 (1988). Greta R. Krippner, “The Elusive Market: Embeddedness and the Paradigma of Economic Sociology,” *Theory and Society* 30 (2001).

the “spheres approach” (Section 2.1). The next three sections outline the content of the five ideal-type modes of provision: self-provision, informal provision, market provision, professional provision and public provision. Three points of comparison or “frames” serve to mark the differences between them. In each of these three sections, I will first by way of conceptual analysis explain how each mode of provision is to be classified within the frame and then show the normative relevance of these frames to our subject, i.e. to debates about commodification. The first frame is about the economic constitution of goods, that is, about the absence or presence of exchangeability and commensurability for the goods that are to be provided (Section 2.2). The second frame is about the creation of the rules of provision and describes how each mode of provision creates these rules (Section 2.3). The third frame is about the subjective dispositions needed to act successfully according to the modes of provision. It discusses to what extent each mode relies on the establishment of social relations between the participants (Section 2.4). I will conclude with some remarks clarifying various aspects of the theoretical setup introduced in this chapter (Section 2.5)

2.1. The Conceptual Apparatus: Practices, Institutions and Modes of Provision

The overarching social entity in which goods are provided I will call a *practice*. Practices are defined as more or less coherent and stable clusters of actions, characterized by specific ends, institutions, participants, materials and technologies. Coherence means that the actions within a practice are mutually interrelated and connected. Stability refers to the fact that this coherent pattern of activities is not a one-time performance but recurs over time. Of the five elements mentioned, the last three elements form the “physical structure” of a practice. Participants have to be present for there to be any activity, materials are used within these activities and technologies mediate the relations between persons and materials.⁵⁶ The other two elements (ends and institutions) together form the “normative structure” of the practice. They prescribe how participants have to conduct themselves if their actions are to count as actions within that practice. The ends that the activities within a practice should serve form its “teleological structure” (devising a moral theory for establishing the *right* ends will be the

⁵⁶ Theoretically, one can imagine a practice without materials, taking place purely at the level of social interaction between participants (although these practices will be rare exceptions). In contrast, a practice without participants, i.e. without persons, is inconceivable, since participants are necessary to generate actions.

subject of Chapter 4). The concrete rules and norms that mediate between the ends and the physical structure form the “institutional structure.” These rules and norms formulate how the ends are to be realized by the available persons and physical objects.

For example, academic education is a practice whose general end is to teach students a certain academic discipline. On many occasions this end will have to be further specified. Is academic disciplines teaching aimed at enhancing the market value of students; should it contribute to their intellectual development; or rather to their civic virtues? Answers to such questions provide a fuller, more specific picture of the ends of the practice. The physical structure consists of teaching materials, pedagogical techniques, buildings and facilities, people in diverse roles, etc. Institutions mediate between these two. For example, they stipulate which people are to be treated as participants in this practice (admission criteria) and formulate what an appropriate execution of their roles would be like (diploma requirements, student rights, rules of fraud, etc.). They determine which technologies should be used to achieve the ends (e.g. which electronic resources) and which physical instruments should be used (e.g. what kind of buildings and facilities). As one leading exponent of institutional economics wrote:

Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction.... They are perfectly analogous to the rules of the game in a competitive team sport. That is, they consist of formal, written rules as well as typically unwritten codes of conduct that underlie and supplement formal rules.... And as this analogy would imply, the rules and informal codes are sometimes violated and punishment is exacted.⁵⁷

Following this definition, institutions are an integral, constitutive part of practices – just as games could not exist without rules. The fact that institutions can be either formal or informal means that I do not require practices to be formally organized (“institutionalized” in some usages of that term). In some practices interaction is a matter of following informal rules: rules of thumb, conventions, traditions, etc. The defining characteristic is that in both cases interactions are governed by rules of some kind. *All* practices have an institutional structure, because the necessary coherence and stability can only come about with the presence of a set of guiding rules (“software”) to mould the physical structure (“hardware”). Even when these are so informal as to be only implicit and unconsciously known, institutions provide guidance as to how to behave in order to realize and uphold a practice. This excludes from our notion of a practice the case of mere habits; but as soon as participants develop an expectation that others

⁵⁷ North, *Institutions, Institutional Change and Economic Performance*, 3-4.

will act upon their habits, a routine with normative implications is established – and thus a practice.⁵⁸

Modes of provision are those specific kinds of institution that provide an answer to the specific problem of the *economic organization* of a practice.⁵⁹ Each mode of provision integrates the three stages of the economic process – production, exchange and consumption – in its own unique manner.⁶⁰ The aim in doing so is to solve the economic problem of how to satisfy individual preferences under conditions of scarcity: the preferences of consumers to consume goods, but also the preferences of producers to provide these goods. Just as those determining the normative structure of academic teaching – university boards, faculty members, national governments, and others – have to make choices about other institutions, so they have to make a choice about the mode of provision to be used so that preferences for education are satisfied; for example, the market mode of provision or some other (In addition, they will have to decide on the more specific norms and rules that have to accompany these modes of provision in order to make for a workable practice, see Section 3.1.).⁶¹ To avoid unhelpful theoretical fragmentation, it is best to distinguish a limited number of modes of provision, which function as ideal types. Different classifications have been proposed, most of which focus on a few basic types. Often the choice has been restricted to “market or state,” but this dichotomy is clearly too narrow and

⁵⁸ While practices depend on having institutions, as Bourdieu recognizes, institutions for their viability also depend on their “objectification” in the “durable dispositions” (*habitus*) of the practice participants. Pierre Bourdieu, *The Logic of Practice* (Stanford, California: Stanford University Press, 1990), 58. I will include the dispositions of participants in the description of the modes of provision (see Section 2.4) – but it is important to realize that these are the *ideal-typically required* dispositions corresponding to these modes of provision.

⁵⁹ Other terms are also used in the literature instead of modes of provision. I have not chosen “exchange mechanism,” for it does not cover one of my modes of provision (where no exchange takes place); “allocation mechanism” focuses too narrowly on only one aspect of what a mode of provision “does;” “coordination mechanism,” with its focus on the coordination of (inter)actions in general, is too broad. “Mode of provision” is more specific in that providing a good is the relevant kind of action.

⁶⁰ The three stages are analytically separated: it is not required that “in real time” these stages occur in succession. They may also happen at the same time (especially in the case of services which are simultaneously produced and consumed).

⁶¹ One could ask whether for *all* practices a choice for one mode of provision needs to be made. The answer is negative, for only those practices need a mode of provision that provide a good that can be the object of the three stages (production, exchange and consumption). I leave out of consideration the complex issue of when this is or is not the case; in this study I will only be concerned with practices for which some mode of provision has to be used; where the contentious question is *which one* this should be. Note that the question as to the necessity that a practice have a mode of provision is different from the question whether for those practices for which we have to identify some mode of provision, *each* mode of provision is an option (e.g. can we marketize all practices?).

misses several non-market and non-state options. In the next sections I will develop a framework consisting of five modes of provision: self-provision, informal provision, market provision, professional provision and public provision.⁶² Each of these modes “frames” economic interactions in a different way. In the next three sections I will identify three such frames and show how the five main modes of provision emerge as a consequence of their differential scores on each of these frames.

Changes in modes of provision have an important bearing on the practice in which they figure. In fact, when the mode of provision is changed we may well wonder if the practice can be said to provide the same good. Imagine the transition of an educational practice from publicly provided to market-based practice. Can we still say that this practice provides “the same good?” One element (the mode of provision) is different, and that most often has important effects on the other elements of the practice, especially on the good to be provided; which is now education-through-market-provision instead of education-through-public-provision. One might be tempted to think that as a consequence a

⁶² In thinking about this classification, I have been inspired and informed by the following works. In the philosophical commodification debate, my ideal types in many respects resemble those given by Anderson, *Value in Ethics and Economics*, 143-62. In economic anthropology, by Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time*. His framework was modified by anthropologist Marshall Sahlins, *Stone Age Economics* (New York: Aldine de Gruyter, 1972). In psychology, there is the theory of “relational forms” in Alan Page Fiske, *Structures of Social Life* (New York: The Free Press, 1991). See also Alan Page Fiske and Philip E. Tetlock, “Taboo Trade-Offs: Reactions to Transactions That Transgress the Spheres of Justice,” *Political Psychology* 18, no. 2 (1997). In institutional economics, Williamson and others have made distinctions between several institutions that are alternatives to the market. See Williamson, *The Economic Institutions of Capitalism*. Oliver Williamson, “Comparative Economic Organisation; The Analysis of Discrete Structural Alternatives,” *Administrative Science Quarterly* 36, no. 2 (1991). William G. Ouchi, “Markets, Bureaucracies, and Clans,” *Administrative Science Quarterly* 25, no. 1 (1980). Grahame Thompson et al., “Introduction,” in *Markets, Hierarchies and Networks. The Coordination of Social Life*, eds Grahame Thompson, et al. (London: Sage Publications, 1991). In economic sociology, a literature on several economic coordination mechanisms has emerged. See Robert Boyer and J. Rogers Hollingsworth, “Coordination of Economic Actors and Social Systems of Production,” in *Contemporary Capitalism. The Embeddedness of Institutions*, eds J. Rogers Hollingsworth and Robert Boyer (Cambridge: Cambridge University Press, 1997). Claus Offe, “Civil Society and Social Order: Demarcating and Combining Market, State, and Community,” in *Advancing Socio-Economics. An Institutional Perspective*, eds J. Rogers Hollingsworth, Karl Müller, and Ellen Jane Hollingsworth (Oxford: Rowman & Littlefield Publishers, 2002). Wolfgang Streeck and Philippe C. Schmitter, “Community, Market, State and Associations? The Prospective Contribution of Interest Governance to Social Order,” *European Sociological Review* 1, no. 2 (1985). Frans van Waarden, “Market Institutions as Communicating Vessels: Changes between Economic Coordination Principles as a Consequence of Deregulation Policies,” in *Advancing Socio-Economics. An Institutional Perspective*, eds J. Rogers Hollingsworth, Karl Müller, and Ellen Jane Hollingsworth (Oxford: Rowman & Littlefield Publishers, 2002).

comparison becomes impossible: one can no longer ask: For good x , should we have mode of provision a or b ? since x itself changes when provided through a or b .⁶³ However, if a practice changes its mode of provision, the second practice is to be considered the successor of the first one. One could therefore say it is a different practice, but with equal justice it can be said to be the same practice which has evolved in a certain way (am I the same person as this morning, given the continuous process of cellular change?). The substantive normative question remains the same. Formulated as about a choice between different practices it is: Should we want to have the package x -cum- a or x -cum- b ? Formulated as about the same practice it is: Should good x be provided through a or through b ? However conceived, the predicament is that there is some identifiable – albeit evolving – cluster of activities about which a choice has to be made. We therefore need independent arguments referring to the desirableness of one of the alternatives over the other (or for having both).

Digression – comparison to the spheres approach. For those interested, I will now relate my exposition of the basic concepts to the alternative characterization of the market as a “sphere” as often found in the literature on commodification. Michael Walzer in his well-known *Spheres of Justice* (1983) distinguished several spheres and related the question of distributive justice to the allocation of social goods over these spheres, one of which was the market (or, as he called it, the sphere of “money and commodities”). The main criticism of his approach has been that it carves up social reality into different domains that have to be rigidly separated from each other, while in fact more nuanced understandings of reality do more justice to the meanings we attach to different goods. Thus, Margaret Radin accuses the spheres approach of “compartmentalizing” reality: “the traditional view wrongly implies the existence of a large domain of pure free-market transactions to which special kinds of personal interactions form a special exception.”⁶⁴ Similarly, Viviana Zelizer accuses two defenders of the spheres approach – Walzer and Elizabeth Anderson – of what she calls the “hostile

⁶³ Adrian Walsh discusses the example of a professor who replies to the objection that he should not commodify his teaching, that he is now simply doing something else instead: he is now “queaching,” so the objection does not apply. Walsh rejects the professor’s rhetorical move, but he concludes that it necessitates an independent account of human interests or values to choose between the rival ways of organization: “the presumption that the violation of expressive ideals and values is ethically undesirable cannot be derived simply from an analysis of meaning.... We need some additional account of why some valuations are more appropriate than others.” Adrian Walsh, “Teaching, Preaching, and Queaching About Commodities,” *The Southern Journal of Philosophy* 36 (1998), 443.

⁶⁴ Margaret Jane Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things* (Cambridge Massachusetts: Harvard University Press, 1996), 30.

worlds” view, which treats market and non-market domains as mutually exclusive. This approach according to her misses “the many ways in which monetary transfers coexist with intimate relations.”⁶⁵ Insofar as these criticisms are directed at the strategy of distinguishing different spheres, they are misguided. They mistake ideal types for actually existing social entities. “Spheres” are theoretical constructs that may or may not be helpful to analyze social reality. These constructs fully allow for the allocation of a good not to be determined by one pure ideal type, but by a more complex mixture of ideal types. The spheres approach allows “sphere differentiation” or “mitigated pluralism.”⁶⁶ Of course, as a matter of moral judgment, one may advocate that most or all goods should fall into pure spheres (perhaps the fact that Walzer made such judgments has misled people into thinking that this is what the spheres idiom requires). The approach itself however allows for deviations from pure spheres.

A more penetrating criticism shows that Walzer’s theory is ambiguous between two interpretations of spheres, both of which are problematic.⁶⁷ On one interpretation Walzer identifies spheres with *distribuenda*, i.e. classes of goods such as welfare, membership, education, recognition, etc. for which a certain distributive principle is found to be appropriate. The argument then is that a certain good should belong to this sphere, so that we can conclude that the distributive principle applies to it. For example, if we think of the sphere of medical care as inherently governed by the principle of need, we could make an argument that good *x* (e.g. paramedical care) belongs to the sphere of medical care and then claim that it therefore should also be distributed by need. But, as Govert den Hartogh has argued, this argumentative strategy is a non sequitur:

Of course, we can always say of an excluded facility that it isn’t really “health care,” but the point is that this is not an argument. It cannot be an objection against taking some health care provision from the welfare packages that this “crosses boundaries between spheres.” Whether it does has to be argued for by reference to the relevant principles of justice, given the importance of the good in terms of prevalent

⁶⁵ Viviana Zelizer, “The Purchase of Intimacy,” *Law and Social Inquiry* 25 (2000), 826.

⁶⁶ Elizabeth Anderson emphasizes this in her discussion of the professional sphere: “The goods internal to these professions become *partially commodified*. Pluralism does not repudiate such mixed practices. Sphere differentiation should not be confused with complete sphere segregation.” Anderson, *Value in Ethics and Economics*, 147. Similarly, Margot Trappenburg characterizes “mitigated pluralists” as those who dislike Walzer’s “principle of spherical autonomy” which requires “a strict separation of spheres.” Margo Trappenburg, “In Defence of Pure Pluralism: Two Readings of Walzer’s Spheres of Justice,” *Journal of Political Philosophy* 8, no. 3 (2000), 346.

⁶⁷ For the following, I am indebted to Govert den Hartogh, “The Architectonic of Michael Walzer’s Theory of Justice,” *Political Theory* 27, no. 4 (1999).

conceptions of the good life. There is no shortcut by means of the spurious classification of “spheres.”⁶⁸

This brings us to the alternative interpretation, according to which spheres are characterized by principles of distribution (the principles of desert, need and free exchange). First we distinguish a number of spheres characterized by some list of principles of distributive justice, then we ask in which sphere a good should belong (given its “social meaning,” according to Walzer). This interpretation gives a coherent theory, but now the problem is that the concept of spheres becomes a redundant metaphor for the legitimate scope of distributive principles. We need an account of the good whose distribution has to be decided upon, we need an account of what options are available (what principles or mechanisms of distribution can be distinguished), and we need normative criteria to decide the match between good and distributive mechanism. Nowhere do we need the concept of a sphere (alternatively, the concept of sphere can simply be used instead of the concept of a “mechanism” or “principle” of distribution – I would have no problem with that).

In comparison, I think that the framework presented above has the advantage of emphasizing that the question about the appropriate mode of provision is a question about the institutions of *the practice in which the provision of the good is embedded*. This directs attention to the wider social context of provision: goods do not exist as separate entities, in isolation from the people, technologies and materials that are used in their provision. We should consider the practice as a whole when we decide about the economic organization of a good’s provision. Also, the notion of a good’s “social meaning” as the locus of its normative force is replaced by the notion of the “ends of a practice.” This teleological structure suggests a separate determination of those ends, so that the right provision of goods is determined by an independent process of reasoning, not by an interpretation of what is already supposed to be contained “in the good” (see further Chapter 4 on this point). Although both these advantages are not necessarily absent from a theory that uses the notion of spheres as basic concept, I think that distinguishing practices from their ends, institutions and modes of provision helps us in constructing a normative theory to answer the market question.

⁶⁸ Ibid. 503.

2.2 The First Frame: The Constitution of Goods

The object of all modes of provision is a good: a physical object or a service that is to be produced, exchanged and consumed. Goods can be characterized in many different ways. For example, physical objects can be described in terms of their form, size, color, number etc. The sum of all these characterizations makes up the “constitution of the good” in question. Which characteristics a theorist wants to specify depends on the question she is interested in. For our typology of modes of provision, two central characteristics about goods are relevant: whether they are exchangeable and whether they are commensurable. These two aspects taken together make up the economic (part of the) constitution of goods.⁶⁹ Exchange is the alienation or transfer of a good from one agent to another. Commensuration means that goods are assigned a quantitatively specified exchange value (price) that allows them to be compared to other goods.⁷⁰ The common metric normally is some form of money: performances are measured monetarily and goods are exchanged for a payment in terms of money.⁷¹ Moreover, the specification of the value of one performance as an exact quantity of money has to be matched with the exact specification of the non-monetary performance in the terms of a contract – one has to know what one pays for. Priced goods therefore usually are well specified in contract; contractual specification and payment are two sides of the

⁶⁹ A third aspect is “objectivation,” which I will leave out of consideration because it is implied by *all* of my modes of provision. Margaret Radin defines it as follows: “Objectivation relates to ontological commitment. By *objectivation*, I mean ascription of status as a thing in the Kantian sense of something that is manipulable at the will of persons.” Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 118. Against this interpretation of objectivation as a general feature of goods that are exchanged, some have interpreted objectivation as characteristic for market exchange. For example, Georg Lukács saw “Dinghaftigkeit” as a distinctive feature of the “Warenstruktur,” Georg Lukács, “Die Verdinglichung und das Bewußtsein des Proletariats,” in *Geschichte und Klassenbewußtsein. Studien über Marxistische Dialektik*, ed. Georg Lukács (Darmstadt: Luchterhand, 1968), 171. (Later in his text Lukács recognizes the central importance of calculability for market exchange, which makes it hard to interpret his position, in talking about “das Prinzip der auf Kalkulation, auf *Kalkulierbarkeit* eingestellten Rationalisierung“ and “rationellen Kalkulation,” Lukács, “Die Verdinglichung und das Bewußtsein des Proletariats,” 177, 82.). Similarly, Georg Simmel held that only market exchange (exchange of objects with equal value) expresses a full ontological separation of subject and object. Georg Simmel, *The Philosophy of Money*, 3rd ed. (London: Routledge, 1978 [1907]), 97.

⁷⁰ Comparability is to be distinguished from commensurability: the latter is stronger in that it involves a cardinal ranking, i.e. comparability of goods by means of a common metric. Ruth Chang, “Introduction,” in *Incommensurability, Incomparability, and Practical Reason*, ed. Ruth Chang (Cambridge, Massachusetts: Harvard University Press, 1997).

⁷¹ There is nothing essential to this point. One can think of all kinds of measures as an alternative, but usually these then function as “quasi-moneys.”

same coin. The different combinations of (non-) exchange and (non-) commensuration serve as a first step to distinguish our five modes of provision.⁷²

Modes of provision	Frame 1: constitution of goods
self-provision	no exchange & no commensuration
informal provision	exchange (direct) & no commensuration
market provision	exchange (direct) & commensuration
professional provision	exchange (indirect or direct) & commensuration
public provision	exchange (indirect) & commensuration

There is only one mode of provision that does not constitute goods as exchangeable. This is *self-provision*. When subject to self-provision, a good is both produced and consumed by the same agent. No exchange with others takes place (a fortiori, no commensuration takes place either). This mode of provision is applied to many goods provided on a daily basis as a matter of course. Cooking our meal, driving to work, washing our clothes, etc. – we all provide these goods to ourselves most of the time. Alternatively, we could make these goods the subject of a market exchange or some other mode of provision: we could dine at a restaurant or enjoy a meal at a friend’s place, we could hire a taxi or get a ride from a colleague, we could bring our clothes to the laundry or ask our parents to wash them. The absence of exchange with others marks an instance of self-provision.

The combination of exchange and non-commensuration is the distinguishing trait of our second mode of provision: *informal provision*. For goods provided according to this mode, both a common metric (price) and contractual specification are absent. This is anything but a coincidental or regrettable trait. On the contrary, the deliberate vagueness thus created about performances may serve various social functions. For example, in an important subspecies of informal provision, gift exchange, the deliberate lack of precision in the determination of value is coupled with the creation of a lapse of time between the first performance and its reciprocal counter performance.⁷³ This lapse of time allows the

⁷² One can have exchange without commensuration, but one cannot have commensuration without exchange (at least as a combination used for practical purposes, in some mode of provision).

⁷³ When there is no lapse of time but exchange takes place simultaneously, one can speak of a subspecies of “cooperation.” See Angelika Krebs who distinguishes between taking turns reciprocally (“Dienst”) and simultaneously providing a good (“Kooperation”). Both according to her produce an “unshared good” and have to be distinguished from producing a shared good (“geteilte Praxis”), such as in walking together. The latter does not involve any exchange, so it would in my scheme be a subspecies of self-provision (a collective form of self-provision, where the agent is a group instead of an individual) Angelika Krebs, “Arbeit und Anerkennung,” *Deutsche Zeitschrift für Philosophie* 49 (2001), 700.

exchanging parties “to be in debt” to one another and to stress their mutual dependence.⁷⁴ The exchange of birthday presents is a common example. The calculation of anything more than a rough balance between the presents one receives and the presents one gives in return when the other person’s birthday has come is often deemed inappropriate. In another variant of informal provision no counter performance is expected at all, apart from some gratitude from the receiver. Here informal provision may be used to express a loving relationship (think of the care of a parent for a child), an intrinsic motivation to do well (think of the finder of a wallet returning it to the owner), etc.

Within the three remaining modes of provision goods are both exchanged and commensurated. Here we have to distinguish between two types of exchange. One is the direct quid-pro-quo variant, where two agents exchange goods between them: A delivers good *x* to B and B delivers good *y* to A. This variant is the most common one for *market provision*.⁷⁵ By contrast, *public provision* makes use of an indirect kind of exchange, where money is pooled – usually by collecting taxes – from a group of constituents (A, B, C, D, etc.) to a central actor (usually a state-like entity) who provides a good in return. If this good is delivered to all constituents indiscriminately it is a public good. If the good consists of entitlements delivered to only some of them on the basis of specified criteria I will speak of public entitlements. Finally, for *professional provision* exchange can take both forms. Exchange is of the quid-pro-quo kind if it is going on directly between a professional (say a lawyer or a doctor) and a paying client. In contrast, exchange is indirect if money is pooled for the purpose of providing the professional service, either through public funds or subsidies, or through private donations. These three modes of provision are further differentiated from each

⁷⁴ The distinction between gifts and commodities is contested. Some state that gifts have “shadow prices” and therefore implicitly obey the exchange logic of market goods (most often both are then characterized in terms of the theory of rational choice). In maintaining the distinction but embedding both in a framework of modes of provision I reject the view that gifts follow essentially the same logic as markets while on the other hand I do acknowledge that gifts are (also) *economic* phenomena. See also Bourdieu, *The Logic of Practice*, 105. Sahlin, *Stone Age Economics*, '193-94., Anderson, *Value in Ethics and Economics*, 151-52. Richard Titmuss, *The Gift Relationship. From Human Blood to Social Policy* (New York: Pantheon Books, 1971), 217. Arjun Appadurai, "Introduction: Commodities and the Politics of Value," in *The Social Life of Things. Commodities in Cultural Perspective*, ed. Arjun Appadurai (Cambridge: Cambridge University Press, 1986), 9-13. Aafke E. Komter, *Social Solidarity and the Gift* (Cambridge: Cambridge University Press, 2005), 17-21.

⁷⁵ As may be clear from the former discussion, it is also the common form of exchange for informal provision, even if not the only conceivable one. Informal exchange patterns are conceivable which are neither direct (in the quid-pro-quo sense) nor indirect (in the sense of pooling to a central agent). For example, think of the famous Kula trade, in which objects were exchanged in circles of participants over various islands. Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time*, 52-53.

other on the basis of our second frame (see next section). This completes the conceptual exposition of the first frame. Before we proceed, some remarks on its relevance to our theme of commodification are in order.

Controversies may arise over the appropriateness of the market due to its framing goods as exchangeable and commensurable. As to exchange, it is sometimes claimed that certain goods should be off the market because they should not be exchanged, i.e. be the subject of self-provision or no provision at all. The presence or absence of opportunities to exchange is partly an ontological matter. For example, given the world as it is, it is hard to understand what it would mean to exchange things like the universe, divine grace, a memory or a friendship.⁷⁶ As these examples show, some of these things cannot even be produced by an agent (such as the universe or divine grace); hence they cannot be the object of any mode of provision. Other things, such as a memory, cannot be transferred to someone else; one cannot lose a memory by telling it. Again other things, such as a friendship, can only be ‘produced’ in cooperation with others but without exchanging them (I cannot provide a friendship to myself, nor can I transfer my friendship with another person to a third party).⁷⁷ In most cases, however, opportunities for exchange are not ontologically given but *socially constructed*. Social norms formulate whether it is possible and appropriate to exchange blood, organs, sexual services, votes, military service, legal verdicts, etc. These norms can be contested; competing normative theories make different judgments over which exchanges are to be endorsed and which are to be blocked.⁷⁸

In other controversies the focus is on the aspect of commensuration. Here the question is whether the goods at stake should be exchanged for a price on the market or without commensurating, i.e. through informal provision. A standard example is sexual activity, which can be provided either informally or as a

⁷⁶ Some of these examples are taken from Judith Andre, "Blocked Exchanges: A Taxonomy," in *Pluralism, Justice and Equality*, eds David Miller and Michael Walzer (Oxford: Oxford University Press, 1995).

⁷⁷ Neither friendship nor love are exchangeable goods; rather, they social relationships that supervene on the exchanges made between the persons entertaining them. Of course, simulacra of such relationships can be objects of exchange (for example, one can sell the service of keeping someone company). Also, *within* such relationships the use of several modes of provision is possible – nothing prevents friends from exchanging some goods between them for money, giving other goods as gifts and sharing still other goods between them.

⁷⁸ For another set of controversies the market’s *form* of exchange (either direct or indirect) is in dispute. For some goods one may endorse the public good structure of a “common pool” that gives free access to all people simultaneously, after previous bundling of resources. Think of museums of national interest, or landscapes such as beaches or national parks. Markets, as they embody the direct *qui-pro-quo* kind of exchange, cannot imitate such an open access structure of allocation (see also Section 3.2).

commodity in prostitution. Another example is care for dependents, which can be provided without the expectation of a payment or as a market good (for further discussion of the appropriateness of payment and contractual specification for care work, see Section 7.2). The objection to commensuration for these kinds of goods is usually couched in terms of instrumental and intrinsic valuation. In its strongest form, the objection is that commensuration implies an instrumental valuation of goods (according to their price) that is *incompatible* with the intrinsic value that we should attach to those goods. Instrumental valuation drives out intrinsic valuation. Being paid for care work, for example, would destroy the intrinsic motives characteristic of good care. However, this incompatibility objection overstates the effects of commensuration. It is possible to intrinsically value a good even though it is subject to commensuration.

First, it might be the case that while during market transactions agents value a good in a strictly instrumental way, after the transaction intrinsic valuation is restored. In the commodification literature we find several instances of this, in stories about pets and ponies that are unemotionally acquired on the market.⁷⁹ At the moment of purchase those animals are merely use values, but as soon as the owner has taken them home an altogether different and loving relationship may set in. Thus, the single moment of commodification is quite harmless, and even a necessary practical precondition, one could say, for having and loving the animal at all.⁸⁰ Goods have to be valued for their intrinsic properties in order to be interesting as exchange values, instrumental values. Second, instrumental and intrinsic valuation may more or less peacefully coexist in people's "mixed valuations."⁸¹ For example, one can enjoy one's work as rewarding in itself and at the same time value its financial remuneration. One can value the friendly contact

⁷⁹ For the pet variant, see Edward Soule, *Morality & Markets. The Ethics of Government Regulation* (Lanham: Rowman & Littlefield Publishers, 2003), 64-65. For the pony variant see Adrian Walsh, "Are Market Norms and Intrinsic Valuation Mutually Exclusive?," *Australasian Journal of Philosophy* 79, no. 4 (2001), 532. Another variant is the appreciation of a cup of cappuccino: see Jeremy Waldron, "Money and Complex Equality," in *Pluralism, Justice and Equality*, eds David Miller and Michael Walzer (Oxford: Oxford University Press, 1995).

⁸⁰ Anthropologists talking of a "commodity phase" that goods can enter and leave provide support for this point. A good can leave the commodity phase so that the instrumental valuation expressed at the moment of market exchange does not prohibit its later intrinsic valuation. The realm of market exchange and the subsequent realm of consumption should be disconnected. Intrinsic valuation properly belongs in the latter realm. See Appadurai, "Introduction: Commodities and the Politics of Value," 13. Igor Kopytoff, "The Cultural Biography of Things: Commoditization as Process," in *The Social Life of Things. Commodities in Cultural Perspective*, ed. Arjun Appadurai (Cambridge: Cambridge University Press, 1986).

⁸¹ This is one of the senses in which Margaret Radin talks of incomplete commodification. See Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 102ff.

with one's business partner and the advantages this contact brings to one's business. For this to be possible, people have to be able to deal with the ambiguities involved. They may be capable of temporarily sidestepping the instrumental aspects of the activities they undertake, forgetting that the attractive man they are talking to is also their business partner, or that their exciting dance is "just part of the job." In all of these cases the capacity for mixed valuations is a necessary condition for the generation of exchange value.

This makes the issue of commensuration into a contingent one. Is it possible within a specific practice to combine the presence of payments and contracts with the proper kind of intrinsic valuation of the good that is to be provided? For example, can mixed motivations in care work be stable in heavily competitive markets, where a focus on price considerations makes it difficult to maintain intrinsic valuation of the relationship between provider and client? Much depends on the specific characteristics of the practice at hand. In Chapter 7 I will illustrate how we may evaluate this issue of commensuration in the context of care services to dependents.

2.3 The Second Frame: The Creation of Rules of Provision

Once the economic constitution of goods along the two dimensions of exchange and commensuration is in place, the second question is how these goods are to be provided; that is, what rules have to be followed to allocate them over the participants in the practice. The creation of these rules of provision forms the second frame, which serves to further differentiate the five ideal-type modes of provision.

There are two possible ways of characterizing these rules of provision. One is to understand them as distributive principles, as Michael Walzer did when he proposed three classical principles of distributive justice to segregate goods into different spheres (need, desert and free exchange).⁸² For my purposes the problem with this approach is that there is no simple one-to-one relation between these

⁸² Michael Walzer, *Spheres of Justice. A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 21-26. See also David Miller, *Principles of Social Justice* (Cambridge Massachusetts: Harvard University Press, 1999), 26-32, who uses a slightly different scheme of need, desert and equality (capturing market exchange under desert). Jon Elster uses the same approach, although his aim is geared toward understanding the decision making of concrete institutions rather than identifying social spheres, and his categories of allocative principles are much more fine-grained than Walzer's threefold scheme: he distinguishes egalitarian principles, time-related principles, principles based on status, principles defined by other properties and a mechanism based on power. See Jon Elster, *Local Justice. How Institutions Allocate Scarce Goods and Necessary Burdens* (New York: Russell Sage Foundation, 1992), 67ff.

distributive principles and the five modes of provision. For example, I have characterized public provision as a kind of exchange in which contributions are pooled from a number of agents and a good is provided in return. There is not one fixed principle for collecting these contributions, nor for providing the good. On the contributive side of the exchange one can use a flat tax, a progressive tax and many other kinds of tax schemes. On the delivering side, one can also use different rules to specify citizens' entitlements, such as social security benefits, subsidies for art, health care benefits etc. Public provision is not characterized by a specific principle or set of rules but rather by the way in which these rules are devised; through the mechanisms of a process of *political decision making*.⁸³ Classical distributive principles are then best conceived as options that may be contemplated for the provision of a certain good within the political process. As a result, goods *x*, *y*, and *z* may all be provided publicly, but according to different distributive principles. For example, a community may decide that *x* should be distributed according to the principle of need (e.g. health care), while *y* should be distributed according to the principle of desert (e.g. higher education) and *z* is a classical public good to which everybody has free access (e.g. police protection). There is no simple one-to-one relation between public provision and a determinate distributive principle.

Modes of provision	Frame 2: Creation of rules of the provision
Self-provision	allocation to producer
Informal provision	social norms
Market provision	price mechanism, on the basis of preferences and endowments
Professional provision	expert knowledge
Public provision	political decision making

A similar conclusion holds for informal provision and professional provision. For informal provision, *social norms* determine which rules of provision are appropriate for the allocation of a certain good. As with public provision, these norms can prescribe different rules of provision for different goods or for the same good in different communities. For example, the division of household tasks between the sexes can be according to gender in some communities (usually the women doing all the work), according to strict equality in other communities (man and women each contributing half of the work), and according to

⁸³ Most often the political process takes place in a nation-state, but the term "public provision" is meant to cover provision by non-state public authorities as well (making use of the same pooling kind of exchange): local communities, regions, international public organizations, etc.

proportionality in again other communities (both contributing in proportion to time available), etc. Moreover, social norms can be more or less strict in allowing deviations from the standard norm. In any community the social norm for household work could either be to strictly prescribe one specific allocation rule (the examples just mentioned), to prescribe a default rule but allow deviations according to the choices of the individuals in the household, or not to prescribe any rule at all.

For professional provision the rules of provision are created by the *expert knowledge* of professionals, and define what counts as good provision. Again, this allows for different rules to be generated, according to the good at issue and the state of expert knowledge at the time. For example, the medical profession constantly adapts its views on illnesses and treatments to the latest state of knowledge, generating real differences in the provision of medical care to patients. These rules need not have anything in common with the rules used in other professions, such as law, journalism, science, art, etc. If financial contributions for professional services are pooled via the state or another public authority, then usually a mixed mode of public–professional provision emerges. The political process will then specify the main rules while leaving the detailed application of these rules to professionals. If financial contributions flow directly from clients to professionals, then professional provision closely resembles market exchange: for direct, quid-pro-quo exchange with commensuration of the service to be provided is also characteristic of the market. The crucial difference is that professional provision often takes place under a (publicly sanctioned) fixed price scheme, which shelters professionals’ actions and decisions from competition with their colleagues and from having to cater directly to the preferences of their clients.⁸⁴

In contrast to the openness to a diversity of rules for the modes of provision discussed so far, self-provision is characterized by one simple rule of provision:

⁸⁴ Each of the three modes of provision discussed so far is characterized by an additional openness to different arrangements, at the meta-level of the “constitutional” rules that determine how political decision making, the formation of social norms and the generation of expert knowledge is to take place. The political process itself can vary between different communities and within a community over time: it can be dictatorial, monarchical, democratic, republican, etc., and characterized by further differences in the details of political procedures as well as the habits ingrained in the informal political culture. Similarly, the way in which expert knowledge is codified and disseminated among the profession differs between professions (think of sociological characteristics of many professions such as common training and diploma requirements, codes of conduct formulated by the professional association, internal arbitration in case of complaints, etc.). Finally, the generation of social norms may be subject to different kinds of processes, depending on the characteristics of the community for which they are to be valid.

allocation to the producer of the good. Its rule of provision simply reflects the fact that self-provision is characterized by the absence of exchange.

This brings us to our last mode of provision, market provision. The market resembles self-provision and differs from the other three modes of provision in that it is also characterized by one unique rule of provision holding for all actions under this mode. Allocation on the market takes place according to the *price mechanism*, with *preferences and endowments* of the exchanging agents underlying the formation of prices.⁸⁵ In comparison, the market is a form of decentralized or spontaneous order whereas the informal, professional and public modes of provision all exemplify some form of collective order.⁸⁶ This does not mean that in the latter modes of provision all members of the relevant community have to be involved in the formation of social norms, professional knowledge and political decision making; but it does mean that the resulting rules are legitimate to the extent that the relevant community as a whole accepts the outcomes of the process of rule formation. For the market this is different; once a market is in place, there is no need for an additional process of rule formation. The resulting allocation is considered legitimate because one's preferences are taken to be the best measure of one's interests and each agent accepts that his own endowments determine his market opportunities.⁸⁷

A note of caution is warranted about this spontaneous character of the market. It does not imply that no rules can be set as constraints upon market exchange. As is the case for any other mode of provision, additional rules are always possible while respecting the general rule of provision that is used. For example, the fact

⁸⁵ In Chapter 8 I will elaborate on two more specific elements that are not explicitly included in the market definition here: the presence of competition and the orientation of agents toward profit maximization. Both are required by the notion of the price mechanism, but only to a certain – variable – extent. The reason is that if we would require perfect competition (the economic model of a *perfect* market) to be able to identify a market, there would be very few markets. Similarly, I do not require that in the market preferences are rationally ordered, that agents have perfect information, transactions are costless, etc.

⁸⁶ The distinction is that of Hayek between *taxis* (made order) and *kosmos* (grown order), where the market order or *catallaxy* is presented as an example of the latter. The distinguishing feature according to Hayek is that spontaneous orders do not presuppose an agreement on the ends of action (but we may question the extent to which informal, professional and public decision mechanisms presuppose such an agreement). Friedrich A. Hayek, "Rules and Order," in *Law, Legislation and Liberty. A New Statement of the Liberal Principles of Justice and Political Economy*, ed. Friedrich A. Hayek (London: Routledge, 1982), 35ff. See also Hayek, "The Mirage of Social Justice," 107ff. Similarly, Habermas defines the market as a system bringing about social integration "spontaneously," i.e. without the need for an orientation toward moral rules. Habermas, *Theorie des kommunikativen Handelns. Band 2 Zur Kritik der funktionalistische Vernunft*, 176.

⁸⁷ For a justification of these characteristics, see Gauthier, *Morals by Agreement*.

that the market takes the personal endowments of agents as given does not imply that no rules can be devised to change these endowments. For markets for which a reliance on each person's individually acquired resources is judged problematic, one may endow them with a publicly financed budget to be spent on the relevant market (voucher scheme). Similarly, even if the market process itself does not correct or judge the preferences of market participants on their merits, this does not mean that no additional rules can be set which constrain the process by which these preferences are formed, while leaving the market process itself intact. Rules restricting advertising for certain products or age groups provide an example of this. In general, then, the market is a system of "pure procedural justice" in which no pattern of outcomes is predetermined. Nonetheless, constraints on such a system are possible which define the rules under which the game is to proceed (see also Section 3.1 about additional institutions).⁸⁸ This completes the conceptual exposition of the second frame.

Its relevance to commodification issues lies in the contested nature – for some practices – of the market's reliance on individuals' preferences and endowments. The market's dependence on endowments (one's ability to pay) may be a problem for those goods that are judged necessary in some sense: to develop basic capabilities, to participate as a citizen, etc. However, the conclusion is often too hastily drawn that it is therefore necessary to revert to public provision of these goods.⁸⁹ A market-compatible solution may also be possible, which is to provide a personalized budget on the basis of an independent and good-specific criterion. This is the voucher scheme mentioned above, leading to the emergence of a so-called "quasi-market."⁹⁰ For example, in some health care markets people get an earmarked budget according to their medical status, which can be spent at will in the relevant market for health services. In principle, such a solution takes away the threat of distributive injustices in the allocation of the good over all needy persons. Needless to say, the adequacy of this solution depends on a proper

⁸⁸ For a discussion of systems of impure versus pure procedural justice, and a characterization of the market in terms of the latter, see Elizabeth Anderson, "Against Desert: Markets, Equality, and Pure Procedural Justice," (*draft* 2007).

⁸⁹ The reliance on endowments is also often addressed at the level of the market system taken as a whole. This discussion centers on the fairness of the initial distribution of endowments; if this distribution is somehow unfair, general redistribution programs (progressive taxes, inheritance taxes, social security benefits, etc.) are proposed as a solution. There is a connection between this generic systems discussion and the goods-specific discussion of endowments: in as far as endowments are equalized for specifically important goods, one can defend that ex post general redistributive corrections of market outcomes become less urgent.

⁹⁰ Julian Le Grand, "Quasi-Markets and Social Policy," *The Economic Journal* 101, no. 408 (1991), 1260. He defines quasi-markets as markets with three characteristics: competition between providers which operate as profit or non-profit institutions, demand in the form of vouchers and consumer choice delegated to a third party.

institutional design of the organization that determines the size of the available budgets, the criteria for receiving contributions from these budgets, etc. Moreover, for some practices the voucher solution may be unable to remedy the objections raised against the market's reliance on endowments. In Chapter 5 I will discuss whether this is the case for the good of security; whether the construction of a voucher-based market is able to satisfy the basic need for security services that all citizens have (Section 5.2).

The other potentially problematic feature of the market under the second frame is its reliance on preferences. Objections here are directed at cases where preferences may lack reliability as a basis for decision making because the process of their formation is distorted.⁹¹ Some psychiatric patients, for example, may not be able to make correct judgments about their future well-being, so that treating them as autonomous consumers poses problems. For other cases, such as education, it may be the point of these practices to form preferences in the first place. Treating students as consumers able to judge the quality of their education may be problematic for it requires a judgment which can only be made after having followed education.⁹² The creation of a quasi-market may also provide a solution to these problems. On a quasi-market, third parties help consumers to form their preferences. For example, psychiatric patients may be assisted by counselors who help them decide between hospitals, doctors and treatments; national lists of schools' educational quality may guide prospective pupils and students in their choice of school; etc. Here too large demands are put on the institutional design of these markets to make this work. Adverse incentive effects are to be expected. For example, when schools are evaluated according to certain criteria, they will try to score high on these criteria while possibly neglecting other indicators of quality which are perhaps less visible or more difficult to measure.

Another problem arises when preferences are formed successfully (so there is no distortion), but create outcomes which are disadvantageous from a social point

⁹¹ The market's reliance on preferences should not be taken to mean that preferences are *exogenous* to the market. Preferences are formed at least partly in the market itself. The question is, even when producers (try to) inform and influence consumer preference, whether or not the process can be judged as sufficiently autonomous to count the resulting preferences as "belonging to the consumer." See Michael S. McPherson, "Want Formation, Morality, and Some 'Interpretative' Aspects of Economic Inquiry," in *Social Science as Moral Inquiry*, eds Norma Haan, et al. (New York: Columbia University Press, 1983). See also Samuel Bowles, "Endogenous Preferences: The Cultural Consequences of Markets and Other Economic Institutions," *Journal of Economic Literature* 36 (1998).

⁹² These kinds of cognitive restraints on the part of consumers are only one source of distortions. Another source is the inability or unwillingness on the part of producers to give adequate information about their products. Regulation may then be required to enforce transparency.

of view, under some preference-independent normative standard. Here it is the adequacy of a reliance on individual preferences that is itself in dispute. We will encounter two examples of this problem in Part II. In Chapter 5 I will discuss the tendency of the market to increase preferences for security services – that is, more anxiety – than is warranted by objective levels of insecurity (Section 5.2). In Chapter 6 I will discuss the market’s ability to create preferences for media content that serves the democratic ideal of a public sphere (Section 6.2). To the extent that preference-independent standards of provision are to be endorsed for these and other goods and markets fail to realize them, markets will have to be replaced by other arrangements; at least, if these other arrangements perform better at realizing these standards. The conclusion here is the same as in the discussion of the objection to commensuration in the previous section: whether this is the case is a contingent matter that must be addressed at the level of specific practices.

2.4 The Third Frame: The Subjective Dispositions

For any mode of provision to be successfully implemented in a practice, we have seen that it is indispensable that the object or activity at issue is constituted as an economic good that is or is not exchanged and/or commensurated (first frame, Section 2.2). Furthermore, we have seen that it is indispensable that rules of provision are created to govern the allocation of this good (second frame, Section 2.3). But the two conditions taken together are still insufficient. A third condition is that agents need to have the right kind of *motivation* to act according to the mode of provision and thereby to reproduce the kind of *social relations* that it requires. One could say that while the first two frames give the structural (or ‘systemic’) features of the five modes of provision, the third frame refers to the dispositions on the agent/participant side that will have to be fulfilled in order to implement a mode of provision.

Both elements in this frame – our motivational attitude toward the provision of a good and our attitudes toward the other participants involved – cannot be strictly separated; they merge in the “subjective dispositions” that make up the third frame. As is clear from the table below, I have chosen to classify these subjective dispositions in three types, depending on (i) whether the required subjective disposition is to establish a relationship between the agents involved in the mode of provision and, if so, (ii) whether this relationship is brought about for its own sake or for the sake of the economic aim of producing and consuming

goods.⁹³ The latter distinction marks the line between personal and impersonal relations. Personal relations are characterized by an interest in other people's concerns (ideals, values, emotions, etc.) and in the relation with this other person *for its own sake*. In impersonal relations this kind of intrinsic interest is absent.⁹⁴

Modes of provision	Frame 3: Subjective dispositions
Self-provision	a-personal
Informal provision	personal
Market provision	impersonal
Professional provision	impersonal
Public provision	impersonal

For self-provision, since it is based on the absence of exchange, social relations with others do not arise. In fact, often the motivation behind self-provision is exactly to avoid such relations and to establish a measure of independence from others (the autarkic ideal).

For informal provision we saw that the absence of commensuration often serves to create and express social bonds between participants. These can vary depending on the good concerned and the content of the social rules governing provision. Despite these variations, the relations in informal provision can be described as personal, for agents are not only motivated to achieve an economic result, i.e. the satisfaction of certain preferences by producing, exchanging and consuming goods; they are also motivated to establish a relation with the other for its own sake. The relation between the “relational” and the “ economic” motivation may vary. At one extreme, the economic motive is merely instrumental to the relational motive. Birthday presents for example would not be exchanged if it were not for the maintenance of personal ties between the exchanging persons. At the other extreme the relational motive, while established for independent reasons, is required for the economic motive to succeed. This is the case in care work, which requires investment in the personal relation between care giver and care receiver to respond adequately to the needs of the latter. In

⁹³ The character of social relations is the main object of the subjective dispositions. Over and above the rather basic characterization of social relations offered in this section, many other dimensions of the subjective dispositions required to participate in modes of provision may be relevant. Because these are often contingent on the specific context in which these modes function I leave them out of consideration here.

⁹⁴ The resulting table resembles the distinctions within the first frame, with self-provision and informal provision each in a different category, and the three remaining modes of provision together in a third category (but in turn further differentiated as a consequence of the rules of provision of the second frame).

both cases, however, the establishment of the personal relation is a requirement for informal provision to succeed.

This is different for the other three modes of provision, where the achievement of the economic result is paramount and relations can be characterized as impersonal. This does *not* mean that no relations between agents can be formed as a by-product of exchanges; it means that an interest in these relations for their own sake is not required to participate successfully in these modes of provision. Apart from this general consideration, the social relations required for market or professional and public provision are anything but a homogenous category. For public and professional provision, much depends on the specific rules of provision that are established. For example, in most modern societies a specific attitude of impersonality is required for public provision. We do not normally have personal bonds with officials or public servants, who are expected to act “without regard for personal considerations.”⁹⁵ Here impersonality takes the form of disregarding irrelevant personal circumstances and retaining a critical distance. By contrast, for professional provision in many cases a close relation between professionals and clients is established. Many professionals need to know important details about their clients’ lives in order to make adequate decisions or to establish a measure of trust between them and their clients to make the treatment work.⁹⁶ This difference notwithstanding, for both public and professional provision social relations remain functional to the success of the provisional practice. For example, these relations are not expected to continue apart from this context. Independent personal relations may even be harmful to bureaucratic integrity or professional reputation and damaging to the ability of the civil servant or the professional to allocate his resources between different clients.

This brings us to market provision. Given the market’s unique rule of provision, the type of impersonality required in the market can be circumscribed somewhat more precisely than in the case of professional or public provision. The typical participant in market exchange strives to obtain his own goals and does not value the relations with others for their intrinsic qualities. Everybody “minds his own business;” this is necessary for the market to function well. The public virtue of a well-functioning market only comes about if everybody follows the

⁹⁵ Max Weber, *Economy and Society. An Outline of Interpretative Sociology* (Berkeley: University of California Press, 1978), 225. He also stressed the similarity of the market and bureaucratic organizations in coordinating actions “without regard for persons.” Weber, *Economy and Society. An Outline of Interpretative Sociology*, 975. In other types of societies, relations between government agencies and citizens are much more personal, where a system of patronage exists which almost resembles what is usual in informal provision.

⁹⁶ Andrew Brien, “Professional Ethics and the Culture of Trust,” *Journal of Business Ethics* 17 (1998).

private “vice” of self-interest. Some caution is required here, for this characterization is often made into a caricature. A proper understanding of the market’s motivational conditions only requires a *weak* interpretation of this self-interested type of impersonality.

Following Amartya Sen, we can distinguish three interpretations of the individual’s relation to the self in economic transactions. These are the fact that agents pursue their own goals (“self-goal”); the fact that one’s goal is to maximize one’s own welfare (“self-welfare goal”) and the fact that one’s welfare depends only on one’s own consumption (“self-centered welfare”).⁹⁷ Which of these interpretations of self-interest are necessary for market interactions? The inclusion of self-goal is rather evident: we do not expect market agents to pursue anything other than their own goals. Sen adds to his explanation of this feature that “in particular, it is not restrained by the recognition of other people’s pursuit of their goals.” This fits nicely with the traditional picture of the market as an institution that allows individual efforts for ourselves and socially optimal outcomes to converge. The inclusion of the second interpretation, self-welfare goal, depends on one’s interpretation of welfare. Commodities are the raw material of the market game and it would seem fair to say that the welfare derived from their possession is the aim of the game. However, one can also imagine people purchasing items out of curiosity, rather than a regard for their welfare (the item might actually be damaging to their welfare). Unless one stretches the concept to include these kinds of cases, welfare is not necessarily what is at stake. Finally the third interpretation, self-centered welfare, should clearly be excluded from the description of market-based self-interest. It is compatible with the market to pursue goals that aim to further the interests or welfare of others, such as family members or friends. On the market one acts out of oneself but not necessarily for oneself. As a consequence of the exclusion of the second and third interpretations, a weak kind of self-interest emerges as the required subjective disposition for market exchange.

In a recent discussion in economic anthropology the interpretation of impersonality in the market was subject of debate. Daniel Miller criticized Michel Callon’s work on the “laws of the market” for espousing a market conception that presents the market as a sphere of calculative rationality, where price considerations provide the only relevant information to agents and buyers, and

⁹⁷ Amartya Sen, “Goals, Commitment, and Identity,” in *Rationality and Freedom* (Cambridge, Massachusetts: Harvard University Press, 2002), 213. According to Sen, all three interpretations are lumped together in the assumptions in standard economic theories of “rational action.” However, one might broaden our understanding of human behavior by recognizing motivations that do not conform to one or more of these interpretations of rational action. See also Amartya Sen, *On Ethics and Economics* (Oxford: Basil Blackwell Ltd., 1987), 15-22.

sellers are freed from any further ties between them. By contrast, Miller argued, market transactions are always highly entangled. Agents have to invest in each other's motives, meanings, ideals, etc. in order to achieve a successful transaction. He gives the example of a car salesman who has to make sure the car to be sold connects to the buyer's deeper psychological drives.⁹⁸ The problem with his argument, however, is that it mistakes the appearance of mutual interest in each other for mutual interest *for its own sake*. As Don Slater argued in response to the Callon-Miller discussion:

Market exchange... presumes a form of property right in which a transfer of ownership ends all claims of the previous owner: the object is thoroughly alienated. When we finish the transaction, we are quits. As opposed to gifting, commodity exchange does not aim to perpetuate a social bond between buyer and seller, but, indeed, to get it over with as quickly and cheaply as possible. It certainly aims to repeat the procedure in large aggregate numbers (repeat sales, customers who come back for more and are described as "loyal") but not in order to sustain some broader social connection beyond the immediate market transaction.⁹⁹

Thus, insofar as market relations go together with a certain appearance of personal connections, that appearance should not be confused with an intrinsic interest in others. Usually, it is for the sake of selling more, or more effectively.¹⁰⁰ Of course an interest in others for its own sake can develop; business partners can become friends or even lovers. But then their relation takes place outside of the market frame and is governed by other norms and expectations – which is the best proof that the market itself does not require these in the first place. This completes the conceptual exposition of the third frame.

⁹⁸ Michel Callon, "Introduction: The Embeddedness of Economic Markets in Economics," in *The Laws of the Markets*, ed. Michel Callon (Oxford: Blackwell Publishers, 1998). Daniel Miller, "Turning Callon the Right Way Up," *Economy and Society* 31, no. 2 (2002). Don Slater, "From Calculation to Alienation: Disentangling Economic Abstractions," *Economy and Society* 31, no. 2 (2002). Another illustration is Graham Dawson's attack on Elizabeth Anderson's claim that markets are impersonal, arguing that relations in some markets are "interpersonal" instead. See Graham Dawson, "Exit, Voice and Values in Economic Institutions," *Economics and Philosophy* 13 (1997). For Anderson's response, see Elizabeth Anderson, "Comments on Dawson's 'Exit, Voice and Values in Economic Institutions'," *Economics and Philosophy* 13 (1997). Similarly, Ed Soule attacked Anderson for holding that markets are characterized by norms of "exclusiveness," "exit" and "egoism." See Soule, *Morality & Markets. The Ethics of Government Regulation*, 62-63.

⁹⁹ Slater, "From Calculation to Alienation: Disentangling Economic Abstractions," 237. Similarly Kopitoff remarked: "the primary and immediate purpose of the transaction is to obtain the counterpart value.... The purpose of the transaction is not, for example, to open the way for some other kind of transaction, as in the case of gifts." Kopitoff, "The Cultural Biography of Things: Commoditization as Process," 69.

¹⁰⁰ For a classical account of market impersonality along these lines, see Weber, *Economy and Society. An Outline of Interpretative Sociology*, 636.

Its relevance to commodification debates is that this frame inspires arguments about the market and its alternatives on account of the social relations that they are able to convey. As an example, take the objection that the commodification of publicly provided goods entails the loss of one type of valuable social relations, i.e. citizenship relations between members of the same public. The idea is that when a good is provided to the community as a whole, this strengthens citizenship relations between those within the public, who first fund and then benefit from the good on an equal footing. Market provision cancels this expressive effect. This might seem strange at first sight, since I characterized social relations in public provision as impersonal; how can they express citizenship at the same time? However, the impersonality of public provision (as well as that of market provision and professional provision) does *not* mean that the establishment of these modes of provision cannot serve to express the intrinsic value of having certain social relations. For example, public provision of education may serve to express relations of citizenship between all members of the community through the medium of a common educational curriculum. The expressive function of the practice as a whole is dependent on the subjective dispositions required of agents acting within the practice. In this case, the success of the citizenship relation depends positively on the disregard by public officials and teachers of education-irrelevant personal characteristics of potential pupils or students.

Although this type of consideration is not without its merits, we have to be cautious about using it as a separate source of arguments about the market. The loss of certain types of social relations does not automatically give a good-specific reason to object to the use of one mode of provision rather than another. One could always argue that the desired social relation can be expressed through the provision of *other* goods. The challenge is to show why *this* good is necessary to express citizenship, friendship, or any other type of social relation. Some communities, for example, will organize relations of citizenship around other common symbols (a royal family, an immigration policy) instead of a publicly organized educational practice; so why would education need to be publicly provided in order to achieve citizenship? One would have to show that education is indispensable or at least much better placed than other goods to provide such an expressive function. In spite of this problem, considerations about social relations are almost always present in the background, whether it is for the state provision of security services (Chapter 5), the role of the media in the establishment of a public sphere in civil society (Chapter 6), or the personal qualities of informal provision of care (Chapter 7). The creation of a diversity of social relations does matter; although the link with the provision of specific goods often is a contingent one.

2.5 Some Additional Issues

Having presented the conceptual exposition of the five ideal-type modes of provision, I want to clarify several remaining issues. To that end I offer three further sets of remarks, about the completeness of the framework, the nature of agency and the methodological implications of using ideal types.

First, there is the question as to the exhaustiveness of the framework. In Section 2.1, I characterized modes of provision as institutions organizing the economic aspect of practices, i.e. the integration of the stages of production, exchange and consumption. Now one could ask to what extent the five modes of provision are exhaustive of all the possibilities in this respect. As far as I can see, there is at least one other mode of provision that could have been added to the framework. This “sixth mode of provision” is violent one-way exchange by one party taking goods from another; in activities such as theft, plundering, robbery and war.¹⁰¹ Economically, this kind of “exchange” has played a major role, and has been considered by many individuals, gangs, countries and empires as an attractive alternative to production and exchange via one of the other modes of provision. Nevertheless, I have chosen to exclude this mode of provision from the previous sections. The reason is that inclusion in that framework serves the purpose of identifying alternative institutional strategies to be contemplated when we deliberate on the governance of our practices. It seems hard to defend the inclusion of this alternative, since it violates the cooperative nature that is required for any institutional arrangement to have legitimacy among both parties in the exchange.¹⁰²

Another solution to the economic problem is not to provide goods at all. The provision of goods, in the last instance, serves the satisfaction of preferences. The ends of a practice specify which preferences are to be satisfied (and which are not), how they are to be specified, by whom the necessary goods are to be produced, etc. Non-satisfaction of preferences is the “ascetic” solution to this economic problem, which consists of their suppression, voluntarily by the agent or involuntarily by the decision of the social organization that is responsible for the category of preferences at stake.¹⁰³ For example, governments in conjunction

¹⁰¹ This alternative is not mentioned in most of the social theories mentioned earlier in my note on the overview of the literature in Section 2.1. For an exception, see Fiske, *Structures of Social Life*, 19-20 and 398-400.

¹⁰² We should distinguish legitimacy in the broad sense used here from consent in the narrower sense. For example, public provision may be legitimate as a form of cooperative action, even while it requires exchanges that not every participant in the scheme consents to (taxation).

¹⁰³ For a more elaborate discussion of the ascetic solution to the scarcity condition and its philosophical credentials, see Rutger Claassen, *Het eeuwig tekort. Een filosofie van de*

with medical professional associations can institute a health care system that systematically fails to satisfy some medical preferences, leaving the persons having those preferences to have avoidable pain, suffer from avoidable illnesses or a premature death. As dramatic as this particular example may sound, any practice must draw a line between the preferences that are to be satisfied and the needs that it is unable or unwilling to satisfy.¹⁰⁴ Although non-satisfaction is not a positive way of providing goods on the same level as the main five modes of provision, we have to keep it in mind as an alternative course of action.

Second, there is the nature of agency. The language used in this chapter may have given the impression that the agent producing, exchanging and consuming goods is always an individual. This impression is false, for collective agents (organizations) can also act to provide goods. This raises the question how to organize the interactions of individuals cooperating in such a collective. For this organizational problem, the modes of provision can be used as well. The resulting duplication of modes of provision is best illustrated in the use of the term “labor.” On the one hand labor is the generic name for the activity of providing goods. This is true for any mode of provision: producing goods for oneself (in self-provision) or producing without being paid (in informal provision) is labor, just as producing commodities for the market is. On the other hand, labor is also itself a good that can be provided by individuals to meet the needs of collectives. For example, labor can be bought and sold as a market good contracted for by an organization which in turn produces goods either as a voluntary association for its beneficiaries, a commercial company for its customers, a professional organization for its clients or a public agency for its citizens. Alternatively the same labor may be publicly designated (civil or military service), offered informally (voluntary labor), or acquired by force (serfdom and slavery). This shows that as soon as productive activity is organized in a collective structure these activities are themselves goods that are produced, exchanged and consumed. It also shows that for both activities – the provision of the original good and the provision of the labor that provides the original good – it need not be the same mode of provision that is used (although some combinations are more natural than others).

Finally, I turn to the methodological implications of using ideal types. Against frameworks similar to the one developed in this chapter it is sometimes objected

schaarste [The eternal shortage. A philosophy of scarcity] (Amsterdam: Ambo, 2004), 169ff.

¹⁰⁴ The refusal of a practice to satisfy needs may either result in a disappearance of these needs or a permanent frustration of them. In Fred Hirsch’s classification of responses to social scarcity, this alternative outcome is labeled “congestion.” Fred Hirsch, *Social Limits to Growth* (London: Routledge & Kegan Paul, 1977), 30.

that they “essentialize” the market, providing an image of it that is, upon closer inspection, caricatured or even plainly false. According to this objection we cannot define “the market.” Therefore we would do better to study only specific “markets,” not “the” market, since “the” market does not exist anywhere in our social world. However, against this objection I would maintain that every theory to some extent has to make use of ideal-type constructions. In social thought, whether we call them domains, spheres, practices, or something else, the need to have concepts that refer to more or less stable and identifiable features of social reality remains. The debate should therefore be about the usefulness of the categories chosen to analyze social reality, not about the need for such categories in general.¹⁰⁵ This need for the theorist is mirrored and reinforced by the use that actual people make of such concepts to orient themselves and construct their realities. In the creation of markets, people use an ideal-type “market” as a benchmark for their actions, just as public authorities use the same ideal type as a benchmark for legislation.

It is no coincidence that in many debates about contested markets proponents of marketization claim that “the market is not a real market yet,” where “real” implicitly refers to “well-functioning” in terms of the market model that is presupposed. Ideal types are subject to a self-fulfilling prophecy: once the organization of a certain practice becomes market based, the market (as a general model) will exert pressure on people to conform to its rules. Such pressure is both normative (people accepting that acting “market-like” is appropriate) and functional (a systemic logic that forces people to obey the rules of the game on pain of losing it). Since the market plays an important role in reality as we know it, it would be bad social theorizing to ignore it. In order to understand social

¹⁰⁵ John O’Neill discusses market essentialism and – rightly in my view – claims the following: “It is quite possible that different markets, like games, may turn out to share only some family resemblances. It does not follow that the attempt to discover essential properties is a mistake. It does mean that one may be unsuccessful. In the end it is a matter of empirically informed investigation.... Those similarities are real – there does exist a network of properties that thread together entities that fall under a term. If it is the case that markets are, like games, united only by a set of family likenesses, those likenesses are real.” O’Neill, *The Market. Ethics, Knowledge and Politics*, 14. It is telling that most authors criticizing the use of the market concept do not escape the need for using some ideal types but simply define them at a lower level of abstraction. For example, Viviana Zelizer, who criticizes the dichotomy of the spheres of impersonal economic versus intimate relations, instead proposes to identify “circuits of action.” In my view, she is right to refute the dichotomy but wrong in refusing to recognize that she replaces it by some other kind of ideal-type analysis. Viviana Zelizer, “Circuits within Capitalism,” in *The Economic Sociology of Capitalism*, eds Victor Nee and Richard Swedberg (Princeton: Princeton University Press, 2003). Similarly, anthropologist John Davis objects to market-based or reciprocity-based definitions of exchange but instead relies on ideal-type “repertoires of exchange.” John Davis, *Exchange* (Minneapolis: University of Minnesota Press, 1992).

reality, social theory has to make use of the “life forms” that participants themselves actually use.¹⁰⁶ This point holds a fortiori for normative theory, which claims to be useful for guiding agents in their actions. If that is the aim, that is one more reason to take seriously the categories people use to describe their social lives and actions.

Nonetheless, the objection prompts us to be cautious in generalizing about the market. Each specific feature of one’s market conception may be subject to contestation; there are better and worse – that is, more or less useful – ideal-type conceptions of the market. My framework is open to contestation of this kind. We will have to test the features of our market conception for their occurrence in each social situation where we claim that a market is present and modify the conception if necessary. Moreover, the objection reminds us that social reality rarely presents us with the ideal types as we construct them in theory. Reality is endlessly varied and this is also true for the concrete forms in which markets appear. This intuition does not require us to abandon ideal types; but it does require us to show how these ideal types are turned into really existing social configurations, that is, how they are *implemented*. Therefore it is to the institutional strategies that are available to implement the market and its alternatives that the next chapter will be devoted.

¹⁰⁶ Peter Winch, *The Idea of a Social Science and Its Relation to Philosophy*, 2nd ed. (London: Routledge, 1990 [1958]), 41. Similarly, Charles Taylor, *Sources of the Self. The Making of the Modern Identity* (Cambridge: Cambridge University Press, 1989), 53-62.

CHAPTER 3

INSTITUTIONAL CHOICE AND THE VALUE OF

INSTITUTIONAL PLURALISM

The market question formulated in the introduction of this study was: which goods should or should not be on the market? The formulation of this question makes it sound as if we only need to choose between ideal types: between an ideal-type market and one or more ideal-type alternatives. By now, we have to acknowledge that this picture is too simple. Instead, the normative question should be one of institutional design, in which the choice of an ideal type is only the first step. On the basis of a conceptual analysis of the ideal type market and its alternatives we have to take account of the implementation of these ideal types in concrete practices. Therefore we have to have an overview of the available ways of implementation or, as I will call them, *institutional strategies*. The normative question about the market has as its object the choice between these specific institutional strategies, not between mere ideal types.

In this chapter I will start by giving an overview of several basic institutional strategies. Philosophical debates about the market have concentrated on three of them. The two simplest options are to allow a pure market for a specific good or to prohibit marketization, “full commodification” or “blocked exchange.” In addition, there is the intermediary option of allowing marketization but simultaneously regulating the good in question, the strategy of “incomplete commodification.” I will briefly discuss these strategies and introduce a fourth alternative, which consists of implementing several modes of provision side by side – I will call this strategy *institutional pluralism* (Section 3.1). After this conceptual exposition I turn to the normative question of how to choose between them. To answer that question I will introduce three *criteria for institutional choice*. We can judge the attractiveness of institutional strategies according to their outcome value, their process value and their expected stability in practice. These three criteria taken together provide an “open assessment” of institutional strategies, in the sense that none of them is prioritized in advance. Which one is to be preferred will depend on the value to be realized in the circumstances of the

case at hand – this in turn depends on which ends the practice at hand should realize, which is the topic of the next chapter (Section 3.2).

The second half of the chapter is devoted to a more detailed discussion of the value of one of the institutional strategies, that of institutional pluralism. I spend more time on this strategy because of its novelty in the commodification debate and because of its importance to the three practices that will be the subject of the second part of this study: the services of security, media communication and care. First I will present a generic argument for institutional pluralism that raises a challenge to the method of open assessment according to the three criteria for institutional choice. According to this “argument from neutrality,” institutional pluralism should serve as the privileged default option for institutional arrangements, since from a neutral point of view it is best to leave people a choice between a diversity of modes of provision because this respects their preferences as they figure in their conceptions of the good life. I will discuss and reject this challenge to the method of open assessment of the value of institutional strategies (Section 3.3). Finally, I will show how the value of institutional pluralism is to be determined by accounting for how its value diverges from the value of a simple addition of the value of each alternative mode of provision on the pluralist menu. The value of pluralism is enhanced by the choice it makes possible between a diversity of modes of provision (effect of choice), but should be corrected for the overlap between different modes of provision in pluralism (effect of overlap). I illustrate this by showing these two “interaction effects” in the example of blood donation versus blood sale (Section 3.4).

3.1 A Taxonomy of Institutional Strategies

Any practice that uses the market to govern the provision and exchange of its good also embodies some other institutions to implement that market.¹⁰⁷ For example, if the practice of providing bread is to be market based, then additional institutional arrangements are needed to make such a market possible: arrangements for the market days and times, for the assignment of authorities to oversee trade, for the products allowed for trade on the market, for the conventional rules of trading, etc. I will call these additional arrangements the *accidental institutions* of the market in question, in contrast to the “core” of the

¹⁰⁷ In deviation from the more or less equal attention paid to every mode of provision in the previous chapter, from now on I will focus more strongly on the market. However, most of what is discussed here applies *mutatis mutandis* to the other ideal-type modes of provision.

ideal-type market as defined by the three frames in the previous chapter. These accidental institutions can be divided into three classes.

The examples just mentioned are all examples of *market-enabling* institutions. The role of these institutions is to create and sustain a market. Their necessity reminds us of the fact that the market is a deliberate social construction, not something that just appears out of the blue or arises from spontaneous non-institutional interactions (the standard example in the institutional literature is the creation of a reliable and stable scheme of property rights). Other institutions however, are *market restraining*: they prevent the market from functioning in the way it would without those constraints. In our example of the market for bread, think of a regulation requiring minimum standards for bread quality, which discourages the production of low-price/low-quality bread that might otherwise be in demand by part of the consuming public. Similarly, a minimum price regulation would restrain the market.¹⁰⁸ Both enabling and restraining elements are compatible with the market: they do not inhibit its core functioning. Far different is the third category, that of *market-incompatible* institutions. These institutions are restraining to such an extent that the operation of a market becomes impossible. The explicit prohibition of having a market is the most extreme example of such an institution; more common is regulation that is so restrictive that it becomes unattractive to trade; for example, hygienic requirements which would make bread making prohibitively expensive.¹⁰⁹

This distinction between three types of accidental institutions should be interpreted as representing a continuum, rather than all-or-nothing categories. For example, regulation about opening hours of shops enables them to focus the public's attention on certain hours of the day and thus facilitates the functioning of the market. But if regulation restricts these hours to a large extent, it may be perceived as restraining rather than enabling. If regulation brings the number of hours down to zero, it even becomes market incompatible.

From this distinction flows a corresponding distinction between three institutional configurations and three corresponding institutional strategies to

¹⁰⁸ These restraining elements, ironically, are often argued for as if they are market enabling: for example, one could argue that without minimum quality regulations people would distrust bakers and refuse to buy bread. Similarly, one may defend worker protection rules against lay-offs, not from a market-external motive (social protection) but from a market-internal perspective, as a necessary incentive for investment of employers and employees in their mutual relationship. The restraining and the enabling function of an additional institution, then, are often two sides of the same coin.

¹⁰⁹ For completeness' sake we can identify a fourth category, that of *market-neutral* elements. They do not bear directly upon the operation of the market, but on other aspects of the practice. For example, changes in technical standards for baking machines do not bear directly on the operation of the bread market but upon the process of production preceding it.

realize these configurations. A *pure* market exists when the economic organization of a practice is based on the ideal-type market in combination with market-enabling institutions; this is the strategy of full commodification.¹¹⁰ By contrast a *mixed* market exists when in addition one or more market-restraining institutions are present; the strategy of incomplete commodification. Lastly, when market-incompatible institutions are introduced in a practice, the core of the ideal-type market cannot come into or remain in existence and a *non-market* results; the strategy of blocked exchange. In the remainder of this section I leave full commodification out of consideration, for I want to focus on the ways in which we can deal with objections to marketization that the market itself cannot solve (i.e. “contested markets”). The most radical reaction to such objections is to block exchange, while the less radical but often more important strategy is to have incomplete commodification. I discuss these two strategies first and then add a third alternative, institutional pluralism.

The strategy of *blocked exchange* was proposed by Michael Walzer.¹¹¹ He devised a list of goods that should not be bought and sold on the market. His list includes fourteen items, ranging from human beings, political power and criminal justice to prizes and honors, divine grace, love and friendship. All these goods should fall into spheres other than the market. This list of blocked exchanges has been criticized for several reasons. As Judith Andre claims, the list is “rough and unorganized, suggestive rather than conclusive.”¹¹² More specifically, there are at least two categories of goods that are not susceptible to a choice between allocation on the market or via a non-market mechanism. The first category consists of those activities that are forbidden irrespective of their market form. An example is the procurement of murder by money which is prohibited simply because murder itself is prohibited. For these goods “the block follows the ban.”¹¹³ Jeremy Waldron argues that most of the items on Walzer’s list are examples of this kind. I leave these out of consideration, since I want to focus on activities that are in principle allowed, but where the block is specifically on market exchange. Therefore I also leave out of consideration a second category, which consists of those goods for which it is conceptually impossible to exchange them, such as love and friendship. When these are exchanged for money, they simply cease to exist.

¹¹⁰ Note that a “pure market” is not to be confused with the “perfect market” in economic theory. The former is a market in the sense defined in the previous chapter without any market-restraining institutions, while the latter refers to a different conception of the market altogether (see also the note in Section 2.3 on the perfect market).

¹¹¹ Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 100-103.

¹¹² Andre, “Blocked Exchanges: A Taxonomy,” 172.

¹¹³ Waldron, “Money and Complex Equality,” 159.

For the remaining goods the question is whether or not the market is fit or appropriate for their allocation.¹¹⁴ Walzer provides a good example of the requirement of “fittingness” in a discussion of offices. He argues that once we have socially constructed an office as a good that is open to all on the basis of talent, it is wrong to allocate it on the basis of family loyalty and equally wrong to grant it to the highest bidder. In both cases, the form of allocation does not fit the social meaning the good in question has acquired.¹¹⁵ One could object that allocation of offices on the basis of family loyalties is a legitimate mechanism in many cultures. Why should only allocation according to talent “fit” the good of offices? In response, one can either grant that the social meaning of offices is indeed culturally relative or one can insist on a universalistic interpretation. For both responses, however, it is true again that one fitting kind of allocation is identified (albeit a different one for the cultural relativist who allows differentiation between the meaning of offices in different cultures, or for the universalist who defends allocation according to only one universally valid mechanism). The notion of fittingness establishes a one-to-one relationship between a certain good and a fitting mode of provision. For some goods, this may result in the conclusion that market-based allocation is objectionable and that markets should be blocked.

However, not every objection to market allocation of a specific good justifies the far-reaching conclusion that market exchange should be blocked. There may be reasons why allowing a contested market might be preferable to prohibiting it (for criteria to ground these reasons, see the next section). When we allow a market to exist it does not follow that such a market should be a pure market; it can also be a mixed market in which goods are *incompletely commodified*. The restraining institutions added to the market serve the function of protecting a so-called “non-market aspect” of the meaning of a good. Whenever market and non-market aspects coexist in the meaning of one good, the solution offered by the strategy of incomplete commodification is to have both a market and regulation to restrain that market (while in most of the commodification literature these aspects are taken as being embodied in the “meaning” of the good, in my view they

¹¹⁴ Fittingness covers what Michael Sandel has called “the argument from corruption,” which he distinguishes from “the argument from coercion.” The first aims at identifying corruption of the meaning of goods through commodification, the second guards against sales that are de facto coerced, e.g. because of poverty. See Michael Sandel, “What Money Can’t Buy, The Moral Limits of Markets,” *The Tanner Lectures on Human Values, Delivered at Brasenose College, Oxford* (1998), 94ff.

¹¹⁵ Michael Walzer, “Objectivity and Social Meaning,” in *The Quality of Life*, eds Martha C. Nussbaum and Amartya Sen (Oxford: Clarendon Press, 1993), 169.

emerge from the formulation of the ends of the practice in question).¹¹⁶ To illustrate this, Margaret Radin, who coined the term “incomplete commodification,” mentions work. Work has a market aspect in being a performance that can be exchanged for payment according to the value it adds to the product; consequently it functions as a good exchangeable for a price on the labor market. At the same time, work cannot just be described in terms of a sale. It also has personal and social meanings – people take pride in their work, they identify with the organization they work for, work gives them social standing etc. When these non-market aspects of work are not guaranteed by the market organization of labor, regulation can be a means to protect them: regulation to guarantee a minimum wage, to restrict possibilities to dismiss workers, to give workers a voice in the decision-making bodies of organizations, etc.¹¹⁷ The strategy of incomplete commodification shifts the focus of attention from establishing the legitimacy of a market for good x or y as such to the design of conditions under which this market is judged legitimate. Market and non-market aspects now come to bear simultaneously on the provision of the same good. Note that the notion of fittingness is complicated by such a strategy but it remains applicable: market organization now fits the good’s market aspect while additional regulation fits the good’s non-market aspect.

To implement the provision of goods for which market and non-market aspects coexist, another strategy is available, which – as far as I am aware – goes unrecognized in the philosophical debate on commodification, although it is widely used in practice.¹¹⁸ I propose to call this strategy *institutional pluralism*.

¹¹⁶ See Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 107. For a related distinction between sphere segregation (Walzer’s strong version) and sphere differentiation, see Anderson, *Value in Ethics and Economics*, 147. Sphere differentiation allows “mixed practices,” where ideals and values from several spheres come together in the provision of a certain good.

¹¹⁷ Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 102ff. Regulation refers both to formal legal rules that protect non-market meanings and to informal, social norms that provide incentives to harbor non-market meanings in individuals’ behavior. These formal and informal norms to a certain extent are alternatives to each other. Governments may consider the use of formal means or alternatively ask organizations to protect a non-market interest or value by self-regulation. Legal regulation may then be used where self-regulation fails. From this perspective the currently spreading discipline of business ethics may be considered as a means to promote informal forms of regulation, insofar as it tries to encourage and persuade commercial organizations to voluntarily take into account non-commercial aspects of their behavior where no legal obligation exists.

¹¹⁸ In the literature, the coexistence of market and non-market modes of provision is discussed in the context of the “domino effect,” i.e. the question whether market provision drives out non-market provision. Here only the (potentially) negative side of such coexistence is emphasized. It is not recognized as an institutional option with potential positive value in its own regard.

Institutional pluralism exists where a good is simultaneously provided via two or more modes of provision; for example via the market and via one or more alternative modes of provision.¹¹⁹ To illustrate, consider the possible ways people produce and exchange food. They may decide to grow and cook their own food and create a self-sufficient family within which the products are shared among the members (self-provision). Alternatively, people can purchase their food in restaurants, leaving the whole process of cultivation and preparation to a chain of commercial suppliers (market provision). A third option might be to give and take turns in preparing meals among a group of friends (informal provision). Fourthly and fifthly, one could depend on eating in charity houses operated by the state (public provision) or by professional associations (professional provision). Pluralism of modes of provision in the case of food is quite uncontested. Whether I decide to cook for myself, to eat at a friend's place or to pay a cook to do the work for me in a restaurant is a matter we generally would want to leave open. For most of these alternative modes of provision we would not normally propose a block.

That such simultaneous provision through several modes of provision is merely to be *allowed* ("weak institutional pluralism") does not mean however that it is also normatively *required* ("strong institutional pluralism"). Whether the strong form of pluralism can be defended depends upon the circumstances. For example, one could argue that in emergency situations where market and self-provision fail to deliver food to parts of the population, government agencies should start distributing food. Apart from this instance of public provision, however, it is dubious to speak of a normative requirement to have as many modes of food provision as possible. The world would surely be impoverished without restaurants or friends inviting us for dinner; but that does not normally mean we have a claim on the realization of these modes of provision. Moreover, public emergency provision does not imply an unconditional right for everyone to eat at the government's expense every day. Similar limits are also set on the use of other modes of provision: my friends will not allow me to eat at their place every day (gifts require reciprocating the favor), nor do most families feed their children endlessly after they have grown up. Strong institutional pluralism cannot be assumed; the addition of each mode of provision to the scheme will have to be argued for (for a more elaborate defense of this position, see Section 3.3).

¹¹⁹ I use the term "institutional pluralism" in this very specific sense as a reference to a pluralism of modes of provision. For a broader use of the term, but which also makes reference to coordination mechanisms similar to my modes of provision, see Veit Bader and Ewald Engelen, "Taking Pluralism Seriously. Arguing for an Institutional Turn in Political Philosophy," *Philosophy and Social Criticism* 29, no. 4 (2003), 391-92.

In institutional pluralism, the notion of fittingness is again transformed. Instead of a strong linkage to one mode of provision only (the essential “fit”), in pluralism a variety of modes of provisions is realized. Each of them fits with one of the aspects of the good in question. This however does not mean that institutional pluralism has to be a pluralism of *pure* modes of provision; each of them can be pure or mixed in turn. It is possible for a good to be incompletely commodified and subject to other modes of provision at the same time (while the modes of provision not included are implicitly or explicitly blocked). For example, the labor market is both socially regulated and complemented by non-market forms of labor such as informally provided household labor. Or it is possible that a good is fully commodified while at the same time subject to another mode of provision that in turn is restrained by some accidental institutions (e.g. “incomplete informal provision”). For example, fully commodified labor can coexist with household labor that is socially regulated so as to guarantee its provider a pecuniary compensation in case of household breakdown, i.e. divorce. A large variety of combinations is conceivable. Our institutional choice has to take into account the opportunities for these complications in the basic institutional strategies.

As a result, the object of institutional choice can be described as consisting of two interlocking layers. First there is the choice of the ideal-type mode(s) of provision to be used. To be added to that is the second layer of choice, about the appropriate institutional strategy. In this section we have only encountered these strategies in their most abstract form. In concrete cases, the details of these strategies will have to be further specified. For example, if one chooses incomplete commodification, which kinds of regulation are to be used; or, in an institutional pluralism, what kinds of relations should hold between the chosen modes of provision? These two layers can hardly be separated in practice, for each bears upon the other. The desirability of a market for, say, health care, depends on the feasibility of specific restraining arrangements that compensate for deemed negative consequences of having such a market, for example its accessibility to all citizens. Once these arrangements appear to be unfeasible this may or may not lead to the decision to adopt a completely different mode of provision altogether, e.g. public provision of health care. Dissatisfaction with caricatured discussions that only focus on the first of these layers is justified. However, to state that “To Commodify or Not; That is *Not* the Question,” is to throw out the baby with the bath water.¹²⁰ We might say in response that it is the

¹²⁰ This position is defended by Joan Williams and Viviana Zelizer, “To Commodify or Not to Commodify; That’s *Not* the Question,” in *Rethinking Commodification. Cases and Readings in Law and Culture*, ed. Martha M. Ertman and Joan C. Williams (New York: New York University Press, 2005).

question; but only the first question. There is a second question, about the specific additional institutions that bear on the operation of the market. Ideal-type modes of provision provide a useful starting point for institutional choice, but never an end point.

Finally, given these institutional strategies we can now be more precise about the meaning of the notion of “commodification” (or “marketization”). Usually commodification is defined as derivative from the notion of a commodity. It then reads something like “the transformation of a good into a commodity,” “the process by which a good is made a market good,” etc.¹²¹ However, these definitions conflate at least three different interpretations of this process, three different senses in which the market expands its reach, each connected to one of the strategies discussed above (“decommodification” refers to each of the reverse processes). First, commodification can refer to *market creation*: the establishment of a market for goods that had previously not been brought on a market. Market creation refers to the lifting of a block on market exchange. Second, commodification can refer to *market deepening*: when a market evolves from a mixed market in the direction of a pure market. Market deepening is connected to the strategy of incomplete commodification; when the market deepens, non-market aspects protected by regulation give way to market aspects. Third, commodification can refer to *market enlargement*: the fact that a good that is simultaneously provided through the market and through non-market modes of provision is now increasingly provided through the market. With market enlargement, the proportions of market and non-market provision within an institutionally pluralist arrangement shift; the market enlarges its share relative to these other modes.

3.2 Three Criteria for Institutional Choice

Given these institutional strategies, we now confront the normative question which (combination) of strategies should be chosen for the provision of a given good in a given practice. In this section I will argue that three criteria should guide this institutional choice. The first and second criteria concern the outcome value and the process value of the proposed institutional arrangement. The third

¹²¹ One influential use of the term diverging from this one is by Esping-Andersen in his classification of welfare regimes. For him commodification refers more specifically to dependence of people on the labor market and decommodification refers to the opportunities available to survive outside of the labor market. Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton, New Jersey: Princeton University Press, 1990), 35.

criterion is that of stability; it serves as a preliminary check on the feasibility of any institutional strategy. In proposing these criteria I focus on situations where there is some kind of objection to having a pure market and where the choice is between having a mixed market (regulating it) or having an institutional pluralism (adding a non-market alternative to the market); both of which would aim to compensate for that objection. As we saw in the previous section, objections against a pure market claim that the goods at stake have a “non-market aspect.” That aspect refers to some end that a market cannot guarantee or tends to undermine. This sounds rather abstract. Let us therefore consider some examples of objections directed at different kinds of markets, formulating alleged non-market aspects:

- A market for health care is unable to provide insurance to those unable to afford it.
- A market for news is unable to deliver journalism that upholds quality standards, such as the practice of giving a fair hearing to all sides.
- A market for sexual activity is unable to establish and sustain loving relationships between those engaging in the activity.
- A market for military defense activities is unable to collect contributions from every citizen to finance these activities.

The first criterion is that of *outcome value*. This criterion emerges if one focuses on a specific conception of institutions, which I will call the *tool conception* of institutions. This conception considers institutions to be tools that are valuable to the extent that they generate a desirable outcome in terms of a pattern of allocation of goods. When considered as tools, modes of provision are evaluated according to the value of the allocation pattern emerging as the result of their operation. This kind of valuation presupposes an analytical separation of two stages, production and exchange on one side, and consumption on the other. First goods are produced and exchanged and then those who have acquired them consume them. The relevant “outcome” is the result of production and exchange, which at the same time is the basis (or input) for subsequent acts of consumption. In the tool conception, the first stage is a means toward the second stage; consumption is the end of production and exchange. The ability of a mode of provision to deliver a certain pattern of allocation of goods determines its value. If one mode of provision performs better in this regard than another, it is to be preferred. “Performing better” can be interpreted in different ways.¹²² Which

¹²² Mostly economic thought takes as necessary (if not sufficient) criterion for the desired outcome the (Pareto-) efficiency of that outcome. For an overview of the role of this

outcomes are to be valued positively and to what extent, depends on their contribution to the realization of the *ends* that the practice is to serve (if my end is to get to my destination without becoming wet I will value taking the car as a means of transportation; if my end is to do so in an environmentally friendly way, I will value walking). We therefore need a separate formulation of these ends to be able to judge which instances of value are to be endorsed – this will be the subject of the next chapter.

In the example of the health care market presented above this means that a separate criterion has to establish that all persons can rightfully claim to receive health care insurance. Once this is established, the criterion of outcome value measures the performance of alternative institutional arrangements toward this end, such as an incompletely commodified setting in which poor people are endowed with a budget for insurance, or a legal requirement on medical care suppliers to treat uninsured people, or the establishment of a public insurance fund in addition to the existing commercial insurers, etc. Similarly, in the example of news provision, we have to establish separately whether or not there are certain quality standards that this practice should uphold; and if so, which ones. Only then can we measure the extent to which different institutional configurations perform well in realizing these standards. Similar considerations apply to the other examples, of sexual activity and national defense.

The second criterion is that of *process value*. Whereas outcome value concerns the allocation resulting from exchange, the criterion of process value directs our attention to the value of our participation in all stages of the process, production and exchange as well as consumption.¹²³ Underlying process value is a different conception of institutions, which I will call the *game-conception* of

criterion in economic thought, see Daniel M. Hausman and Michael S. McPherson, *Economic Analysis and Moral Philosophy* (Cambridge: Cambridge University Press, 1996), 87-93. However, performance might also be evaluated according to other outcome criteria, such as criteria for the just distribution over the relevant population.

¹²³ The distinction is similar to the distinction made by Amartya Sen between the “opportunity aspect” and the “process aspect” of freedom. Opportunity refers to the ability to achieve certain outcomes while process refers to the act of choice. Amartya Sen, “Introduction: Rationality and Freedom,” in *Rationality and Freedom* (Cambridge, Massachusetts: Harvard University Press, 2002), 10. The difference with the distinction as presented here lies in the fact that here the value of institutions is at stake, not the value of freedom(s), and in a wider definition of the process aspect. The latter for me not only covers the act of choice, since the choice itself is only one moment of the participation in production, exchange and consumption. See also Margaret Radin, who discusses a “participant aspect” and a “social aspect” to incompletely commodified goods. Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 107. Similarly, Eric Mack distinguishes internally and instrumentally motivated actions. Eric Mack, “Dominos and the Fear of Commodification,” in *Markets and Justice*, eds John W. Chapman and J. Roland Pennock (New York: New York University Press, 1989), 212-13.

institutions. This conception compares institutions to games in the sense that they are valuable to the extent that they enable people to participate in forms of social interaction that they value. Of course, games also have outcomes and these outcomes are a potential object of value for us (this is to say: institutions are often both games and tools). However, although the two are connected, the value of outcomes is analytically distinct from the value of participating in the institution. We may value games for their outcomes (the score of who won and who lost) or for the process of being engaged in the game itself – which in turn may refer to a diversity of aspects: its complexity and quality, the social relations it establishes, the enjoyment it brings, etc. Since modes of provision are characterized by their three frames, their process value is always related to one or several of these frames: to the constitution of goods, the creation of rules of provision and the subjective dispositions characteristic of them.

As an example, take once more the case of food: two meals may be exactly alike in respect of their quality as a physical good, having the same ingredients, composition and taste. But to experience the consumption of this meal after self-provision is different from experiencing the same meal after market provision, say in a restaurant. This is not to say that the one is always superior in value to the other; it is only to say that in both cases we value the “environmental condition” under which the good was produced; we value different kinds of participation in social interactions. In the first case, part of the enjoyment of the meal relates to the fact that we have exercised our best culinary capabilities – creativity, discipline, intuition – to produce the meal, while in the second case we may value the atmosphere of the restaurant, or even the fact that we contribute to the economic subsistence of the restaurateur. Similar considerations hold for the example mentioned above of a market for sexual activity, which was also a prominent example in Fred Hirsch’s discussion of the neglect of the process aspect in much of economic theory:

The utility derived from goods can be seen as emanating not only from their embodied characteristics but also from *the environmental conditions in which they are used....* This neglect of the social context in which individual acquisition of goods and services takes place comprises a central aspect of modern commodity fetishism. It involves an excess preoccupation with commodities... as instruments of satisfaction. Orthodox economic analysis is concerned with the commodities people have, not with *the way they get them*. Yet the relevance of this dimension is uncontroversial when applied to at least one activity – sex. “Bought sex is not the same.” And this has a wider significance.¹²⁴ (emphasis added, R.C.)

¹²⁴ Hirsch, *Social Limits to Growth*, 85-87.

The example of sex neatly illustrates how the realization of different kinds of non-market aspects requires different institutional strategies. Regulation of prostitution is able to protect certain non-market aspects, such as the health and autonomy of prostitutes. Regulated prostitution however cannot be used to satisfy the preferences of those who want to engage in non-monetized sexual relations. Each of these non-market considerations (protection of prostitutes and preference for non-monetized sex) requires a completely different institutional strategy: incomplete commodification in the first case, non-market provision in the second case.

The example of national defense can also illustrate the difference between outcome value and process value. Defense is a standard example of a public good in the economic sense. Since it is difficult if not impossible to exclude non-paying citizens from benefiting from defense efforts, payments for this good have to be imposed on the relevant community (taxation). Thus, the criterion of outcome value can be used to argue that an effective allocation of defense activities requires public provision. This justification of public provision is completely different from an argument that can be derived from application of the process value criterion. Here the argument would be that publicly provided defense for all citizens is an expression of membership in the same community. The process consideration focuses on the value of public provision as giving free and open access for all, while market provision functions by excluding non-paying consumers. For those who value open access, the value of market provision is lower than the value of public provision, even if the relevant services are the same in all other respects. From this process consideration an even stronger argument can be made in favor of inalienable obligations to take military service.¹²⁵ However, which of these instances of process value are to be endorsed depends – as in the case of outcome value – on the relevant ends to be judged normatively required for each practice.

The connection between criteria of process value and outcome value with the choice of institutional strategies bears resemblance to the structural connections that Elizabeth Anderson made between modes of valuation and economic

¹²⁵ In defense of this aspect of public services, Fred Hirsch remarked: “Those interested primarily in the narrow commodity or activity will be well served; those who place a positive value on exclusion or exclusiveness will find their social environmental preference satisfied. On the other side, those who prefer social contact focused on casual meetings and activities or relationships less specifically geared to particular forms of consumption will be neglected; so also will those who place a positive value on open access, on non-exclusion. Their bad luck is that they derive utility from environmental characteristics that are outside the market to provide.” Ibid. 91. See also Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 114-15, who discusses the distributive aspect of increased use of private alternatives for formerly public services.

institutions. She has argued that different economic institutions serve to express qualitatively different ideals and modes of valuation. Thus, the market should be used for goods which are properly valued for their use, while political institutions should govern goods which express the ideals of fraternity and democratic freedom, personal relations should be governed by institutions reflecting the ideals of intimacy and commitment, etc.¹²⁶ In her scheme, “use” is a lower mode of valuation while these other modes of valuation are qualitatively higher.¹²⁷ In comparison, the use value of commodities in my scheme is an instance of outcome value; the value of the output that the market delivers for use in consumption. However, in addition the market – as any other mode of provision – can be valued for the opportunities for participation it offers, i.e. for its process value (which is similar to Anderson’s category of expressive value). For example, one can value the entrepreneurial spirit of innovation that participation in markets may offer, its opportunities for competing and bargaining with others, for choosing between different variants and suppliers of the same product, etc. My scheme does not present these instances of the market’s process value as necessarily higher or lower than the process value of participating in non-market modes of provision. Those judgments of higher/lower value can only be made in the context of specific practices, on the basis of a moral theory about these practices’ ends (see the next chapter).

The third and final criterion for institutional choice is *stability*. It is somewhat different from the other two criteria in that outcome value and process value taken together provide a full assessment of the value of institutional arrangements. The third criterion serves as a preliminary test on these arrangements; it assesses whether they are feasible in a particular socio-historical context over a reasonable period of time. Any unfeasible arrangement can be removed from the list of arrangements to be considered for their value. In referring to “a reasonable period of time” my aim is to express the fact that the criterion of stability does not refer to the feasibility of bringing the institutional arrangement to be discussed into being. To create an arrangement will often not be the biggest problem; the question is whether it will be able to last for some

¹²⁶ Anderson, *Value in Ethics and Economics*, 143-147. In her theory, the market is characterized by a set of five norms: impersonality, egoism, exclusiveness, want-regardingness and orientation to exit. See for an in-depth review of Anderson’s and Radin’s market theories, Rahel Jaeggi, “The Market’s Price (Review Essay),” *Constellations* 8, no. 3 (2001).

¹²⁷ The hierarchy of modes of valuation derives from her pluralist theory of value. Use is presented as lower than another mode, respect, on the basis of the Kantian distinction between things which have a price and things which have dignity. Other modes of valuation (such as appreciation, consideration) are in between. See Anderson, *Value in Ethics and Economics*, 8-11, 144.

considerable period of time. How long is difficult to say in general, but the demand cannot be directed at an overly long period of time. After all, nothing lasts forever. It would therefore be unreasonable to expect institutions to last for decades or centuries before declaring them “stable.” At a minimum, there should not be any strong indications for doubts about their short-term stability.

Take our example of maintaining quality standards for journalism, which for most media companies is too burdensome and expensive to be profitable. Incomplete commodification could in principle guarantee protection of this non-market aspect: forms of regulation are conceivable which amend the market. In the US, the demand of giving a fair hearing was forced on commercial TV broadcasting networks through regulation. However, this instance of regulation proved vulnerable to circumvention. In practice, broadcasting networks chose to avoid the demand of a fair hearing by simply bringing fewer programs which would demand conforming to the standard, while the networks also – and successfully – lobbied for the abolishment of the demand.¹²⁸ This arrangement turned out to be unstable.

As is clear from the example, stability is largely a matter of empirical detail. It is not difficult to imagine more favorable circumstances where regulation of broadcasting stations could have worked well. In cases where instability of regulation is to be expected, this gives an argument for having a non-market form of provision instead; for example having a separate public broadcasting station that upholds standards of good journalism.¹²⁹ Of course, such an institutionally pluralist arrangement itself could also prove to be unstable. Therefore a comparative investigation as to the *relative* stability of different institutional alternatives is needed. A similar conclusion emerges from the example of health care. Insurance companies often try to attract only the good risks (the young and healthy) by focusing their marketing techniques on them, while leaving the bad risks to other companies. In the Netherlands, with the introduction of a market-based health system in 2006, insurance companies are under the legal obligation to accept all clients for the basic care package while simultaneously erecting a fund for compensating companies that attract many bad risks.¹³⁰ Such a system of

¹²⁸ Robert W. McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century* (New York: Monthly Review Press, 2004), 43-4.

¹²⁹ One can even imagine circumstances in which quality journalism would not be a non-market aspect at all; where it would be in sufficient demand in the market. This shows how non-market aspects themselves are contingent upon the context (similarly, in a world with a different human psychology, there would be no free rider problem and the market could deliver defense activities). Instead of intervening directly on the level of provision, one can therefore also choose to try to reform the context (e.g. give school education on media quality).

¹³⁰ A.P. den Exter and A.J.M. Buijsen, "Gelijke toegang tot gezondheidszorg verzekerd?," in *De zorg is geen markt. Een kritische analyse van de marktwerking in de zorg vanuit*

market regulation may or may not lead to attempts to undermine it. If it proves to be unstable, a public fund for part of the population may become necessary as an addition to the market. Here as well, much depends on the behavior of the participants in the market, which in turn depends upon the wider institutional environment in which they operate.

In this section I have presented the criterion of stability after the two value criteria, even though logically it is a preliminary criterion for eliminating unfeasible alternatives (whatever their value). In practical decision making, the sequence is as I presented it here. We first make judgments about the alternative that we defend as having the largest value and then we try to implement it in practice. If it proves unstable, we are forced to turn back to consider other solutions. As a consequence, policy experiments with new markets have a high trial and error nature. An additional complication is that these experiments take place against a political background. Wherever uncertainty reigns, ideology easily takes over the role of formulating general expectations of success. Unsurprisingly, therefore, these expectations differ considerably between various political parties; the left usually more inclined to doubt the stability of market-based arrangements than the right. Consequently, the latter will also be less (quickly) inclined to turn its back on market-based solutions and more inclined to continue adjusting the market-based solution and to tolerate continuing deficiencies in them. Philosophically speaking, additional assumptions about the prevailing socio-historical context would have to be added to the framework as presented here, in order to defend specific hypotheses about the stability of institutional strategies. In this context, I will keep the theory underdetermined as to these socio-historical contexts and refrain from formulating such hypotheses.

3.3 The Nature and Limits of Institutional Pluralism

The three criteria for institutional choice presented in the previous section do not privilege any institutional strategy. They require choosing from all stable strategies the one with the highest total value. They do not treat any strategy as a “default option,” while requiring overriding arguments for diverging from that standard and opting for another strategy. Now some might want to argue that institutional pluralism should have such a privileged place. They could use an argument similar to the one used for arguing that the market should occupy a

verschillende perspectieven, ed. Ineke Palm (Rotterdam: Wetenschappelijk Bureau SP, 2005), 30. Barbara Baarsma, Marc Pomp, and Jules Theeuwes, eds *Dynamische marktwerking. Over de complexiteit van mededinging in vijf sectoren* (Den Haag: Sdu Uitgevers, 2006), 47-48.

privileged place: that it enables individuals to choose freely their conception of a good life. In the first chapter I argued that that argument fails for the market, because it is biased toward commodity-centered conceptions of the good life. Would it not then make perfect sense to react to this by treating as a privileged benchmark the institutional arrangement that enables people to choose between *all* modes of provision? A consideration of this generic argument in favor of institutional pluralism will be the subject of the present section, for it will reveal more clearly the nature of and limits to the attractiveness of institutional pluralism.

A more precise statement of this “argument from neutrality” (as I will call it) reads as follows. A basic requirement of a free and democratic society is that it remains as neutral as possible toward the conceptions of the good life of its citizens. Conceptions of the good life may contain preferences for participating in specific modes of provision; for example, preferences for always (or never) engaging in market transactions.¹³¹ If people have different preferences for modes of provision and if these preferences figure in their conceptions of the good life, then institutional pluralism becomes necessary to respect all of these conceptions. A neutral point of view requires the realization of opportunities for as many different conceptions of the good life as possible. The notion of neutrality used here states that an institutional setting is neutral to the extent that it provides equal opportunities to people to pursue their legitimate conceptions of the good life. A closely resembling formulation was originally developed in the context of debates about political authority and political principles for a just society. It is what Joseph Raz has called “comprehensive political neutrality:”

One of the main goals of governmental authority, which is lexically prior to any other, is to ensure for all persons an equal ability to pursue in their lives and promote in their societies any ideal of the good of their choosing.¹³²

¹³¹ There is some anthropological evidence that people indeed do have spontaneous preferences for modes of provision in just this way; for example, they react intuitively to “transgressions” of spheres of justice – cases where a good is provided via an allocation mechanism other than the one they think is right. Fiske and Tetlock, “Taboo Trade-Offs: Reactions to Transactions That Transgress the Spheres of Justice.”

¹³² Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 115. Raz distinguishes this conception from “narrow political neutrality,” which prohibits political action to the extent that it has a *differential impact* upon people’s chances to realize their conceptions of the good life. The reason for using the comprehensive conception is that the narrow conception’s prohibition on differential impact is too weak to realize an institutional setting. Any instance of institutional pluralism requires a deliberate creation of institutional structures, not merely the absence of interference.

Note that in contrast to the classical political-philosophical debates with which Raz and others are concerned, it is only partly up to the government to realize a pluralism of modes of provision (whenever this is deemed appropriate). Government (or public authority in general) has a double role to play in the implementation of modes of provision. On the one hand it has a clear role in being the producing agency for the public mode of provision. On the other hand it often has a role in supporting other modes of provision. For example, market provision would hardly be possible without the government setting up legal institutions that guarantee the enforceability of property rights and contracts. Nonetheless, most forms of provision do not depend primarily on governments for their realization, but rather on individuals and groups. The attribution of exclusive responsibility to the government for creating and upholding institutional pluralism should therefore be resisted.¹³³ The normative requirement of pluralism, where it is established, addresses all agents necessary for its realization; it is their collective responsibility. With this qualification in mind, let us consider the case for the argument from neutrality. It depends on two sets of considerations.

First, there is the analogy of institutions with games (presented in the previous section in the context of process value). This analogy may tempt us to think of an intrinsic justification of institutional pluralism, as “pluralism for pluralism’s sake.” We normally value there being more kinds of games rather than fewer. For example, a world in which only one kind of sporting game would exist – whether it would be football or chess, tennis or racing – would be impoverished, compared to current standards. Only a multiplicity of games can reflect the multiplicity of human capacities for different kinds of sporting experiences and performances; chess allows exercise of complex mental computations, racing allows skill in dealing with high speeds, etc. We do not have to be personally engaged in these sports to recognize that each of them offers something of value. Now the variety of modes of provision is not as endless as the variety of games is (at least not in the ideal-type form presented in the previous chapter). Still, even with regard to modes of provision the idea of “more rather than less” has some intuitive attractiveness; after all, each mode of provision has a combination of frames that is unique to it. This may lead us to conclude that having several modes for the provision of one and the same good is necessarily better than

¹³³ At most, it could be argued that in certain cases governments will have a responsibility for actions that cannot be undertaken by other actors in virtue of their collective nature. For example, sometimes restricting the influence of one mode of provision will be necessary in order to make it possible for others to flourish. This means governments will have to practice the “art of separation.” See Michael Walzer, “Liberalism and the Art of Separation,” *Political Theory* 12, no. 3 (1984).

having only one: an institutional pluralism always dominates an “institutional monism.” It is always better, for example, to have market *and* non-market provision of a good, compared to the situation where only one of both is available.

The argument from neutrality could be further reinforced by a consideration we already encountered; that the survival of institutional arrangements is subject to a large degree of uncertainty (see the stability criterion in the previous section). Therefore we might think it best to adopt as many different modes of provision as possible. Institutional progress requires that many different arrangements are experimented with so that better functioning or more valuable arrangements prove themselves while worse arrangements show themselves to fail. This argument is analogous to John Stuart Mill’s famous argument for individual freedom in allowing many different “experiments of living.” Since we cannot know in advance which way of living is conducive to human happiness and “individual and social progress,” we are best advised to allow many different ways of living to flourish.¹³⁴ Thus, even if we reject the inherent value of maximum diversity (which we should not, according to the game analogy) we should recognize the instrumental value of diversity in selecting the best institutions.

Despite these considerations, I will now argue that the argument from neutrality should be rejected. The most important reason for this is that, in practice, unconditional respect for the preferences about modes of provision figuring in conceptions of the good life leads to conflicting demands upon scarce social resources. In this regard the analogy with “experiments of living” fails. Allowing different ways of living in many cases “merely” requires tolerance from others for deviations from customary or non-offensive ways of living (this is even more so in the case of Mill’s specific concern with having a diversity of opinions). However psychologically demanding such tolerance may be, it does not, for the most part, require extensive coordinated action and the sacrifice of large resources. In contrast, the establishment of all modes of provision (apart from self-provision) requires social cooperation and claims social resources that cannot be used otherwise. Here the qualification that John Rawls made about his own conception of political justice also applies:

No society can include within itself all forms of social life. We may indeed lament the limited space, as it were, of social worlds, and of ours in particular; and we may regret

¹³⁴ Mill, *On Liberty*, 63. The epistemic element is emphasized even more strongly by Hayek: “the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends.” Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: The University of Chicago Press, 1960), 29.

some of the inevitable effects of our culture and social structure. As Berlin long maintained... there is no social world without loss; that is, no social world that does not exclude some ways of life that realize in special ways certain fundamental values.¹³⁵

The “limited space of social worlds” provides a limit to institutional pluralism as it does to any other multiplication of institutions. It points to the need of finding ways to adjudicate between different, conflicting conceptions of the good life which cannot all be realized simultaneously. The preferences which are expressed in these conceptions of the good life by definition cannot provide such adjudication – they cannot be the source of the problem and its solution at the same time.¹³⁶ Preference-transcending criteria are therefore needed, which tell us which preferences are more important or urgent than others.¹³⁷

An additional problem is that currently existing institutions have a certain influence on the formation of conceptions of the good life and thus the preferences figuring therein. The fact that preferences are “endogenous” to current institutions (or that they are “adaptive” to present contexts) makes it hard to rely on these preferences as a normative standard.¹³⁸ The preference of a group of people for using, say, informal provision for caring activities, does not provide a reason for providing care this way if their preferences have only emerged as a consequence of being acquainted with doing care this way (not having had another option); and if they would prefer, say, market provision, if this had been on their institutional menu of choice instead. This consideration too calls for a preference-independent normative standard. The capability theory presented in the next chapter aims to fill this gap. By making moral judgments about the set of capabilities for which it is morally required to realize them, priorities can be set in

¹³⁵ John Rawls, *Political Liberalism*, expanded ed. (New York: Columbia Press, 2005), 197.

¹³⁶ Some might want to propose that preferences could provide the solution; if one would rely on calculations about their number and intensity to establish which combination of conceptions of the good life, possible in the limited space of possible social worlds, would realize the greatest net amount of preference satisfaction. However, such cost-benefit analysis would completely overthrow the emphasis of the argument from neutrality on the equal value of each conception of the good life, by virtue of the fact that it is a person that holds that conception (it would violate the separateness of persons). Also, it would require making interpersonal comparisons of utility, which is a highly contested method.

¹³⁷ For a paradigmatic statement for assessing the urgency of preferences and moving to more objective criteria in moral argument, see Thomas Scanlon, "Preference and Urgency," *The Journal of Philosophy* 72, no. 19 (1975).

¹³⁸ For the endogeneity of preferences with regard to economic institutions, see Bowles, "Endogenous Preferences: The Cultural Consequences of Markets and Other Economic Institutions." For a classic discussion of adaptive preferences, see Jon Elster, "Sour Grapes – Utilitarianism and the Genesis of Wants," in *Utilitarianism and Beyond*, eds Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press).

the face of conflicting demands upon social cooperation and resources. This will provide us with a ground for judging when and for what reasons institutional pluralism is required and when other institutional strategies are required.

Still, this conclusion has to be put in perspective. Institutional pluralism (and indeed any institutional arrangement implementing one or more of our modes of provision) does remain dependent on preferences in one important respect. Whatever institutional arrangement is to be endorsed, the goods that are provided through it will have to be consumed. It is inconceivable that the government, or any other organization, would be able to provide goods for which demand is systematically lacking. For such an “under-consumption” of goods in the long run will subvert the legitimacy of such institutional arrangements. However much endorsable from a moral point of view – if these arrangements are unable to create a minimum level of preferences in their favor – they are bound to fail. This is especially relevant to goods for which the market’s reliance on preferences is problematic. Take our example of news provision. If one day nobody would hold a conception of the good life in which the consumption of high quality journalism figures it is hard to imagine that a government or other organization would nonetheless continue to supply such a good. Imagine a government providing media programs through public provision in spite of the fact that the whole of its population does not prefer (“demand”) such service. The predictable consequence would be that nobody would watch the programs; and – given the costs involved – that they would lobby successfully for abolishment of such governmental broadcasting programs.

Some may argue that we can be optimistic, in that for many goods valuable institutional arrangements will be preferred – and therefore sustained – by at least some people. Just as it would be bizarre to think of the demands of normative theory as something always shared by current preferences, so it would be bizarre if the two were completely disconnected. Still, guarantees for this overlap between preferences and the demands of normative theory cannot be given. Even if optimism is a moral duty, there is no corresponding duty to rely on one’s optimism. Instead of passively waiting until these forms of provision die out, it may therefore be required to engage in the business of trying to stimulate the demand for these preferences. However, there is no general argument in favor of preference-creating efforts in the case of divergence between normative theory and actually existing preferences. It all depends on the character and weight of the normative interest involved (for an example, see Section 6.2 on the provision of media products).

3.4 Two Interaction Effects in Institutional Pluralism

If the argument from neutrality is to be rejected, then how do we assess the value of institutional pluralism? Is it sufficient to refer to the three criteria for institutional choice? In this section I will argue that these criteria cannot be applied to institutional pluralism without some additional modifications, which have to do with the value of diversity that was endorsed overenthusiastically by the argument from neutrality.

Following the criteria from Section 3.2, the suggestion seems to be that we can get the value of institutional pluralism by simply adding up the value of each separate mode of provision. The analogy with games suggests that a social world that has chess as well as football, tennis as well as racing becomes more valuable with the addition of each alternative. However, this presupposes that the addition of an alternative has no influence whatsoever on the value of already existing games. Perhaps that presupposition is realistic in the case of sporting games; it is untenable in the case of modes of provision. The attractiveness of one alternative changes in an institutionally pluralist setting because of the existence of other alternatives. It does so through two “interaction effects,” which modify the total value of pluralism (compared to the standard of the crude addition of value of each alternative). In this section I will present these interaction effects – one of them positive, the other negative – and illustrate both with the classical example of the market for blood provision.

The positive interaction effect is the *effect of choice*. Any pluralist structure creates an opportunity for individuals to have effective access to different modes of provision.¹³⁹ In this sense the value of the whole is greater than the value of the sum of the parts: institutional pluralism has the additional value of providing a choice, which would be neglected in the method of simply adding up the values of each separate alternative. In pluralism the choice between options adds something of value. This value itself is a sort of process value, generated not by engaging in one mode of provision, but by engaging in a choice between several modes of provision offered on the institutional menu. The participation in choice in that sense is to be valued for its own sake. So there is something to the intrinsic value of diversity, even though the argument from neutrality in the previous section did not draw the right conclusions from that fact.

The negative interaction effect is the *effect of overlap*. If two or more different modes of provision are realized for the provision of the same good, the value of

¹³⁹ For the sake of simplicity I assume here that all individuals have effective access to all available modes of provision, so that they have the choice between them. This need not be the case, of course. For example, the public supply of food may be restricted to those in need of it according to strict criteria of need (see Section 3.1 for this particular example).

the choice set is increased; both because of the fact that the value of several alternatives is larger than the value of one alternative (the original sum of values) and because of the added value due to the effect of choice. However, the original sum will not normally be as large as a simple addition would suggest, due to the fact that there will be overlap in the offers on the institutional menu. If for example a commercial supply of a software item is supplemented with an informally provided open source alternative, the value of the total supply is enlarged, and the value of the opportunity for choice itself is to be added to that. Still, some consumers who resort to the open source alternative would otherwise have used commercial fare; and maybe some applications that would otherwise have been provided commercially will now only be provided informally. Similarly, a public provider of quality journalism may take away consumer demand for quality journalism provided as a commercial niche product. Although the public alternative enriches the media landscape, it does so – at least partly – to the detriment of market opportunities. Therefore the value of the institutional pluralism will often not be as large as the original sum of the value of every separate alternative would suggest. A fair assessment of the value of institutional pluralism therefore requires an assessment of the value of each alternative and a correction for the overlap between different modes of provision.¹⁴⁰

Let me finally illustrate both interaction effects in the classical case about blood provision as a commodity or as a gift, following Richard Titmuss's study on this subject. Titmuss argued that a market in blood diminishes opportunities for blood donation as an expression of solidarity between citizens. Even though citizens remain legally free to supply blood as a gift, once a market price is attached to blood donation, the altruistic motivation to give is eroded.¹⁴¹ In the debate following Titmuss's assertion, we can see both interaction effects at work. First, it is debated whether the existence of a market for blood actually diminishes the value of the gift (effect of overlap). Kenneth Arrow maintained that this is an empirical question. Commenting on Titmuss's statement that the absence of an expectation of payment for the donation signifies a belief in the importance of altruism between strangers, he wrote:

The statement does indeed imply that individuals will be willing to give without payment. But it does not explain why this willingness should be affected by the fact that other individuals receive money for these services, especially when the others

¹⁴⁰ The overlap points to the extent to which goods are the same, while the non-overlapping part points to the extent to which they become different products as a consequence of the use of different modes of provision, even though they remain functional alternatives between which people choose (see Section 2.1 on this point).

¹⁴¹ Titmuss, *The Gift Relationship. From Human Blood to Social Policy*, 239, 42-46. Here I abstract from the issues about the quality of blood when it is supplied commercially.

include those whose need for financial reward is much greater. Evidently Titmuss must feel that attaching a price tag to this activity anywhere in the system depreciates its value as a symbolic expression of faith in others. But note that this is really an empirical question, not a matter of first principles. Do people in fact perceive the signals as Titmuss suggests? Would they, were the moral questions expounded with greater clarity?¹⁴²

In response to Arrow and in defense of Titmuss, Peter Singer wrote:

The overall picture, then, is that where payment for blood is unknown, the number of voluntary donors has risen and kept pace with the increased demand; whereas when the opportunity to give freely exists alongside the buying and selling of blood, the number of volunteers falls sharply and can only with difficulty, if at all, be made good by increases in the amount of blood bought. This suggests that to pay some people for their blood does discourage others from giving it altruistically; or alternatively, that a purely voluntary system encourages altruism in a way that a mixed commercial-voluntary system does not.¹⁴³

In these passages, two issues get confused. On one side, there is the issue of the stability of a pluralist system, where giving and selling blood run together. This is an empirical issue, as authors on both sides of the debate acknowledge. Of course they think differently about how it will work out: Titmuss and Singer both think that the evidence shows that giving tends to be undermined if a market exists, while Arrow is unconvinced of this. On the other side, there is the issue of the value of a pluralist system, *if* it would be stable. Part of its value would be empirically contingent: whether a mixed system generates an overall quantity of supply of blood that is greater, smaller or equal to the supply emanating either from a pure gift system or from a pure market system (outcome value). Another part however is the effect on the qualitative value of giving (the process value of participating in an act of altruism). Here Titmuss and Singer think this value will be diminished while according to Arrow it will not be diminished: he thinks that the act of giving will still be perceived as an act of altruism that strengthens the bonds of solidarity between anonymous citizens.

Going one step further, some have even suggested that the introduction of a market for blood actually *enhances* the value of giving. This is a nice example of our other interaction effect, the effect of choice. Thus, Tibor Machan wrote:

Only limited moral virtue can be manifest in generous conduct if there are only two alternatives, not to donate or donate something that belongs to one. If, when I decide to

¹⁴² Kenneth Arrow, "Gifts and Exchanges," *Philosophy and Public Affairs* 1, no. 4 (1972), 351.

¹⁴³ Peter Singer, "Altruism and Commerce: A Defense of Titmuss against Arrow," *Philosophy and Public Affairs* 2, no. 3 (1973), 315.

part with my blood, I have only the option to give it away or not to do so, my option of selling it has been taken away and the virtue of resisting the temptation to do so is no longer available to me. So, even if all trade in such goods and services were morally odious, that still would not establish that it is right to prohibit trading them.¹⁴⁴

In order to give blood, one not only has to overcome one's laziness (one could have stayed at home) but one now also has to resist the temptation to ask for payment. By making a choice available between a market transaction and a gift, the value of the act of giving is enhanced. The value of pluralism is enhanced with the intrinsically valuable opportunity for choice. I think that Machan is right in drawing this inference about the value of pluralism. This conclusion only increases the relevance of the issue of stability. If pluralism in blood provision is stable, it probably has a larger value than the two monist alternatives (market and gift) separately. The question is whether it is stable. If it is not, we are confronted with a hard choice between either a market or a gift system – it is in that context that the argument in favor of a gift system seems most convincing.¹⁴⁵

In conclusion, the negative and the positive interaction effects discussed in this section have contributed to a specification of the way the value of institutional pluralism has to be determined. Institutional pluralism may or may not have increased or decreased the net value as a result of these effects, each of which points in an opposite direction. As a consequence, it may or may not be preferable relative to competing institutional strategies, depending on the circumstances of the case. Two relevant questions still need to be answered at the level of each particular practice:

- (i) Is there a *case* for institutional pluralism and if so what is it? What is the value of having several modes of provision for that practice and does it exceed the value of other institutional strategies?
- (ii) What is the *character* of that particular instance of institutional pluralism? What is the most appropriate division of labor between the modes of provision within pluralism for that practice?

¹⁴⁴ Tibor R. Machan, "Blocked Exchanges Revisited," *Journal of Applied Philosophy* 14, no. 3 (1997), 253. Eric Mack hints at the same point when he writes about the values of altruism: "The donor's action still achieves these values *or, perhaps, especially achieves these values*, in a world in which some blood moves in the market." (emphasis added, R.C.). Mack, "Dominos and the Fear of Commodification," 217.

¹⁴⁵ I read Dworkin as making the same point, when he first refutes Singer's claim that freedom of choice is diminished and then argues that the more accurate claim is that the problem is that the exercise of one option (that of giving) can be made less likely by the addition of another option. Dworkin, "Is More Choice Better Than Less?" 70-71.

In Part II, I will argue that for the three social practices discussed there, institutional pluralism is the best institutional arrangement. In each of these practices, there are good arguments for having both the market and one non-market alternative: the market and public provision in the case of security (Chapter 5), the market and professional provision in the case of the media (Chapter 6), and the market and informal provision in the case of care (Chapter 7). Also, I will discuss the question of the more specific relations between these modes that are to hold. The emphasis in these chapters will be on the (outcome and process) *value* of pluralism. The question of the *stability* of these pluralisms I will deal with in a separate chapter where I single out one key issue vital to stability: the capitalist nature of modern markets (Chapter 8). Finally, in the Conclusion I will compare the three applications as to the usefulness of the criteria and strategies presented here. But first, I will now add the last building block of the theoretical framework, the presentation of normative criteria to determine the ends of the practices for which some form of marketization – or any alternative institutional strategy – is contemplated.

CHAPTER 4

EVALUATING COMMODIFICATION;

A CAPABILITY THEORY FOR PRACTICES

In the second chapter I introduced the concept of a practice: a more or less coherent and stable cluster of actions. There I distinguished two normative parts of a practice: its ends and its institutions (Section 2.1). The normative question directed at any practice concerns both these parts: what should the ends of a practice be and which institutions should be used to realize those ends? Until now the question about how to determine ends was postponed. Instead, we concentrated on the institutions. For economic practices the choice about institutions first of all concerns the mode(s) of provision to be used. Here the market as one possible mode of provision came into the picture, but so did four alternative modes of provision (Sections 2.2-2.4). As we saw in the previous chapter, the more specific objects of institutional choice are the institutional strategies that implement these modes of provision. In the case of the market, this is to prohibit markets, to regulate them, to allow them without regulation or to allow them in conjunction with other modes of provision (Section 3.1). We also saw that the value of these strategies should be assessed by three criteria: their outcome value, their process value and their expected stability (Section 3.2). Which instances of (outcome and process) value are to be valued positively still is an open question however, for it depends on their contribution to the realization of the ends of a practice. A different set of ends will lead to different conclusions about the value of alternative institutional strategies for a practice. To these ends I now turn in this chapter.

The determination of the ends that a practice should endorse leads to the formulation of what I will call the *local normative theory* of that practice. Such a theory is local in the sense that it is good specific; it only concerns one practice and the good that practice provides. This contrasts with a *global normative theory*, which formulates the appropriate ends and institutions that govern the basic structure of a society in which all of these practices are to be embedded; with general rules about the design of government, the property regime applicable to market transactions, the fundamental rights citizens have, etc. This chapter will

discuss what normative criteria should guide the formulation of local normative theories. The chapter will be divided into a critical and a constructive part.

In the critical part I will restrict myself to the discussion of two prominent theories.¹⁴⁶ On the one hand, there is the idea that normative criteria can be gained from an internal interpretation of the activities characteristic of practices. This idea inspires the criterion of promoting internal goods of practices, proposed by moral philosopher Alasdair MacIntyre. In an investigation of his thought I will conclude that internal goods provide too narrow a criterion for practices – rather, we should also be open to the possibility that a practice serves important social ends. Accordingly, a description of the practice alone is insufficient to determine its appropriate ends. We have to look for practice-independent criteria. A discussion of MacIntyre’s reflections on the market also shows the inadequacy of his criterion (Section 4.1).

Arguably the most important practice-independent criterion in contemporary moral theory is *personhood*. This criterion has inspired the idea that commodification is problematic where persons or their inalienable personal property are its object. Legal theorist Margaret Radin developed this idea. I will discuss her theory and conclude that the protection of personal property is too narrow as an interpretation of what it means to respect personhood. Many instances of commodification are problematic in the absence of any concern for personal property (Section 4.2).¹⁴⁷

¹⁴⁶ It is impossible to treat the entire diversity of normative approaches to the commodification question. An overview of the debate is provided by Debra Satz, "Market and Nonmarket Allocation," in *International Encyclopaedia of the Social and Behavioral Sciences* (2001). Important contributions include Anderson, *Value in Ethics and Economics*. Margaret Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things* (Cambridge Massachusetts: Harvard University Press, 1996). Sandel, "What Money Can't Buy: The Moral Limits of Markets." Russell Keat, *Cultural Goods and the Limits of the Market* (London: MacMillan, 2000). Soule, *Morality & Markets. The Ethics of Government Regulation*. Andre, "Blocked Exchanges: A Taxonomy." Debra Satz, "Noxious Markets: Why Should Some Things Not Be for Sale?," in *Globalisation, Culture and the Limits of the Market*, eds S. Cullenberg and P. K. Pattanaik (New Delhi: Oxford University Press, 2004). Adrian Walsh and Richard Giulianotti, *Ethics, Money and Sport. This Sporting Mammon* (London: Routledge, 2007). Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*. Oliver Williamson, "The Economics of Governance," *AEA Papers and Proceedings* (2005).

¹⁴⁷ Michael Sandel has proposed an apparently similar distinction. He presents two main arguments in connection with commodification, namely coercion and corruption. There are important differences, though. His coercion argument is about a specific kind of personhood failure, i.e. the absence of consent to market transactions, while Radin’s theory focuses on personhood qua personal property (Section 4.2 below). His corruption argument, which refers to “the degrading effect of market valuation and exchange on certain goods and practices” is equal to the idea presented here. It would encompass both MacIntyre’s conception of internal goods (Section 4.1 below) and Walzer’s and

In the constructive part I propose that “respecting personhood” be conceived as “protecting the capacity for agency.” This requires three conditions to be met, each of which requires the realization of a set of corresponding capabilities. First, one’s capacity for agency has to be developed. This requires the presence of so-called morally required capabilities. Second, one’s agency is to be exercised in action; this requires practices for the exercise of so-called morally permissible capabilities. Finally, one’s agency is to be protected against violations; this requires protection against so-called immoral capabilities. These three conditions are then transformed into criteria that are to guide the formulation of local normative theories for practices. These criteria specify to what extent every practice will have to contribute to the realization of the three conditions just mentioned (Section 4.3). In the last section I add two sets of closer specification. First, we need a more precise interpretation of what is required for the capacity for agency. I will defend a context-sensitive and broad interpretation of the social and political conditions for developing agency. The formulation of such an interpretation depends on a consideration of the potential contribution of all practices to agency. Second, the relation between the three criteria has to be settled to handle cases of conflict. Here I will propose to set one general rule of priority: the criteria of agency development and protection have priority over the criterion of agency exercise. A couple of examples will illustrate the importance of the capabilities framework in general and of this priority rule in particular for debates about the market (Section 4.4).

4.1 The Internal Goods of a Practice

In this section I will first present and criticize MacIntyre’s criterion of the internal goods of practices. As a second step I will present and criticize his position on the relation between markets and practices.

The capital difference between my concept of a practice and MacIntyre’s is that for MacIntyre the definition of a practice is largely in terms of the goods internal to that practice. He defines a practice as

any coherent and complex socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive

Anderson’s theories about the corruption of the social meaning of goods. Sandel, “What Money Can’t Buy: The Moral Limits of Markets,” 94.

of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.¹⁴⁸

MacIntyre gives two criteria for identifying internal goods: these goods can only be specified by reference to the activities characteristic of the particular practice at stake and they can only be recognized by those experienced in that practice.¹⁴⁹ The pursuit of excellence by the participants in that practice when they realize internal goods contributes to human flourishing. As a consequence MacIntyre's notion of a practice has normative force from the start. Internal goods and standards of excellence have moral authority:

To enter into a practice is to accept the authority of those standards and the inadequacy of my own performance as judged by them. Standards are not themselves immune from criticism, but nonetheless we cannot be initiated into a practice without accepting the authority of the best standards realised so far.... In the realm of practices the authority of both goods and standards operates in such a way as to rule out all subjectivist and emotivist analyses of judgment. *De gustibus est disputandum.*¹⁵⁰

MacIntyre contrasts internal goods with external goods. The latter are not essentially attached to the practice in question; they can be achieved by engaging in many practices. Prominent examples of external goods are money, power and status. These external goods, MacIntyre notes, are the object of a competition to excel "in which there must be losers as well as winners." By contrast, internal goods, which are the outcome of such competition, are "good for the whole community who participate in the practice."¹⁵¹ Now, according to MacIntyre external goods can corrupt a practice. The reason is that practices necessarily require institutions. Institutions, in MacIntyre's sense (not to be confused with the rather different way I have defined them!), are formal organizations which "are structured in terms of power and status, and they distribute money, power and status as rewards."¹⁵² They stimulate the pursuit of external goods. Therefore there is an inherent tension between "the cooperative care for the common goods" of a practice and the "competitiveness of the institution."¹⁵³

I will argue that MacIntyre's exclusive reliance on the concept of "internal goods" raises problems. We can ask why practices should only exist for the sake of internal goods: why should that be all that (morally) matters about them? The point is best explained by using a distinction that David Miller made in response

¹⁴⁸ Alasdair MacIntyre, *After Virtue*, 2nd ed. (London: Duckworth, 1985), 187.

¹⁴⁹ *Ibid.* 188-89.

¹⁵⁰ *Ibid.* 190.

¹⁵¹ *Ibid.* 190-91.

¹⁵² *Ibid.* 194.

¹⁵³ *Loc.cit.*

to MacIntyre between “self-contained” and “purposive” practices. The first are “practices whose *raison d’être* consists entirely in the internal goods achieved by participants,” the second are “practices that exist to serve social ends beyond themselves.”¹⁵⁴ Miller mentions games as an example of the former and architecture, physics and medicine as examples of the latter. If performers of purposive practices entirely lose themselves in improving their excellences, we should be able to criticize this from the point of view of the social ends that these practices should serve. Miller mentions doctors who concentrate on performing spectacular surgery while simple treatments for widespread diseases would contribute more to overall health care.¹⁵⁵ The moral relevance of Miller’s distinction is that

in the case of self-contained practices, critical assessment can only be carried out from within the practice itself, whereas in the case of purposive practices, the whole practice may be reviewed in the light of the end it is meant to serve.¹⁵⁶

According to Miller the moral authority of only *some* practices can be determined by its internal goods, and only by virtue of the fact that these practices do not serve any social end. I think this still leaves too much room for self-contained practices. Complementing it with a category of purposive practices is not enough, because so-called “self-contained practices” always also serve social ends. The use of the example of games as paradigm for self-contained practices is telling. Games are never activities just happening in isolation from the rest of society. They inspire and entertain people watching them, they provide relief from other activities such as work, they contribute to cultivating group bonds, etc. Note that the opposite is equally true: purposive practices are never *just* purposive, that is, never just serve social ends. They always also have internal ends, i.e. criteria of appropriate valuation and excellence in performance that are specific to and constitutive of that practice. Therefore rather than to divide practices into two

¹⁵⁴ Miller, *Principles of Social Justice*, 116-17. A different kind of critique, by Walsh and Giulianotti, argues that the concept of internal goods is tied up with “contentious metaphysical claims about the very nature of human goods.” As an alternative basis for moral critique they introduce the concept of “autotelic goods,” which are intrinsic to a single activity, not a practice. Walsh and Giulianotti, *Ethics, Money and Sport. This Sporting Mammon*, 33-38.

¹⁵⁵ Miller, *Principles of Social Justice*, 117. See also the discussion of this point in Keat, *Cultural Goods and the Limits of the Market*, 127ff.

¹⁵⁶ Miller, *Principles of Social Justice*, 118. Miller’s notion of a social end is not to be confused with MacIntyre’s notion of an external good. The fact that a practice serves social ends is something entirely different from the fact that external goods (money, power, status) are involved in its organization. The first has to do with potentially legitimate demands on practices from the wider society, while the second is an unavoidable by-product of their institutional organization.

categories, (the purposive and the self-contained) it would be better to see self-containedness and purposiveness as *aspects* or partial ends of the overarching (i.e. internal plus social) ends of a practice.¹⁵⁷ These “final ends” – as I will call them – are to be determined by a separate moral evaluation which takes into account both potential internal goods and potential social ends, considers to what extent they are worthy of endorsement and finds ways to resolve conflicts between these when they arise. This kind of evaluation can no longer take the inherent nature of the activity itself as an unambiguous guide; we must formulate independent normative criteria to do the job.

Such independent criteria could also solve a related objection to MacIntyre’s theory to the effect that its focus on internal goods fails to exclude morally bad practices.¹⁵⁸ For example, the mafia practice cultivates excellence in violent operations that are turned toward immoral ends. But how do we draw the line between morally good and morally bad practices? Which ends are moral and which are immoral?¹⁵⁹ Note that this problem remains even if we broaden these ends so as to include social ends. The content of the latter can be as immoral as that of the internal goods of the practice. In the example of the mafia, it seems that consideration of the mafia’s systematic violation of the physical integrity of its victims, that is, of their personhood, provides the answer. Similarly, in the example mentioned above of a medical practice that can either take as its end to provide spectacular treatment for rare diseases or simple prescriptions for widespread diseases, considerations of promoting personhood for both doctors and patients could be used to select the right ends. In the remainder of this chapter, therefore, I will take my lead from the idea that personhood can provide the moral criterion we are looking for. But first let us consider the consequences for the issue of the market that would follow from accepting MacIntyre’s theory.

¹⁵⁷ Another way of reaching the same conclusion is by showing that even on MacIntyre’s own definition of internal goods (as goods that can only be specified in terms of the activity of a practice), many social ends should be taken into account. There may be several conflicting ideas about which goods should be endorsed, each of which can be defined in terms of the activities at stake. For example, both the spectacular surgery and the simple treatments of the doctor qualify as goods that can be specified with regard to medical actions, knowledge and skills.

¹⁵⁸ The objections are related in the sense that the requirement not to violate moral demands is one of those social ends that are difficult to derive from the notion of internal goods of a practice.

¹⁵⁹ MacIntyre himself has dealt with this problem in a variety of ways. At one point he refers to the necessity of complementing his practice conception with an account of “a conception of moral law.” MacIntyre, *After Virtue*, 200. Elsewhere he insists that the virtues characteristic of practices must be integrated in an account of the good of a whole life and that of a tradition (but that does not make things much clearer). MacIntyre, *After Virtue*, 274-75.

MacIntyre's attitude toward the market is hostile. He opposes what he calls "the modern industrial organization of work," in which work "tends to become separated from everything but the service of biological survival and the reproduction of the labor force, on the one hand, and institutionalized acquisitiveness, on the other."¹⁶⁰ Because production for a market implies this modern form of work, in MacIntyre's view markets are by definition antagonistic to practices. They necessarily corrupt the motivations and virtues that should be flourishing in practices. This comes out most clearly in his famous example of two kinds of fishing crews. One crew is exclusively oriented to the market. Its aim is to maximize profits, its management will not hesitate to fire members of the crew if necessary to sustain these profits, and its investors will not hesitate to withdraw their investments if the expectations of profit are better elsewhere. The second crew is devoted to "excellence in fishing." Its members share a sense of common purpose, feel responsible for each other's safety and well-being, and are prepared to stick to the crew even during "the economic hardships of low wages and periods of bad catches or low prices for fish."¹⁶¹ Unsurprisingly, the latter kind of fishing crew demonstrates what MacIntyre has in mind as uncorrupted practice.

MacIntyre's criticism of the market can be interpreted in two ways. On one interpretation, MacIntyre's paradigm for economic practices is that of the pre-modern self-sufficient household or community that produces for its own needs or, in a modern context, that of a self-sufficient activity such as a hobby or a game. In the context of such a practice, internal goods can be maximally honored. This household/hobby paradigm allows him to attribute the external directedness of practices to the "modern productive and service work" for the market that he so despises. The market necessarily introduces external considerations in practices (such as "is there any demand for this good?") and these are to be dismissed categorically as corrupting the pursuit of internal goods. While some of MacIntyre's arguments seem to lend support to this interpretation, it cannot be taken too seriously. For this external aspect of economic practices is in no way unique to production for the market. Forms of production not directed to sale on the market also imply the presence of a consuming party whose interests and influence provides the practice with a social end it has to reckon with in order to survive. The ancient Greek sculptor or medieval craftsman no less than the modern worker produced to satisfy other people's preferences for his products, whether or not these products were traded in markets (e.g. the artist could be

¹⁶⁰ MacIntyre, *After Virtue*, 227.

¹⁶¹ Alasdair MacIntyre, "A Partial Response to My Critics," in *After MacIntyre. Critical Perspectives on the Work of Alasdair MacIntyre*, eds John Horton and Susan Mendus (Cambridge: Polity Press, 1994), 285.

sponsored and supported by a Maecenas). Economic practices never were merely “games,” played for the exercise of the skills and virtues of those involved. The market is only one way in which external considerations are being transmitted to practices.¹⁶²

A second and more convincing interpretation would be that it cannot be the external directedness in general that fuels MacIntyre’s hostility toward the market. Rather, the problem is in the market’s specific kind of external directedness: the systemic drive for profit maximization that it forces upon all market participants. In other words, the problem is that the market’s social end happens to be the pursuit of one of the main external goods – money. On this interpretation MacIntyre is well aware of the fact that the tension between internal and external goods cannot be resolved. For, as he himself acknowledged, institutions and the pursuit of external goods triggered by them are indispensable for having practices in the first place. Money, power and status, for all their corrupting power, are a necessary evil to organize the pursuit of anything of intrinsic value. So profits themselves are not morally problematic; just like any other external good, they are a good – as long as they are pursued in balance with and in the service of the pursuit of internal goods. However, the problem with the market is that the profit motive will be paramount, because the market depends on it to generate competition, which in turn is essential to the adequate functioning of the price mechanism.

On this interpretation, the question turns into an empirically contingent one: is the market’s profit orientation so pervasive that the pursuit of internal goods is necessarily corrupted? Pessimists have argued that this is the case. John Dobson for example remarks that the virtuous fishing crew is

in fundamental ways alien to and powerless against the rigours of market competition. Indeed, it seems likely that the latter crew would rapidly fall victim to the former if these two crews were competing for the same fishing grounds.¹⁶³

¹⁶² Similarly, Van Staveren criticizes MacIntyre for failing to recognize that people in modern economic activities may (also) be motivated by internal goods, and for romanticizing the pre-modern economy as if it were exclusively oriented toward internal goods. Irene van Staveren, “De economie als morele praktijk,” *Tijdschrift voor politieke economie* 26, no. 4 (2005). An English version of this article (“The Economy as A Moral Practice”) is forthcoming in *Review of Social Economy* (2008).

¹⁶³ John Dobson, “Virtue Ethics as a Foundation for Business Ethics: A MacIntyre Based Critique,” *Unpublished Paper Presented at the Second International Symposium on Catholic Social Thought and Management Education* (1997), 9. Similarly, Keat argues that “it requires only one reasonably powerful firm to, as it were, take seriously the aim of profit maximization, for others to be forced to follow suit on pain of elimination from the contest. And if the changes thereby required are damaging to the practice, there is nothing that can realistically be done to protect it.” Keat, *Cultural Goods and the Limits of the Market*, 28.

In contrast, optimists turn MacIntyre against himself and hold that the market actually rewards corporations that strive for excellence in internal goods. This requires a division of labor within corporations. For example, according to Geoff Moore,

An important role of those who represent the corporation, therefore, is to act when they observe excellence not being pursued and to remind those engaged in the practice of their responsibility. This may well be more observable by those who represent the corporation for they will see, in the performance indicators used to measure the achievement of external goods, the failure of the practice to meet “best practices” elsewhere.¹⁶⁴

Depending on one’s optimism or pessimism, authors take different positions as to whether the market system “as we know it” should be radically reformed or even abolished, or whether the flourishing of excellences is compatible within the market system.¹⁶⁵

I agree with this second interpretation in that I think there is no a priori incompatibility between the market and the ends of a practice. However, from my perspective the question whether the pursuit of internal goods can be reconciled with the profit motive should be reformulated at both sides of the equation. First, I have replaced the normative defense of virtuousness in creating internal goods with the more open category of realizing whatever final ends are ultimately deemed morally defensible. Second, the implication of my earlier analysis (in Chapter 2) is that market provision is not so much oriented toward the generation of profits in itself but rather toward the satisfaction of consumer preferences.¹⁶⁶ Profit seeking behavior is “merely” a means to that end and the market rewards those excellences that are necessary to produce the product that the market demands. The question should therefore be whether the final ends of a practice coincide sufficiently with the product that consumers in the market actually

¹⁶⁴ Geoff Moore, “On the Implications of the Practice–Institution Distinction: MacIntyre and the Application of Modern Virtue Ethics to Business,” *Business Ethics Quarterly* 12, no. 1 (2002), 29. Similarly, Keat argues for the optimistic line (in revision of his earlier passage that I quoted in the previous note), saying that the kind of emulative competition characteristic of practices may very well coincide with the pursuit of external goods in the market (profit maximization), for, although persons act to maximize profits, in the meantime they improve their skills in the practice. Keat, *Cultural Goods and the Limits of the Market*, 118-23.

¹⁶⁵ See Dobson, “Virtue Ethics as a Foundation for Business Ethics: A MacIntyre Based Critique,” 10. Moore, “On the Implications of the Practice-Institution Distinction: MacIntyre and the Application of Modern Virtue Ethics to Business,” 30.

¹⁶⁶ See Section 2.3. More accurately, the market is oriented to the conditions of all three frames that I described in Chapter 2.

demand. Whether profit orientation is morally problematic depends on whether what we normatively expect of the practice coincides with market demand. For contested markets the rule of provision of the market (consumer preferences) may be unable to generate the kind of provision normatively required (final ends). Sometimes this may be a matter of empirical contingency, and here the level of competition may be crucial. For example, the level of competitiveness co-determines the extent to which corporations are able to engage in unprofitable activities if these are established as morally required according to some theory of corporate social responsibility.¹⁶⁷ In other instances the market's inability to accommodate the realization of some set of final ends may be non-contingent, for example where some process aspect that is inherently alien to the market is at stake (Section 3.2).¹⁶⁸

In conclusion, the first, strong interpretation of MacIntyre's market critique is untenable, while the second, weaker interpretation does not provide an insurmountable obstacle to the legitimacy of market transactions. In any case, the determination of the final ends of a practice cannot be guided by MacIntyre's criterion of its internal goods. These goods may play a role, but so do social ends that the practice may serve. Independent moral criteria are needed. Although I cannot pursue that line of argument here, it is noteworthy that Michael Walzer's account of justice as sphere segregation has been subject to a similar criticism as the one I made of MacIntyre. Walzer bases decisions about the appropriate allocation mechanism (or sphere) on the "social meanings" of the goods in question. These goods as they are understood through their social meanings resemble MacIntyre's internal goods. Here too an intuitive grasp of "what the good is about" is supposed to guide our allocation decisions. However, these social meanings are anything but uncontested. Again, we need an independent moral basis for critique.¹⁶⁹

¹⁶⁷ Van de Ven and Jeurissen argue that corporations may be expected to engage in different types of socially responsible actions, depending on the fierceness of competition that they face. See Bert van de Ven and Ronald Jeurissen, "Competing Responsibly," *Business Ethics Quarterly* 15, no. 2 (2005).

¹⁶⁸ For a discussion of the tension between markets and internal goods and the limited opportunities for reconciling them when they conflict, see Rutger Claassen, "Marktwerking kan morele praktijken eroderen" [Markets may erode moral practices], *Christen Democratische Verkenningen* 28, no. Herfst (2007). There is another stability problem with profits and competition, which does not relate to the market's adequacy in realizing certain ends, but to the effect of competition on the overall balance between market and non-market goods. This I will discuss in Chapter 8.

¹⁶⁹ More precisely, Walzer proposes that the social meaning of goods is to be found in the "common understanding" of these goods in a particular culture. Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 9. For a representative critique, see Ronald Dworkin, "What Justice Isn't," in *A Matter of Principle* (Cambridge Massachusetts: Harvard University Press, 1985). In defense of Walzer, David Miller argues that Walzer has been

4.2 The Protection of Personal Property

In this section I discuss Margaret Radin's theory, because it is the most worked-out application of personhood to the issue of commodification and has been prominent in discussions of the commodification of organs, sexual activity, commercial surrogacy and other goods.¹⁷⁰ The probable reason for this is that she aims to articulate an intuitively attractive idea, i.e. that persons themselves should not become the object of market exchanges.

The aim of Radin's theory is the justification of so-called market inalienabilities; prohibitions on the alienability of some goods. The starting point is that the person himself, including whatever intrinsically belongs to the person or "the self," should be inalienable. The prohibition to sell oneself into slavery is the only undisputed example, since it directly subjects the person as a whole to market exchange. Beyond slavery, however, there is little consensus about which goods should be inalienable. There is a need for a criterion to decide what intrinsically belongs to, or is bound up with, the constitution of the self. In this regard Radin criticizes the Kantian and Hegelian use of the subject-object dichotomy. According to this dichotomy, things external to the person are candidates for alienation while things internal to the person are not – for the latter

misunderstood: "The relationship between the meaning of the good and the distributive principle is not here a conceptual one; it is rather that, once we see what kind of good medicine is, this immediately *triggers* a particular distributive principle which we see as applying to all goods of that sort." David Miller, "Introduction," in *Pluralism, Justice and Equality*, eds David Miller and Michael Walzer (Oxford: Oxford University Press, 1995), 6. This quote clearly reveals the intuitive grasp that is supposed to guide the theorist. Miller goes on to argue that the task is an interpretative one, which is subjected to requirements of coherence and consistency and has as its "ultimate test" "its capacity to persuade participants in the culture at large that it gives the best 'reading' of their beliefs." Miller, "Introduction," 10. Although Miller's defense is the most sophisticated one that I know of, it still remains within the boundaries of the method of internal critique, with all the attendant problems. Elizabeth Anderson, in her theory of sphere differentiation, distances herself from this aspect of Walzer's theory and formulates a range of "critical strategies" for justification: internal, scientific and experiential strategies. Anderson, *Value in Ethics and Economics*, 104-10. For my purposes I will follow the distinction in Anderson's later work between different kinds of capabilities (Section 4.4).

¹⁷⁰ I focus on the version given in Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*. An earlier version is Margaret Radin, "Market-Inalienability," *Harvard Law Review* 100, no. 8 (1987). See also Margaret Radin, "Justice and the Market Domain," in *Markets and Justice*, eds John W. Chapman and J. Roland Pennock (New York: New York University Press, 1989). The personhood theory (apart from its consequences for commodification) is elaborated in Margaret Radin, "Property and Personhood," *Stanford Law Review* 34, no. 5 (1982). For application to commodification in bioethics, see the special issue in *Kennedy Institute of Ethics Journal*, September 2001. For simplicity's sake, in the following I leave out of consideration an important line of argument in her work that concerns the dangers of commodifying in rhetoric or discourse, rather than in real exchanges.

commodification should not be allowed. However, for many things it is unclear what it would mean to say that they are internal or external to the person.¹⁷¹ As an alternative, Radin proposes a concept of personhood made up of three aspects. The first two are freedom and identity:

The freedom aspect of personhood focuses on will, or the power to choose for oneself. In order to be autonomous individuals, we must at least be able to act for ourselves through free will in relation to the environment of things and other people. The identity aspect of personhood focuses on the integrity and continuity of the self required for individuation. In order to have a unique individual identity, we must have selves that are integrated and continuous over time.¹⁷²

The third aspect is more complicated. Radin calls it “contextuality” and relates it to the freedom and identity aspects:

Contextuality means that physical and social contexts are integral to personal individuation, to self-development.... The general point is that any (recognizably plausible) conception of freedom of persons comes attached to a particular enabling context. The relationship between freedom of persons and its enabling context requires, if freedom is to be realized, a positive commitment to act so as to create and maintain particular contexts of environment and community.¹⁷³

Being a person thus requires having a free will, a continuous identity and proper relations to enabling contexts. The next step is that she associates the process of becoming such a person – which she calls ‘self-constitution’ – with property:

In human life as we know it, self-constitution includes connectedness with other human beings and also with things in the world, with a home, for example. Not everything we might be thus connected with in the world can be property, but in a property-owning culture, some such things can be property. When an item of property is involved with self-constitution in this way, it is no longer wholly “outside” the self, in the world separate from the person; but neither is it wholly “inside” the self, indistinguishable from the attributes of the person.¹⁷⁴

Radin calls these objects in the world necessary for self-constitution “personal property.” They are to be contrasted with items not bound up with self-constitution, which she calls “fungible property.” Personal and fungible property are the two extremes of a continuum on which all items can be placed. In a next

¹⁷¹ Radin mentions wage labor and intellectual property as examples of goods that are not clearly outside the self although we do not object to their marketization. Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 37.

¹⁷² Ibid. 55.

¹⁷³ Ibid. 56-57.

¹⁷⁴ Ibid. 57.

step Radin argues that items that are personal property, because of their connectedness to the person, should be market inalienable. Guaranteeing the continuing possession of these goods in this way will protect their importance to our self-constitution. In contrast, fungible property, because it is not bound up with the self, may be justifiably traded for other items in the market. For intermediate cases there may be a case for restrictions on market exchange rather than outright prohibition (see my Section 3.1 on incomplete commodification). She argues that on account of personal property, prohibitions or restrictions are justified on the marketization of work, the home, human organs, sexual activity and child bearing.¹⁷⁵

The suggestive force of these examples notwithstanding, a first problem of the property theory of personhood explained thus far is that it is as yet unclear when an item is to count as personal property. In earlier work, Radin was reluctant to engage in a general treatment of this issue, merely stating that there should be “an appropriate connection to our conception of human flourishing” and furthermore making it a matter of case-by-case argumentation.¹⁷⁶ In later work, Radin introduces Martha Nussbaum’s list of human capabilities to this end. However, the conclusion she draws from the capabilities theory for the issue of personal property is ambiguous. On the one hand she states that “certain functionings *can* be served by a form of private property” (without explaining which ones and to what extent). On the other hand she believes that Nussbaum’s theory opens up the possibility that non-Western cultures convince Western culture that living under a property regime does not contribute to human flourishing.¹⁷⁷ These puzzling remarks are insufficient to establish a clear link between personal property and capabilities.¹⁷⁸

¹⁷⁵ In many of these examples, according to Radin, there may be situations where genuine personal property should nonetheless be alienable, because of the problem of the “double bind” (desperate people being worse off when one would withhold them the opportunity to sell their property).

¹⁷⁶ In the same passage she concludes: “There is no algorithm or abstract formula to tell us which items are (justifiably) personal. A moral judgment is required in each case.” Radin, “Market-Inalienability,” 1908.

¹⁷⁷ Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*, 75. With this remark Radin seems to me to cast doubt on the value of her entire property theory.

¹⁷⁸ The vagueness of the personal versus fungible property distinction has led several authors to doubt whether classification of personal property really provides a valid reason to prohibit market exchange. They fear arbitrariness and judgment based on mere “individual feelings” in applying the distinction and argue that commodification of personal property may sometimes even have desirable effects. Satz, “Noxious Markets: Why Should Some Things Not Be for Sale?” 21. Neil Duxbury, “Do Markets Degrade?” *The Modern Law Review* 59, no. 3 (1996), 342. John A. Robertson, “Human Flourishing and the Limits on Markets,” *Michigan Law Review* 95 no. 6 (1997), 2148-49.

Let us suppose for the sake of argument that we could somehow give the fungible versus personal property distinction more substance. Still, a second problem would arise; the personal property criterion does not seem to be an adequate criterion for evaluating all instances of commodification. The problem here is that Radin's reliance on "personal property" excludes from the scope of her theory those objectionable forms of commodification that may not be matters of commodifying personal property. As Debra Satz has rightly pointed out, it is no coincidence that Radin draws most of her examples from "the sphere of sex and reproduction."¹⁷⁹ Sexual activity, female reproductive capacities and body parts are plausible candidates for being a person's inalienable property because they are closely tied up with one's physical constitution. It is easier to show for these goods how they are "bound up with the self" than for many other examples, like votes and judicial decisions, educational and military services, etc. These goods are not normally conceived of as property, either in the fungible or in the personal form. Thus, even if we agree with her account of personhood (in the three aspects of freedom, identity and contextuality); and if we also agree that one condition of personhood is to be able to dispose over some items closely bound up with self-constitution (personal property), we should still disagree that this is a sufficient criterion for evaluating commodification.

Underlying this problem is the fact that in Radin's theory personhood plays a double role. Her account of personhood can be used as a *moral value* for assessing social states. Personhood in the sense of persons having a free will, a continuous identity and enabling contexts is such a moral ideal. If suitably developed it can be used as a benchmark to judge which social arrangements tend to promote this value and which tend to undermine it. However, once Radin invests personhood more specifically in certain items of property, it is no longer a moral value but an *ontological category*. To follow Hegel: one's personality is now "invested" in these objects; they "belong to" the person. The relation between both of these uses of personhood is unclear. More specifically, it is unclear why its moral value would be realized only by assuring that certain objects remain within the ontological sphere of influence of the individual person. It would be better to acknowledge that personhood as a moral value can be realized in other ways as well.

¹⁷⁹ Satz, "Noxious Markets: Why Should Some Things Not Be for Sale?" 21. Similarly, in a review of Radin's book, Kenneth Arrow remarked: "Whether the reason these potential commodities are 'contested' is that they would offer a violation of personhood is less clear. I do not have a good answer, but many of them seem more concerned with the operations of the social system than with preservation of individual integrity." Kenneth Arrow, "Invaluable Goods," *Journal of Economic Literature* 35, no. 2 (1997), 765.

It is unclear to me whether Radin had the ambition of making personal property into a necessary *and* sufficient criterion for evaluating commodification. At any rate, in some passages she seems to acknowledge the double role of personhood. For example, she argues that there also is a personhood interest in fungible property rights. In other words, to realize personhood it is sometimes important that we are able to exchange goods with one another.¹⁸⁰ This implies that personhood (as a moral value) is at the origin of justifying *both* fungible and personal property. But then it is unclear how personhood can be the decisive criterion to decide which items should be fungible property and which should be personal property. In another place Radin recognizes “non-property-related personhood interests,” claiming that when these conflict with fungible property rights, the former should take precedence over the latter.¹⁸¹ This construction also depends on the acknowledgement of the double role of personhood. Finally, Radin recognizes this double role in a potential objection to her theory:

It might be argued, however, that what a personhood perspective dictates is a dichotomy in entitlements, not a dichotomy in property. A welfare rights theory might derive from *the needs of personhood* a set of core entitlements encompassing both property interests, such as shelter, and other interests, such as free speech, employment and health care. In such a scheme, the distinction between property and other rights breaks down. There would be room for a personhood dichotomy but it would not be related to interests traditionally called property. The general task of such a welfare theory would be to carve out for protection a core containing both property interests and other interests.¹⁸² (italics mine, R.C.)

The “needs of personhood” here refer to a broader concept of personhood, independent from personhood qua personal property. In fact, the objection Radin formulates here seems to me right on the mark (apart from the fact that our theory of the relevant entitlements does not have to be dictated by welfare considerations).¹⁸³

Our conclusion must be that the personal property criterion is as yet too vague to be useful for assessing instances of commodification. Moreover, an exclusive connection of personhood to personal property is unconvincing. What is

¹⁸⁰ Radin, “Property and Personhood,” 986.

¹⁸¹ *Ibid.* 1015.

¹⁸² *Ibid.* 989.

¹⁸³ The argument that Radin brings forward to dismantle the objection is unconvincing. She states: “The attachment to ‘things’ may be different from other necessities of personhood, and it may be worth noticing the difference sometimes, even though, by itself, it would not determine questions of just distribution.” And in a footnote she adds: “For example, paying attention to the notion of personal property would lead not merely to a right to shelter in general, but a right to a particular house or apartment.” *Ibid.* 990. This defense is so modest that it seems to reduce the property theory to a merely helpful device in a broader theory of personhood.

worrisome is not in the first place the commodification of persons and their attributes, but rather the commodification of goods that prevent someone from being, becoming or remaining a person. The fact that a personal attribute is commodified may be one of many facts that prevent the realization of this broader personhood value. In this shift to a broader role for personhood, there is an analogy to the objection Amartya Sen leveled against theories of justice that focus on the acquisition and possession of commodities (primary goods or resources). These commodities are important, not in themselves, but because they open the way for the capabilities to function as a person.¹⁸⁴ Indeed, it is on these capabilities that I will focus in elaborating the moral demands upon our practices that follow from the notion of personhood.

4.3 Personhood and Three Types of Capabilities

In this section, I will present a version of the capabilities approach that can guide the formulation of local normative theories for practices. I start from some observations concerning the capability approach in general and then present a conception of personhood that is to serve as the fundamental moral value that regulates and justifies the promotion of capabilities. From this conception I derive three types of capabilities and three corresponding normative criteria for practices. In the next section, I further clarify this approach by filling in some of the details and considering some examples of its applications to the issue of commodification.

The capability approach is a general framework for normative evaluation rather than a specific theory. Several capability theories can be formulated, depending on the theoretical choices that one makes to specify the approach. For my purposes, two such choices are most notable. First, there is the question of which capabilities are to be endorsed as worthy of moral and political protection. Here Martha Nussbaum's substantive list of capabilities is at one end of the spectrum while Amartya Sen's choice to stick with the idea of capabilities as

¹⁸⁴ Indeed, Sen argues that these approaches fall prey to "commodity fetishism." Amartya Sen, *The Standard of Living* (Cambridge: Cambridge University Press, 1987), 16. Also Amartya Sen, *Commodities and Capabilities* (Oxford: Oxford University Press, 1985), 17-19. Nussbaum presents a similar argument when arguing against the Rawlsian notion of primary goods. See Martha Nussbaum, *Women and Human Development. The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 65-69. Although these criticisms are misdirected (for not all Rawlsian primary goods or Dworkinean resources are commodities) the substantive point remains valid that we should not focus on the commodities but on the capabilities.

providing an “evaluative space” is at the other end.¹⁸⁵ Second, there is the question how capabilities are to be justified. Here Nussbaum initially relied on an Aristotelian notion of the good, while later she presented her theory as justified by a kind of political liberalism close to that of Rawls.¹⁸⁶ For his part Sen has presented his capabilities theory as kind of “complex non-utilitarian form of consequentialism.”¹⁸⁷ The two questions are connected: the method by which we generate a substantive analysis of capabilities will at the same time reveal what ultimately justifies this analysis. In the following I will elaborate and justify my version of the capabilities approach with regard to the value of personhood.

The starting point is that it is fundamentally valuable for all individuals to be able to live their lives as persons. I will call this the value of personhood. Being the most fundamental value, it is the final criterion of moral theory: personhood should be respected.¹⁸⁸ The struggle between competing moral theories is about what it means to protect personhood; i.e. what specific normative demands flow from its interpretation.¹⁸⁹ Does it require endorsing the preferences persons happen to have or would have under some idealized circumstances (utilitarianisms)? Or should we promote the actions and institutions that people

¹⁸⁵ For a general discussion of “the problem of the list,” see Ingrid Robeyns, “The Capability Approach, A Theoretical Survey,” *Journal of Human Development* 6, no. 1 (2005), 105-07. For the idea of an evaluative space see Amartya Sen, “Capability and Well-Being,” in *The Quality of Life*, eds Martha Nussbaum and Amartya Sen (Oxford: Clarendon, 1993), 32. Nussbaum has criticized Sen for she thinks that without a list no theory of justice can be derived from the capability approach. Martha Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice,” *Feminist Economics* 9, no. 2/3 (2003), 46.

¹⁸⁶ Actually, Nussbaum uses several justificatory strategies side by side. On the one hand she states that her list of capabilities gives us the “central requirements of a life with dignity.” Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice,” 40. Similarly Nussbaum, *Women and Human Development. The Capabilities Approach*, 72. On the other hand she refers to the Rawlsian idea of an overlapping consensus. Nussbaum, *Women and Human Development. The Capabilities Approach*, 76. Finally, she gives the method of informed desire some justificatory status. Nussbaum, *Women and Human Development. The Capabilities Approach*, 152. For a study of Nussbaum’s different justificatory strategies, see Alison Jaggar, “Reasoning About Well-Being: Nussbaum’s Methods of Justifying the Capabilities,” *Journal of Political Philosophy* 14, no. 3 (2006).

¹⁸⁷ The characterization is from Nussbaum, *Women and Human Development. The Capabilities Approach*, 14.

¹⁸⁸ One could of course ask *why* personhood should be respected. This would require showing why from the fact that persons need to have agency there arises a demand on others to respect their agency. These complicated matters of foundation I have to leave out of consideration here. For a well-known attempt to solve these problems, see Alan Gewirth, *Reason and Morality* (Chicago: The University of Chicago Press, 1978).

¹⁸⁹ Admittedly, my portrayal of personhood as the uncontested starting point for moral theory does not do justice to theories which choose another starting point; e.g. utilitarianisms that start from protecting sentient beings rather than agents.

would consent to in some hypothetical choice situation (contractarianisms) or idealized discourse (discourse ethics)? Are we required to respect the development of the excellences belonging to their essential human nature (Aristotelianisms); etc.? Personhood as I will conceive of it is defined by its three crucial constitutive conditions: developing the capacity for agency, being able to exercise this capacity, and being protected from violations of this capacity. As we will see, each of these conditions requires the realization of a corresponding set of capabilities. In the following, the notion of “capabilities” will be used in a morally neutral fashion, standing for the opportunities persons have to engage in some functioning, i.e. some kind of being or doing. The notion itself will not imply that the opportunities it addresses are valuable; for that remains to be seen.¹⁹⁰ Let us first turn to the three conditions for personhood.

To begin with, having personhood requires developing the capacity for agency (I will call this the *condition of agency development*). An individual who has this capacity is able to reflect on his desires and can rationally decide which of these should be endorsed as valid reasons for action. Furthermore, that individual is able to embark upon the courses of action that he or she has rationally endorsed. Thus, the capacity for agency involves a deliberative and an active aspect. At both stages problems may arise. We can imagine that individuals are drifting through life without apparently making decisions of their own, perhaps acting randomly (like an automaton) or following their urges without reflection (like an animal). We can also imagine individuals who have made decisions on the basis of rational deliberation but are unable to act upon them, due to internal defects (such as those suffering from weakness of will) or to external impediments (like slaves being coerced to follow the orders of their masters). Having this capacity for agency requires having the capabilities necessary to develop and sustain this capacity. These capabilities I will call *morally required capabilities*. As we will see below, different interpretations are possible as to which capabilities are actually required in this sense (Section 4.4).¹⁹¹

¹⁹⁰ Compared to these alternatives, my theory will be substantive rather than procedural (contra contractarianism), objective rather than subjective (contra utilitarianism) and thin rather than thick (contra Aristotelianism); although it would be better to say that it is both thin (in allowing a limited class of morally required capabilities) and thick (in adding a separate class of morally permissible capabilities).

¹⁹¹ In comparison with Nussbaum’s list, the category of morally required capabilities is stricter from the start. Capabilities for play, for relations with animals, for producing self-expressive works, and many others on Nussbaum’s list would not qualify, in my view, for being necessary to the development of agency. They do receive a place in my theory as *morally permissible* capabilities. Nussbaum’s only attempt to bring some hierarchy into the list is by giving two capabilities – practical reasoning and affiliation – a special place. “All the items on the list should be available in a form that involves reason and affiliation. This sets constraints on where we set the threshold, for each of the separate capabilities,

Having the capacity for agency is usually taken to be the defining condition for being a person. It undoubtedly is a necessary condition – but is it also a sufficient one? The person having this capacity surely is no automaton, animal, weak-willed individual or slave; but is this enough? Such a human being could still be forced to the status of a couch potato who has the full capacity for agency but is unable to live life like a person, unable to act upon the capacity for agency. To have this ability a person needs avenues for exercising agency, i.e. capabilities and opportunities to convert these capabilities into functionings (I call this the *condition of agency exercise*).¹⁹² The list of capabilities that one could convert into functionings in order to exercise one's agency is endless and it is not possible in a lifetime to realize all the capabilities and functionings offered in our social world. The requirement is that one is able to develop those capabilities and functionings that one chooses to. Some will choose to develop their capability for artistic performances, others will engage in exercising their capability for philosophy, again others will concentrate on their capability to sing, weed gardens, become a manager or a potter, participate in NGOs or play tennis. These capabilities I will call the *morally permissible capabilities*. They do not bear directly on the capacity for agency, neither positively by enhancing agency nor negatively by diminishing it. Rather, they provide avenues for exercising one's capacity for agency (once one has it) in living the good life of one's choosing and thereby flourishing as a person.¹⁹³ An individual who does so is a person in the full sense: such a one has the capacity for agency *and* is able to exercise agency in realizing capabilities and functionings. It is the opportunity for leading this kind of life of a person that we value most fundamentally and seek to protect, in different ways, in the requirements of moral theory and in the organization of social and political arrangements.

The realization of personhood, finally, also requires that one is shielded from violations of one's agency. Violations can occur in relation to either one's agency development or one's agency exercise or to both. (I will call this the *condition of agency protection*). This condition requires protection against *immoral capabilities*: capabilities which – when transformed into actual functioning (!) –

and also places constraints on which specifications of it we will accept.” Nussbaum, *Women and Human Development. The Capabilities Approach*, 82-83.

¹⁹² The inability relates to the presence or absence of these avenues, not to the internal and external impediments to the capacity for agency mentioned above in the context of agency development.

¹⁹³ As I define the notions, there is no overlap between morally required and morally permissible capabilities. Of course, morally required capabilities are “permissible” in some sense; they are not disqualified by moral theory. But the category of morally permissible capabilities is reserved for those capabilities which are “merely permissible” and not also required.

prevent a person to a greater or smaller extent from developing or exercising the capacity for agency. The capability to torture people or to lie to them or steal from them are examples of such immoral capabilities. Despite the name “immoral capabilities,” it is not the capability itself that is immoral – its conversion into functionings is. The name is still appropriate, because immoral capabilities are those capabilities which will normally produce a violation of agency that is to be considered immoral once they are being converted into functionings. I say ‘normally’ for sometimes such a violation may be justified or even required in order to prevent graver violations of agency; in that case the conversion into functioning is not to be considered immoral (see Section 4.4 on conflicts between capabilities).

These three constitutive conditions of personhood could be taken as the basis of many different kinds of normative theories, directed at very different kinds of subjects; for example, directed at evaluating actions of individuals. Such is not my purpose. Being interested in the ends of practices, I will in the remainder of this section derive from these conditions three normative criteria for the formulation of local normative theories for practices.¹⁹⁴

Criterion of agency development

Formulate ends which

- a) promote the realization of those morally required capabilities that a global theory of justice has assigned to this practice,
- b) promote the conversion of these capabilities into functionings, while respecting a person’s refusal to be subjected to such conversion, but only to the extent that this refusal is expressed by someone having an adequate level of agency.

The criterion of agency development – in conjunction with the criterion of agency exercise – gives positive content to local normative theories of practices. Every morally required capability in a specific society is a basic need for persons in that society, to which they are entitled.¹⁹⁵ The level of the entitlement depends on

¹⁹⁴ As the following set of criteria formulates the obligations put upon (the formulation of the ends of) practices, it does *not* tell us to what extent there is an obligation for individuals to themselves to (try hard to) live their life as a person. Nonetheless, in the following I will touch upon this problem as well, in a couple of places: where the right of a practice to impose the conversion of morally required capabilities into functionings is concerned (see also Section 4.4 in the context of the examples) and where the obligations of participants in a practice realizing morally permissible capabilities are concerned.

¹⁹⁵ Nussbaum has claimed that her list of capabilities is to be treated as a list of fundamental entitlements: “Central capabilities may not be infringed upon to pursue other

what is necessary to realize the capacity for agency.¹⁹⁶ This will have to be specified by our local theory on a case-by-case basis.¹⁹⁷

The application of this criterion depends upon the cooperation of two levels. First, at the level of a global normative theory for a society, it has to be decided which practices have to be in place for its citizens' capacity for agency to be developed.¹⁹⁸ From this preliminary global determination of which capabilities are morally required, for example, may follow that a practice for nurturing young children is required. Once the creation of such a practice of nurturing is normatively endorsed, a *local* theory for that practice is assigned the task of promoting the morally required capabilities that form its *raison d'être*. The global assignment determines which morally required capabilities a practice can limit itself to. For example, it would not make sense to require of the practice of nurturing young children that it develops the children's capability for understanding mathematics; that would be an instance of misallocation of responsibilities.¹⁹⁹

Application of the criterion of agency development will not issue in the assignment of a morally required capability for all practices. For many practices the conclusion will be that no relevant morally required capability is at stake. These practices only exist for the sake of promoting morally permissible capabilities (see below). For example, most global theories will not demand of the

types of social advantage." Nussbaum, *Women and Human Development. The Capabilities Approach*, 14. A separate question is whether these entitlements should be interpreted as giving rise to rights. For Nussbaum's comparison of the vocabulary of rights with that of capabilities, see Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice," 36-40. Similarly Nussbaum, *Women and Human Development. The Capabilities Approach*, 96-101. Here I remain agnostic as to the question whether my criteria could and should be translated into moral rights.

¹⁹⁶ Nussbaum also uses this idea that what is required is a "basic level" or "threshold level" of capabilities. The threshold is to be determined for each capability separately and in the context of the particular circumstances of a society. See Nussbaum, *Women and Human Development. The Capabilities Approach*, 71. Sen also recognizes that it may sometimes be useful to distinguish "basic capabilities" from other capabilities; he mentions the example of the analysis of poverty. Sen, "Capability and Well-Being," 40.

¹⁹⁷ For example, sometimes this will be an equal level for all; sometimes this will be a sufficient level, determined by a lower threshold where it is morally permitted for each to strive for a higher level (for an example of the problem of choosing between these two interpretations, see Section 5.3).

¹⁹⁸ In the following I will treat as unproblematic that there is a society (a moral community) for which such a global theory can be devised. This neglects the problems which arise when different societies come into contact with one another (comparable to the problems of making a theory of justice for an international context).

¹⁹⁹ In the remainder of this study I will not try to formulate a complete global theory of my own. Rather, for those capabilities which I will classify as morally required (see at the case studies: Sections 5.2, 6.2 and 7.2), I will argue that any tenable global theory should endorse these capabilities as morally required.

practice of playing soccer to develop any capacities for agency. This practice will then depend on the capacity for agency already being there; it is a practice in which this capacity is exercised in one particular, morally permissible, way; it is not a practice in which this capacity for agency is developed in the first place (note that there is nothing essential to this point: we can easily imagine sporting practices that are burdened by a requirement stipulated by another global theory to develop agency capacities of sports players).

The division of labor envisaged here between global and local theory is a subtle one. While the general end for the practice is set at the global level, any further specification is to be made at the local level, and this specification may considerably determine the interpretation of the capability at stake. While at the global level we decide that there is to be some practice of nurturing young children, this leaves ample space to determine the more specific ends at the local level; i.e. how and to what extent nurturing should contribute to the development of children's capacity for agency. This discretionary space is important for two reasons. First, what might be required for developing full agency cannot be specified in an eternally fixed standard. The requirements of agency development in highly complex modern societies are not the same as those in ancient Greece. The exact content of the morally required capabilities has to be interpreted in the context of the society at hand. This kind of flexibility can be done justice in a local theory, while arguably a global theory will have to be less context sensitive (see also Section 4.4 on interpretation). Second, local theories benefit from the expertise of the practice participants in formulating the details of the ends at stake; expertise that is indispensable for a theory to acquire legitimacy and be a guiding force in realization of the formulated ends, for example pedagogical expertise on the best way to nurture children.²⁰⁰

If we look at the details of the criterion, its first part (the a-clause) directs the practice to realize that level of capability for everyone in the relevant society. The second part (the b-clause) demands promoting the conversion of these capabilities into functionings. This raises the vexing question how far a practice is obligated to go in promoting this conversion. The problem is that persons may refuse being subjected to it. For example, even if a global theory is established which obligates the creation of a practice of basic education, children may claim that they should be allowed to choose not to go to school. Or, even if a practice is established which delivers medical treatment, a dying person suffering great pains can claim that he should be allowed to refuse medical treatment that would prolong his life. The second part of the criterion states that a practice has to respect these kinds of

²⁰⁰ This is analogous to Nussbaum's idea of "multiple realizability," i.e. that the capabilities list requires specification to be applicable in local contexts. Nussbaum, *Women and Human Development. The Capabilities Approach*, 77.

refusal, but only to the extent that the capacity for agency of the refusing individuals is sufficiently developed (after all, this is what the practice tries to achieve). This may lead us to the conclusion that it is not up to the children to stay at home, since their capacity for agency is still in development, while it may lead us to respect the dying person's refusal. If the latter's capacity for agency is absent (if he is in a coma), we may judge differently. This shows how the right to a refusal to exercise the actual functioning depends on the extent that an individual's capacity for agency is present at the time of refusal. The area of justified paternalism will be larger to the extent that one is distrustful of the quality of people's revealed choices.²⁰¹

Criterion of agency exercise

Formulate ends which

- a) promote the realization of those morally permissible capabilities that participants have assigned to the practice, and
- b) promote their conversion into functionings for the participants in the practice.

The criterion of agency exercise – in conjunction with the previous criterion – gives substance to the ends that any practice is to formulate for itself. It assigns to every practice the duty to promote those morally permissible capabilities which form that practice's *raison d'être*. Here the division of labor between global and local theory is markedly different from the one that applied to the previous criterion. Every society should allow the existence of those avenues for the development of morally permissible capabilities that persons choose to create. Because these capabilities are not morally required, there is no global obligation to create specific practices for the development of these capabilities. Indeed, such a hierarchically imposed creation of practices for the development of morally permissible capabilities would conflict with the criterion of agency protection. Once they gain their capacity for agency, persons must decide for themselves the practices they want to create and participate in, in order to exercise their agency. From the perspective of personhood, a society in which some people decide to engage in piano playing and others in wrestling is as good or bad as a society in which some engage in religious ceremonies and the others in watching cartoons on television. Therefore, at the global level there is no obligation to create

²⁰¹ Despite her general preference in favor of not pushing people into functionings, Nussbaum discusses some cases where paternalism may nonetheless be justified, such as health and safety measures and cases where persons surrender their dignity. Ibid. 86-96.

practices for these capabilities; on the contrary, the obligation is one of non-interference. Persons with the capacity for agency will create new practices, reform other ones and let again other ones whither away. Any global theory has to allow this, since none of the capabilities at stake is morally required.

At the level of the local theories of the practices that come into being on this basis, things are different. Any practice has the obligation to promote the realization of those capabilities (and their conversion into actual functionings) that its members – be they pianists, cartoon lovers, or whatever – have assigned to it. The legitimating force of the obligation to promote these ends thus rests on the consent of the voluntarily cooperating participants in the practice, not from the requirements of a global theory (as in the case of the previous criterion). These practices are based on a kind of local social contract, which places obligations and entitlements on both the participants and the practice itself.

For the participants the main obligation is to cooperate in the practice according to its rules. In choosing to join the practice, they have chosen to abide by the rules that are cooperatively established. On the other hand, persons have a right to withdraw from the practice. Their original consent to be participants is revocable, so that at any moment the practice consists only of voluntarily cooperating persons. At the same time, every individual has a claim on the practice (that is, on all other participants jointly) that they continue to promote the ends of the practice. This claim extends only to the participants in a practice and only as long as the practice continues to exist. The argument for this claim is that for those persons who have already invested their agency in a certain practice (their time and energy, their personal biographies and identities etc.) it is important that the practice serves to promote the development of their capabilities and their conversion into functionings.

For the practice, the first part of the criterion (the a-clause) promotes the realization of the morally permissible capability at issue. All persons in the relevant society will then have this capability. For example, if a practice of playing tennis is established, this provides the capability to play tennis for all people – they are all potential tennis players who may choose to join the practice; their lives have been enriched with an additional avenue for exercising their agency.²⁰² At the same time, according to the second part of the criterion (the b-clause) the practice promotes the conversion of these capabilities into functionings for those who have chosen to become participants. The problem of individuals refusing to subject themselves to this conversion does not arise here

²⁰² This does presuppose that all persons have the innate capabilities necessary to be able to play tennis (for example, to be able to hold a racket). To the extent that this presupposition is unrealistic, some people will not be able to benefit from the practice's efforts to make the capability for playing tennis available to all those interested.

(as it did for the previous criterion) because these practices require the consent of persons to become participants in the first place. Practices that merely promote morally *permissible* capabilities cannot exact participation, a possibility that may sometimes be granted to the practices promoting morally *required* capabilities.

Criterion of agency protection

Formulate ends which

- a) do not promote the realization of any immoral capabilities,
- b) nor allow immoral capabilities to convert into actual functionings as far as these conversions can reasonably be foreseen and prevention is reasonably within the practice's reach.

Finally, the criterion of agency protection holds that no practice should violate the capacity for agency of all persons, be they involved as participants in that practice or not. This criterion flows from the corresponding condition of agency protection. It formulates a demand upon all practices alike. Coercion, manipulation, deception, not to mention torture, physical assault and the like constitute such violations. These kinds of actions are to be ruled out by a double restriction imposed on practices. First, a practice should not itself promote the development of these immoral capabilities (the a-clause). For example, the practice of raising children in a family should not promote the development of children's immoral capabilities, like their capability to lie or to steal. Governments should not stimulate their civil servants to develop the skills necessary to engage in acts of corruption. Second, a practice should not allow the conversion of these capabilities into actual functionings (the b-clause). For example, families should not allow children – once they have nonetheless developed capabilities to steal or lie – to exercise these by actually lying to or stealing from other people.

Now one might object that no family is probably able to prevent all such violations, just like no government, however well intended, will ever be able to prevent all acts of corruption of its civil servants. Therefore the requirement on practices is to take measures to prevent these violations as much as is reasonably within their reach. For example, it might require that governments issue clear guidelines about the kinds of acts that are to be judged instances of corruption and it might require that a regime of sanctions be in place in order to deter possible violators. The second part of the criterion thus contains a more active demand, although limited to those types of violations that are to be foreseen in the given practice. For example, it would not make much sense to demand of families that

they actively issue and monitor prohibitions of corruption in the way that governments should for their civil servants.

Despite this explicit demand for incorporating appropriate measures of preventive action, this criterion does not say anything about the positive ends that a practice should endorse. It rather restricts the range of permissible ends. In that sense, we may conceive of this criterion as a test on the permissibility of potential formulations of a local normative theory. No such theory should explicitly require or tacitly approve of violations of agency or fail to actively counter them wherever appropriate.

This completes our overview of the three criteria for formulating local normative theories of practices. If we want to be clear about the application of these criteria to issues of commodification, this framework will have to be further clarified in two respects. First, there is the question how we are to decide which capabilities are immoral, which ones are morally required and which ones are morally permissible. This is the question of interpretation. Second, there is the question of how to decide in case of conflicts between the promotion of several capabilities of different types. This is the question of priority. In the next section I try to provide answers to these two questions.

4.4 Interpretation and Priority

The *question of interpretation* concerns the application of the distinction between the three types of capabilities in the context of practices. This interpretation will determine where the boundaries lie: which capabilities will be morally required, which ones morally permissible and which ones immoral. For the sake of convenience we can focus on the distinction between the morally required and the morally permissible.²⁰³ There are three potential problems of interpretation.

A first problem might be that some would object that it is impossible to allocate the labels used here – morally required, morally permissible and immoral – to definite capabilities at all. For example, the capability to use physical force against persons may be immoral in one case (a neighbor tries to kill me), morally required in another case (the police tries to protect me) and morally permissible in yet another case (a parent uses force to correct his disobeying child). Similarly, the capability for sleeping may belong in each of the three categories: it may be morally required to have the capacity for agency (which is why sleep deprivation is a form of torture), it may be a morally permissible capability that persons

²⁰³ Once one knows what is required for the capacity for agency, one also knows what is required to protect it, i.e. which actions constitute violations of agency and which capabilities are immoral. All the remaining capabilities are morally permissible.

choose to exercise their agency (those sleeping long hours instead of engaging in other activities); but it may also be immoral in other circumstances (the night watch falling asleep on the job). Similarly for many other capabilities it might be impossible to specify in which category they belong. One may feel tempted to think that the three labels should actually not be applied to capabilities at all, but rather to their use in actual functionings.

In response, we can admit that capabilities do lead to functionings that have a different moral status depending on the circumstances. However, this does not pose a problem for the theory as formulated in the last section, for this theory is directed at the arrangements to be made in practices. Since by definition practices are local contexts in which certain regular patterns of action recur, capabilities tend to be tied to specific ways of being converted into actual functionings *within* that practice.²⁰⁴ So when we discuss the capability to use violence for, say, the practice of security provision (the work of police forces), we are interested in the question to what extent it is morally required, permissible, or immoral in that context. The local normative theory of a practice will then have to specify in which kinds of circumstances, *as a rule*, this capability will be justified. The moral evaluation of specific actions is a separate kind of evaluation that does concern the actual functioning; i.e. whether the agent has acted within the rules of the practice. This kind of evaluation is important in its own right, but it is not what concerns us when we are interested in the previous step where the rules for practices are to be designed. At this previous stage, the evaluation of capabilities in their practical context is what is at stake.

A second problem concerns the interpretation of which of these capabilities are required for the development of the capacity for agency. In the section above I have already remarked that the demands of agency are to be understood in a context-sensitive fashion. For example, in a modern society it may be necessary to have the capability to read and write in order to acquire the information that enables one to choose between the courses of action that a modern society offers. In other societies, literacy would not be necessary in this sense. However, context sensitiveness should not be too readily assumed to lead to differential results in different contexts. For at the same time others could argue that literacy enhances the quality of one's practical reasoning, independent of the social context. If that argument is correct, then the promotion of literacy is morally required, even though no vital information about one's potential courses of action is missed without it.²⁰⁵ All capabilities have to be evaluated for all their possible effects on

²⁰⁴ Capabilities are tied to specific contexts by defining very specific capabilities; not "the capability to sleep," but "the capability of a night watch to sleep during work."

²⁰⁵ For a discussion of this dilemma, see Nussbaum, *Women and Human Development. The Capabilities Approach*, 294-96.

the capacity for agency, some of which may be more sensitive to context than others.

A third problem is that, even allowing for context-sensitiveness, it is possible to distinguish a narrow and a broad interpretation of which capabilities are required for having the capacity for agency. In a narrow interpretation, this category includes only those capabilities that contribute directly to the development of the capacity of agency, as it is characterized by a set of deliberative skills (roughly equal to what is normally called practical reasoning) and the absence of obstacles to one's preferred course of action. A person living under a dictatorship who is sufficiently trained in practical reasoning and is not hindered by the dictator in his preferred course of action – say, spending his days playing baseball – would thus have all the capabilities that are morally required. This cannot be right. At any time the dictator can decide to withhold the information this person needs to carry out practical reasoning or force him into or out of certain courses of action, e.g. by prohibiting baseball. Similarly, in a society with large differences in power and status, private persons may have the power to do these things to others. We therefore have to include into the category of morally required capabilities the capabilities individuals need to have to achieve the social and political conditions that are necessary to have equal standing as a person in a society. It is this kind of broader interpretation of what is required for having the capacity for agency that we have to endorse, for only then can the capacity for agency in the narrow sense be securely guaranteed.²⁰⁶ In thinking about what this entails we can take our lead from Elizabeth Anderson, who proposed such a broad interpretation in the context of a theory of democratic equality:

Sen's capability egalitarianism leaves open a large question, however. *Which capabilities does a society have an obligation to equalize?...* Surely there are limits to which capabilities citizens are obligated to provide one another. We should heed our first desideratum, to identify particular goods within the space of equality that are of special egalitarian concern. Reflection on the negative and positive aims of egalitarianism helps us meet this requirement. Negatively, people are entitled to whatever capabilities are necessary to enable them to avoid or escape entanglements in oppressive social relationships. Positively, they are entitled to the capabilities necessary for functioning as an equal citizen in a democratic state.²⁰⁷

²⁰⁶ Pettit made a structurally similar point, arguing that preferences should be context decisive and defending the moral priority of capabilities over functionings with reference to that point. Philip Pettit, "Capability and Freedom: A Defence of Sen," *Economics and Philosophy* 17 (2001).

²⁰⁷ Elizabeth Anderson, "What Is the Point of Equality?" *Ethics* 109, no. 2 (1999), 316. An alternative way of selecting capabilities, which is more procedural in character, is proposed by Ingrid Robeyns. See Ingrid Robeyns, "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities," *Feminist Economics* 9, no. 2-3 (2003).

Moreover, Anderson makes clear that this requires having capabilities to three layers of functioning: functioning as a human being who is able to sustain his biological existence and has the basic capacities for agency; functioning as an equal participant in a system of cooperative production (civil society); and functioning as a citizen of a democratic state in a variety of forms of political participation.²⁰⁸ Anderson mentions examples of the capabilities that would be involved in these types of functionings. According to her, sustaining one's biological existence for example requires access to food, shelter and clothing, while participation in civil society requires things like access to education and freedom of contract, and political participation requires things like the freedom of speech but also the ability to appear in public without shame.²⁰⁹

I will not attempt to draw up a list of required capabilities that meet this broad interpretation and are also relevant to the social context of contemporary modern society. It is possible, indeed necessary, to generate such an exhaustive list. However, its generation would require the local study of all practices a society harbors. Since to carry out such an analysis clearly exceeds the scope of this study, my ambition in the following will be the more restricted one of considering for three socially important practices (security, media and care) to what extent they are involved in promoting morally required practices. Note that this makes clear that although personhood is an abstract moral ideal, its content depends on requirements that can only be formulated through a study of local practices. Thus, the substance of the notion of personhood emerges from a context-sensitive and historically situated evaluation of the contributions of every practice to agency. Note, finally, that this position treats "the question of the list" in a way that is reminiscent of both Nussbaum's and Sen's strategies. The exhaustive list of morally required strategies resembles Nussbaum's strategy, while for the category of morally permissible capabilities – due to the endless variations that are possible – no list can be drawn. Here there merely is an open "evaluative space" analogous to Sen's strategy.

These interpretative matters have great relevance, because my theory will treat morally required capabilities differently from merely morally permissible capabilities. This brings us to the second question, that of priority. The *question of priority* concerns the internal structure of my theory, that is, the relations between the three criteria outlined in the previous section. This internal structure will be relevant in those cases where capabilities of different types conflict with

²⁰⁸ Anderson, "What Is the Point of Equality?" 317.

²⁰⁹ Ibid. 318.

one another.²¹⁰ The question then arises whether trade-offs between capabilities from different categories are permitted. I will give two answers. First, I claim that one rule of priority should be recognized: the criteria of agency development and agency protection both have priority over the criterion of agency exercise. This means that morally permissible capabilities cannot be promoted at the expense of any amount of promotion of morally required capabilities or prevention of the exercise of immoral capabilities. Second, I claim that between the criteria of agency protection and agency development no general rule of priority should hold. Violations of agency may be justified to a certain extent if this promotes the development of morally required capabilities, and vice versa. Let me illustrate both these points with the example of the practice of security provision.

The main end of security services is to promote the capability of being secure – in the sense of a state of being where one is prevented from unsolicited assaults by others. For every citizen in a given community, security is a basic need, for it is impossible to act as a person if others are able to interfere at will with one's chosen courses of action. Now some may claim that all persons should be entitled to the additional capability to protect themselves by means of firearms. They will hold that this also is a morally required capability. If we grant this claim, then the security practice will have to accommodate both capabilities at the same time. By contrast, if we judge that people's security can be realized without granting the capability to carry arms then the latter merely has the status of a morally permissible capability.

Which categorization we choose is important, for the two capabilities may conflict. For example, it may turn out to be the case that the capability to carry firearms causes more unjustified violations of agency (e.g. shootings by unlicensed persons) than would be the case when firearms are prohibited. In such a situation of conflicting capabilities the rule of priority is to be applied. If and only if the capability to carry firearms is classified as morally permissible, then it will have to give way to the higher-level capability to be secure (but if it is classified as morally required, some kind of compromise between both capabilities needs to be struck). This example shows the plausibility of the argument for the priority rule: personhood is better respected by protecting the development of the capacity for agency (here: making people secure), than it

²¹⁰ A very important issue that I have to leave out of consideration here concerns priority in case of conflicts between capabilities *of the same type*. For example, imagine that someone's capability for practicing one's religion clashes with the capability of some one else to express her opinion in public; and imagine we establish that both belong to the category of morally required capabilities. How to resolve such a conflict? The general rule would be to consider which resolution overall promotes personhood most; but I admit this does not yield much in the way of a substantive guideline.

would be served by a protection of some avenue for its exercise to the detriment of its development (here: carrying arms).

Let us now consider the second point, that no general rule of priority should be set between the criteria of agency development and that of agency protection. This can also be illustrated with the practice of security provision. As already mentioned above, police officers regularly have to violate the capacity for agency of those who violate the agency of their fellow citizens. For example, they sometimes have to deprive criminals of their freedom of movement in order to protect that freedom of other citizens. Thus the practice of security provision systematically aims at the exercise of an otherwise immoral capability for freedom deprivation in order to promote the moral entitlement of others to a state of security. This example clearly shows that a trade-off between agency development and agency protection can be warranted under certain conditions. No general priority of one over the other can be justified, since on the most abstract level both are equally vital to the realization of the capacity for agency. It is only in specific cases that we can decide which of the two criteria takes precedence over the other in order to promote the conditions for the realization of personhood best.

In anticipation of the next chapters, I will now use the examples of the three practices of security, media and care provision to illustrate how the broad interpretation of personhood and the rule of priority influence the determination of the extent to which markets should be part of those practices.

In the practice of security provision the morally required capability to be secure (as formulated above) will provide the normative touchstone to judge the legitimacy of completely relying on the market in providing security. I will show that a security market cannot be justified. It conflicts with this capability in two different ways. First, a security market will – without a government controlling the market – generate unnecessary violence between security providers and against prospective security consumers. These are instances of violation of the criterion of agency protection. Second, in order to create a demand for its products, a security market will generate a higher level of feelings of insecurity (which are themselves part of being secure) than is justified by actual security conditions (Section 5.2). For both reasons, the capability to choose one's own security provider – which the market would promote – has to be overridden in favor of a system of public provision. After establishing this point, I will then try to show how the same arguments do not exclude the possibility of a limited market under public auspices as a supplement to public provision (Sections 5.3 and 5.4).

The practice of media provision provides a good illustration of the relevance of the broad interpretation of the category of morally required capabilities

defended above. I will argue that the capacity for agency requires a well-functioning democratic process, which in turn requires the existence of a public sphere of debate, fed by media content that provides information and opportunities for deliberation. This democracy-enhancing capability clashes with another capability; to be entertained by the products the media offers (Section 6.2). The tension between these two capabilities is a familiar fact of life in the contemporary media landscape of Western societies. I will argue that the democracy-enhancing capability is morally required and therefore takes priority over the merely permissible capabilities for entertainment. This priority is vital, for it provides the basis to evaluate the market's performance in the media practice. I will argue that the market may be only partially able to promote the morally required capability for democratic content. Where that is the case it has to be supplemented with a system of professional provision which promotes this capability (Section 6.4).

Finally, in the provision of care to dependents I also distinguish two capabilities. In this practice, dependents have a basic need for being cared for (such as children and elderly in dependent conditions as well as disabled people). On the other hand, the persons that these dependents have personal relations with (their family, neighbors, friends, etc.) have a capability for caring which, I will defend, is not a morally required part of their capability for agency. As a consequence, these persons cannot be obligated to informal care provision, i.e. to care personally for those dependents (Section 7.2). This triggers the need for formalized forms of care, the most prominent of which are market based. In a second step the question arises which relations between informal and formal care should hold. As we will see, the answer to this question depends on considering another morally required capability, that of caregivers (mainly women) to be able to engage in paid employment on an equal footing with people without caregiving responsibilities. A reconciliation of the conflict between these capabilities leads me to the defense of a particular division of labor between informal and formal care (Section 7.4).

From these examples we see that the crucial first step in evaluating commodification is to work out what I have called a local normative theory that defines the ends that a practice should strive to realize. These ends are to be defined in terms of the promotion of capabilities relevant to that practice. This requires us to answer the following three questions:

- (i) Which are the relevant capabilities? (selection)
- (ii) Which capabilities are morally required; which are morally permissible and which ones are immoral? (classification)

- (iii) To what extent do these capabilities conflict with one another and what are the consequences of applying the rule of priority to those conflicts? (conflict resolution)

It is not until this work is done that one can turn back to the institutional strategies presented in the previous chapter and seek to argue which of these strategies best fits the realization of the local normative theory thus formulated. The next three chapters will pursue both of these tasks – the normative and the institutional – in tandem, with regard to the practices of providing security, media and care. In the conclusion I will reflect on the results of these applications and judge to what extent the capability theory presented in this chapter has proven to be a valuable guide in thinking about commodification.

PART II APPLICATIONS

INTRODUCTION

In the next three chapters, I will discuss marketization for three specific practices: those providing security services, media products and caring activities. As to the selection of these practices, the choice of some over others will always remain somewhat arbitrary and reflect the personal interests of the author. Nonetheless, the choice of cases was guided by two considerations.

The first is that the three cases together should show the widest possible variety of conflicts between the market and non-market forms of provision. Each of the non-market modes of provision presented in Chapter 2 ought to be addressed, so that we could study in detail its specific tension with the market.²¹¹ Therefore I chose to build each chapter around a conflict between two modes of provision. In each case the market is one of these modes. This should come as no surprise given the centrality of the market to this study. I also wanted to focus substantially on actual debates about the institutional design of the three cases. Accordingly, in the chapter on security the central conflict is between the market and public provision. In the chapter on the media the central conflict is between the market and the professional mode of provision. Lastly, in the chapter on care the focus is on the conflict between the market and informal provision.²¹²

In each case this set-up leaves potentially interesting elements of the practices out of focus. For example, a discussion of self-provision for security might have been interesting in its own right (think of the frontier settlers and their modern-day successors defending their own property). For modern societies however I do not consider it to be an alternative with the same weight. Similarly, in the media case, I exclude possibly interesting instances where people provide news to each other in an informal mode, from the wandering troubadours of medieval times to the modern blogger on the internet. In the discussion of care, I leave largely aside the professional mode of provision, even though it is important to the debates about the quality of formalized care. Each of these omissions is regrettable, but

²¹¹ A subsidiary motive in choosing these three practices was to draw attention away from the cases which have dominated the discussion about marketization (at least in the Netherlands) over the last two decades or so, i.e. the privatization of formerly public utilities: energy, telecommunications, postal services, public transport.

²¹² As the attentive reader will note, the original intention of discussing *all* modes of provision has not been fulfilled completely: a separate chapter discussing a conflict between self-provision and the market is lacking.

nonetheless necessary – at least to my mind – to give the chapters a clear focus on the tensions between market and non-market provision mentioned above.²¹³

A second consideration is that on the level of the institutional strategies mentioned in the third chapter (Section 3.1), I wanted to focus on only one of them: institutional pluralism. I deliberately selected cases for which my original intuition was that objections to the market could not be solved by the other strategies (improving pure markets, regulating them or prohibiting them) and that a coexistence of market and non-market would be necessary. The discussions in the next three chapters therefore follow a specific sequence. In each chapter the first section will be devoted to a preliminary analysis of the market for the practice in question. These preliminary investigations will serve slightly different purposes, depending on that practice. For security, the preliminary question will be whether a market for security services is a feasible construction in the first place. There is no doubt about this in the case of the media. Here the preliminary question will rather be whether normative problems arise because of the contingent structure of current media markets (which are dominated by advertisers and subject to heavy concentration of ownership), or because of the use of the market mode of provision *per se*. Finally, for care, the preliminary question is which modes of provision are to be distinguished and what commodification means in the context of transitions between these modes of provision.

After these preliminary discussions the second section of each chapter will be devoted to the formulation of a local normative theory, i.e. to the selection and classification of the relevant capabilities at stake. Also considered is the question as to what the (im)possibilities are for the market to realize these capabilities. This gives us a first determination of the possible scope of the market for each of these practices. The third sections will extend and complicate the normative analysis, each in a slightly different way. For security, a separate investigation of the arguments in support of public provision will be conducted. For the media, the supportive function of the media with regard to the public sphere of democratic debate is the focus of attention. For care, the problem of how to reconcile care with caregivers' capability to engage in paid work. In each case, this will lead us to conclude that institutional pluralism of market and non-market modes of provision is most appropriate. In the concluding sections I will discuss

²¹³ Lastly, the need for selection applies to the details of the institutional arrangements that I will argue are required. Both with regard to the details of the appropriate regulation of markets for security, media and care services and with regard to the details of the interrelations between different modes of provision in institutionally pluralist arrangements, I will only be able to highlight some of the major features.

in more detail of what character institutional pluralism should be and what conditions can ensure its stability.

Finally, I would like to say something about the philosophical status of the discussions in the next chapters. In the previous chapters I developed a social theory and a moral theory to evaluate the legitimacy of markets. In the discussion of moral theory, I showed how this requires the formulation of local normative theories of practices, in conjunction with a global normative theory. Now these theories do not unambiguously exist somewhere in our reality. Rather, something like such theories can be distilled from the way that political institutions actually govern our practices: from the proceedings of parliament, the verdicts of judges, the decrees of government, the decisions of local boards and associations, etc. Philosophers – not being philosopher-kings – do not have the legitimate authority to formulate the ends and rules for our social practices; that job belongs to the political institutions. Those institutions have to be legitimated themselves however, and here philosophy inevitably comes back in. The social and moral theory of the previous part would therefore have to be complemented with a political theory for creating just institutions. I will not offer such a theory but merely presuppose that we are able to realize a viable legitimating of political institutions. The applications in the next part, then, are offered as one citizen's contributions to the debate within those institutions about the future course of the practices concerned.

I confess that being a non-specialist in each of these fields renders the arguments vulnerable to objections from specialists. Nonetheless, I hope that the positive value of having been able to test the insights developed in the previous chapters will outweigh the negative value of any errors of judgment made due to gaps in the knowledge about the details of these practices. For philosophical theories, as for many other things, the proof of the pudding is in the eating. It would have been a sign of philosophical cowardice to shrink from tasting it.²¹⁴

²¹⁴ Although the sequence of presentation – the theoretical chapters preceding and the applications following – suggests that the theory was developed first and the applications came afterwards, this does not capture the dynamic between them in writing. It was only in studying the applications that the true character of many of the theoretical problems became clear to me. Consequently, the writing process necessitated going back and forth between theory and application; and the arguments in both parts owe much to each other.

CHAPTER 5

SECURITY – THE MARKET FOR PROTECTION

Significant shifts have been occurring over the last several decades with regard to crime and security. With regard to prevailing attitudes an increased sensibility for crime and risk has emerged.²¹⁵ Simultaneously, the allocation of responsibilities for security provision has undergone change as well. 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.²¹⁶ 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.²¹⁷ 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 part of a “new demand for security.”²¹⁸ Anyway, 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?”

²¹⁵ David Garland, *The Culture of Control. Crime and Social Order in Contemporary Society* (Chicago The University of Chicago Press, 2001).

²¹⁶ Figures are for 1996. See Jaap de Waard, "The Private Security Industry in International Perspective," *European Journal on Criminal Policy and Research* 7 (1999): 155.

²¹⁷ Figures are for 2004. See Ronald van Steden and Rick Sarre, "The Growth of Private Security: Trends in the European Union," *Security Journal* 20 (2007).

²¹⁸ Trevor Jones and Tim Newburn, "The Transformation of Policing? Understanding Current Trends in Policing Systems," *The British Journal of Criminology* 42 (2002): 96. The new demand for security may be a reaction to rising crime levels, but also to subjective preoccupations with absolute security. For an interpretation of the latter as the longing for a “safety utopia,” see Hans Boutellier, *De veiligheidsutopie. Hedendaags onbehagen en verlangen rond misdaad en straf*, 3^d ed. (Den Haag: Boom Juridische Uitgevers 2005). [available in English as *The Safety Utopia*, Springer, 2004].

In speaking about the practice of security provision I define security rather narrowly. In this chapter security will not refer to an all-encompassing state of being (including things like social security and ecological security). Rather, for purposes of this chapter it will refer to “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.”²¹⁹ Security provision thus defined aims at establishing a form of social order (“a way of doing things”) in which individuals are protected against a well-specified range of threats or risks. The threats included are, first, unsolicited intrusions against person or property (attacks commonly labeled “criminal”) and second, violations of agreements (breaches of civil contracts). Security efforts are directed against attempts to appropriate what is rightfully ours as well as against attempts to frustrate the agreements we conclude with others, for both form an integral part of the social order or peace.²²⁰ The range of all possible 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 will restrict security provision to activities directly aimed at prevention and prosecution of the above-mentioned violations; activities such as surveillance in the street and at other public places, guarding specified objects, arresting and hearing suspects, fining offenders of traffic laws, transporting prisoners, etc. Roughly, these activities are summarized under the rubric “policing.”²²¹

This raises the leading normative question of this chapter: Who should police? How should security provision be organized? Most forms of provision identified in Chapter 2 could be invoked to this end. Ideal-typically, security can be provided by the police (public provision), by commercial security companies (market provision), by citizen groups in informal neighborhood watch schemes and the like (informal provision) or by individuals protecting themselves and their property with their own means (self-provision). Mixes of these modes of

²¹⁹ Clifford D. Shearing, “The Relation between Public and Private Policing,” in *Modern Policing*, eds Michael Tonry and Norval Morris, *Crime and Justice* (Chicago: The University of Chicago Press, 1992): 399.

²²⁰ Breaches of property rights can even be conceptualized a subspecies of breach of contract, namely, the original contract to respect others’ property rights. The two aims of security provision mentioned then coalesce. See Diego Gambetta, *The Sicilian Mafia. The Business of Private Protection* (Cambridge, Massachusetts: Harvard University Press, 1993), 32.

²²¹ For an extensive discussion of the problem of defining “policing,” see Trevor Jones and Tim Newburn, *Private Security and Public Policing* (Oxford: Clarendon Press, 1998), 247ffff. Note that I exclude other branches of the “system of justice” most notably jurisdiction (courts, arbitration mechanisms) and detainment (prisons). I also exclude “external security,” i.e. mechanisms for protection against foreign enemies in an international context (the latter raises interesting questions of its own with regard to the use of mercenaries in wars).

provision are possible as well. Overall, it is fair to say that the two most important alternatives are market provision and state provision. Compared to these, informal provision and self-provision play a relatively marginal role as additional mechanisms.²²² Therefore in this chapter I will concentrate on the market and the state.²²³

I will start by asking a preliminary question: Can security conceivably be delivered as a “pure market good,” i.e. as a good provided solely through the market?²²⁴ Classical political theories have maintained that the deliverance of security by means of market provision is characteristic for the “state of nature” that must be overcome for a legitimate political constitution to come into being. I will examine this position as represented by Nozick’s argument for the minimal state and compare it to a sociological investigation of what arguably is such a pure security market; the Sicilian mafia. The conclusion will be, *contra* Nozick, that, yes, a pure security market is conceivable. This makes it necessary to ask the normative question whether such a market is desirable (Section 5.1). Subsequently, I will formulate two normative demands upon the practice of security provision and on the basis of these I will formulate two main objections against market-based security; one focusing on its tendency to produce several kinds of unjustifiable violence and the other focusing on its tendency to produce more feelings of anxiety (subjective insecurity) than warranted by actual levels of insecurity. Both these objections do leave room for an “additional security market,” i.e. as part of an institutional pluralism of security providers, regulated under auspices of the state (Section 5.2). For such pluralism to be desirable however the arguments for security as a pure public good must fail. Therefore I will examine two arguments in favor of pure public provision: the argument that state security is essential in the constitution of a (national) community and the argument that state security is essential in upholding justice against breaches of the social order. Both arguments will be shown to provide grounds for a pivotal role for the state in providing a minimum (not necessarily minimal) level of

²²² 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 Les Johnston, “What Is Vigilantism?” *The British Journal of Criminology* 36 (1996).

²²³ For the purposes of this chapter “public provision” and “state provision” receive no separate treatment. This conflation is pragmatic. If some non-state entity would one day succeed the state in being the overarching sovereign public authority under which citizens live (say, the European Union or United Nations), then the same arguments would apply to that authority (of course it would then be relevantly similar to present-day states).

²²⁴ This does not mean that non-market institutions for the regulation of such a good are absent: it incorporates non-market enabling institutions, essential for the market to function properly (see Section 3.1 for the concept of a “pure market” and “market-enabling institutions”).

security to all citizens, but both arguments will also show why additional security efforts by other providers should be considered permissible (Section 5.3). The resulting pluralism bears in itself two sources of constant tension. For these to be sufficiently mitigated, two conditions of stability must be fulfilled. On the one hand market and state providers have to cooperate successfully in their attempts to provide security. On the other hand a balance between both has to be struck in which additional private security efforts do not undermine the minimum level provided by the state (Section 5.4).

5.1 Security as a Pure Market Good – A State of Nature?

The libertarian philosopher Robert Nozick provides a theoretical account of a pure security market that is particularly useful as a starting point for our investigation. 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.²²⁵ 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.²²⁶

²²⁵ Nozick's argument is in the tradition of Hobbes, Locke and others who have reconstructed man's escape from the state of nature into a legitimate political community. However, there is one important difference: whereas for Hobbes and Locke this escape was a matter of argument (it is more beneficial for each individual to establish a public authority and transfer certain powers to it), Nozick relies on an evolutionary process: he calls his explanation an "invisible hand explanation." Nozick, *Anarchy, State, and Utopia*, 18.

²²⁶ Ibid. 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.²²⁷ 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 sorts of protective policies would be offered, at different prices, for those who may desire more extensive or elaborate protection,"²²⁸ 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."²²⁹ This common system is the "dominant agent" in a given area and in due course it will

²²⁷ 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.

²²⁸ Nozick, *Anarchy, State, and Utopia*, 13.

²²⁹ *Ibid.* 16.

acquire the attributes of a state.²³⁰ 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.²³¹

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 such a pure security market have actually existed or perhaps still do exist. Therefore I will now 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

²³⁰ 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.” Ibid. 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, *Anarchy, State, and Utopia*, 110.

²³¹ Nozick, *Anarchy, State, and Utopia*, 17.

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.²³² 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 opposed 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.”²³³ 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-19th 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.²³⁴ 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

²³² Gambetta, *The Sicilian Mafia. The Business of Private Protection*, 15-18.

²³³ Ibid. 23.

²³⁴ Ibid. 197-202.

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.²³⁵ The emergence of a permanent monopoly that will never be challenged – Nozick’s dominant agency – is by no means the necessary outcome.²³⁶ Gambetta concludes: “there is no inescapable equilibrium. Here we stumble into the much less predictable realm of *politics*.”²³⁷

If a pure market for security is a conceivable outcome, the question becomes whether such an organization of security provision is desirable. The fact that the mafia is a leading example of a security market does trigger a strong intuition to the contrary. However, an explicit analysis of objections to a security market is needed to validate that intuition. It is to these objections that I now turn.²³⁸

²³⁵ 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. Ibid. 70 and 115.

²³⁶ Similarly, Murray Rothbard has criticized Nozick for failing to let the invisible hand actually do its work instead of predicting what it would do. Moreover, Rothbard claimed that the minimal state might fall back into anarchy because of challenges raised to it by independent protection firms. Empirical examples would prove this point (he mentions historical examples of competing court systems). See Murray Rothbard, “Robert Nozick and the Immaculate Conception of the State,” *Journal of Libertarian Studies* 1, no. 1 (1977): 47-48 and 55.

²³⁷ Gambetta, *The Sicilian Mafia. The Business of Private Protection*, 71. If one compares the three outcomes just described with the three outcomes Nozick mentions, one may even wonder why Nozick considered his second outcome (division of the territory) and third outcome (agreement on mediating third party) to amount to the establishment of one dominant agency.

²³⁸ The link between the emergence of mafia-like protection services and a market-based social order is striking. Gambetta argues that the Italian mafia arose when feudal structures started to crumble and the emerging state was unable to fill the gap and to provide security. A similar thing happened when the collapse of communism in the early 1990s led to the emergence of a Russian mafia. Historically, private protection does arise out of a “state of nature,” but such a state of nature is created by the demise of another social order (feudalism or communism). Such a state of nature is characterized by the need to protect newly-created rights to private property in combination with the lack of a public alternative to assure the fulfillment of this need. Gambetta, *The Sicilian Mafia. The Business of Private Protection*, 79, 252.

5.2 A Local Normative Theory for Security

In this section I will discuss whether and to what extent a pure security market is desirable. First I will formulate two normative demands that can be legitimately imposed on the practice of security provision; these make up the “local normative theory of security provision.” Second, on the basis of these demands I will present two objections to the pure security market and argue that each of these objections shows that a pure security market is undesirable. Finally, I will show that these objections do not establish that security should be a completely “blocked exchange.” None of these objections warrants the prohibition of an additional and regulated security market as part of an institutionally pluralist setting.

There are two normative demands that we can formulate for security provision. First, it should be organized in such a way as to make sure that the capability to exercise violence and its conversion into functionings are only realized when necessary to realize other people’s capability to be secure. This follows from applying the generic demand addressed to all practices to refrain from promoting the development of immoral capabilities and from allowing the conversion of such capabilities into actual functionings (Section 4.3). The exercise of violence almost always interferences with the capacity for agency of the person against whom it is practiced. This makes it *prima facie* immoral; the first demand is that violence in the course of security provision can be justified through a necessary connection with the positive demand for providing security.

Second, then, the practice of security provision has as its aim to actively promote the capability for “being secure,” that is, being in a state in which one is protected against violations of one’s rights to oneself, property and contract. This capability should be considered a basic need, for no one is able to realize personal goals, values, commitments and life plans if others are capable of threatening one’s life and property and violating agreements made without consequence. Protection against these threats therefore is a necessary condition if one is to have the capacity for agency. I take it as relatively uncontroversial that most global theories would argue from some version of this second demand that the establishment of a security practice realizing this capability is a moral requirement (see also Section 4.3). Nonetheless, questions may arise as to the scope of this demand. The positive demand for promoting security applies to both types of threat mentioned in the Introduction to Part II. First of all, it is true of security as protection against criminal threats to one’s life and property. These threats are so fundamental that if they are routinely present in one’s environment, they necessitate often far-reaching measures of adaptation by the individual that render a normal realization of one’s personal ends difficult if not impossible.

Perhaps less evident is the fundamental need for security in the second sense, as the guarantee that others will be held to act upon the agreements they concluded with us. However, such a guarantee is a prerequisite for the continuation of human cooperative endeavor in general and commercial contracts in particular. Insofar as such cooperation is an essential feature of human life, its protection is as fundamental as the protection against immediate threats to life and property.

Furthermore, there is the question of the required level of security provision contained in this positive demand for promoting security. It should not be interpreted as a request for establishing “absolute security.” A guarantee that no violation of one’s rights will ever occur is a mere illusion. Nonetheless, different levels of security provision establish different levels of protection of one’s capacity for agency against threats. 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. There is no way around contentious political discussion as to what level of (in)security is acceptable in a given society. An additional problem that I merely mention here is that – whatever level is chosen as appropriate – a decision still has to be made 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 interpretation allows for individual variations in security levels above the minimum (a choice on this point will be made hereafter, in the discussion of the “argument from community” in Section 5.3).

Can a pure security market realize these normative demands on the security practice? I will now argue that it cannot, for such a market faces two objections; one pertaining to each normative demand. The “objection from unjustifiable violence” argues for insurmountable problems for such a market in relation to the first demand, while the “objection from anxiety” does the same in relation to the second demand.

The *objection from unjustifiable violence* argues that a pure security market will tend to practice two types of unjustifiable violence. 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.²³⁹ 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 18th-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.²⁴⁰ 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 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.²⁴¹ 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

²³⁹ 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. *Ibid.* 54.

²⁴⁰ Steven Spitzer and Andrew T. Scull, “Social Control in Historical Perspective: From Private to Public Responses to Crime,” in *Corrections and Punishment*, ed. David F. Greenberg (London: Sage, 1977), 275.

²⁴¹ 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, *The Sicilian Mafia. The Business of Private Protection*, 55-57.

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 legitimating 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.²⁴²

What both types of violence have in common is that a means is lacking of "protection against the protectors." both against actions of one's own protector and against those of other protectors on the market. 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? In the case of public provision a solution is to institute systems of accountability toward the community as a whole (via the democratic process) and toward countervailing powers (such as an independent judiciary).²⁴³ Could there be a similar remedy for the security market? One may want to argue that there is one; the establishment of a market arbiter, a third party to oversee the market and to hold the players accountable for their transgressions. Indeed, libertarians sometimes dispute the violent nature of the protection market by arguing that it would be in the economic interest of protection businesses to set up a system of independent appeal courts and arbitrators to mediate conflicts peacefully. Clients would demand guarantees of such a peaceful system and would dislike wars and

²⁴² This is confirmed in the bloody evidence from the mafia history. Gambetta gives the following theoretical explanation of the necessity to compete on violence: "Assume that the business of protection emerged in a brutish world where violence was the routine form of punishment and subjects either lacked the imagination to devise, or proved impervious to, subtler sanctions. Hence the first 'firms' to become established had to prove their efficiency in violence and be properly prepared for it. In the absence of a stable and comprehensive monopoly – including the state – to soften the rules of the game, any new competitor in the market has to select itself on the basis of its predisposition toward toughness before even contemplating entering the fray, for anything less would be suicidal. In this respect, even if violence were no longer strictly required by the business of the guarantor, it would still be overproduced as a consequence of the inertial effect of the competition to which the protection market had been subject since its inception." Ibid. 41.

²⁴³ Stenning distinguishes four modes of accountability for the public police. In addition to the two mentioned, he distinguishes "administrative accountability" as an internal process of checks and balances and "direct public accountability" toward citizens. Philip C. Stenning, "Powers and Accountability of Private Police," *European Journal on Criminal Policy and Research* 8 (2000).

conflicts between businesses because “such wars and conflicts would be bad – very bad – for business.”²⁴⁴

The latter claim can be interpreted in two ways. If the libertarian idea is that consumers can force providers to set up a third party, it presupposes the presence of market power on the part of consumers, the absence of which is what caused the market’s violent nature in the first place. By contrast, if the idea is that securities providers have an independent economic interest in setting up a third party, it presupposes that these providers will be convinced that they all benefit by its establishment. However, that seems an unlikely presupposition, for there will always be situations in which one security provider thinks he can gain larger benefits by defecting from the system; and the third party will not have the means to prevent him from defecting.

One could claim that these objections do not discredit the idea of a security market with a third party who regulates the market but does not provide security itself. They only prove that such a third party would have to have more extensive powers. First and foremost, it would have to have some means of enforcing contracts and of punishing security providers that refuse to obey its verdicts in case of dispute. In addition, if one agrees that such a market would have to ensure an equal measure of security for all, then the third party would also have to have the means to establish some sort of voucher scheme for security services. These vouchers would have to be funded, which requires the third party to have the power to coerce every citizen to contribute to such a funding scheme (taxation).²⁴⁵ Is the establishment of such a market under auspices of a third party an option?

Faced with these requirements, it is likely that one of the following two things would happen. One possibility is that security providers will prevent the third party from having the capacity for force necessary to execute the tasks mentioned above. In that case the solution will simply not come into being. The other possibility is that the security providers will agree to the establishment of the

²⁴⁴ Murray Rothbard, *For a New Liberty. The Libertarian Manifesto* (New York: MacMillan, 1978), 225. Ian Loader provides an extensive discussion of libertarian thinking on private security and also faults libertarians for neglecting the control on the execution of power in market-based security. See Ian Loader, "Thinking Normatively About Private Security," *Journal of Law and Society* 24, no. 3 (1997): 379-83.

²⁴⁵ Voucher schemes in other contexts have proven to be a practical way to reconcile demands for equal provision to all with the market as provisional mechanism. At least, if the addition of private purchasing power to one’s voucher is forbidden (so that one cannot spend more on security) and if the conversion of parts of the voucher to money is forbidden (so that the whole voucher must be spent and one cannot spend less). Competition will entail that the quality of security provision varies among different groups of consumers, but the fact of equal purchasing power per person is supposed to hold these differences in check. A famous defense of vouchers is Milton Friedman’s proposal for educational vouchers. See Friedman, *Capitalism and Freedom*. For a general criticism of vouchers, see Anderson, *Value in Ethics and Economics*, 161-63.

third party. Then, however, a situation arises in which the third party becomes an immediate competitor to the private security providers. In every case of dispute, a threat of violent conflict would emerge between the two forces. Such a situation could only be prevented if the third party has a capacity for force that exceeds that of all security providers combined, to deter them from rebelling against the system individually or collectively by engaging in ad hoc coalitions against the third party. But if such an overwhelming deterrent capacity would be established, it would be very inefficient to let it stay idle and not simply let it provide security for its citizens directly. The prospect of such a large idle force would be so unattractive that we can expect that in practice a transition to monopolized provision of security by the third party – which becomes a state-like entity – will be unavoidable (whether such a development would effectively cancel all opportunities for an additional market is a separate question; see the end of this section).

This argument establishes, I think, the unfeasibility of a security market that does not engage in systemic unjustifiable violations (our first normative demand). Nevertheless, when considering the next objection I will assume for the sake of argument that this problem does not exist. Even then, I will argue, there is a separate valid objection against a pure security market.

The second objection is the *objection from anxiety*. It establishes a violation of our second normative demand, i.e. that security provision should aim to promote everybody's basic need for security. This objection is targeted against another way in which a security market will tend to manipulate consumers. Protection 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. One is simply to force consumers to buy security services (extortion), the other to make sure that they are actually insecure by evoking others to commit crimes. Both were labeled immoral, for they directly interfere with the consumer's capacity for agency. There is a third way to ensure market demand, which does not rest upon these methods. If one cannot coerce the consumer or command criminal threats directly, one can 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.²⁴⁶ This kind of preference manipulation is

²⁴⁶ 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.” Gambetta, *The Sicilian Mafia. The Business of Private Protection*, 25. In the following, he argues that distrust “once addressed through mafioso protection, becomes

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.²⁴⁷ The objection therefore is not that consumer's capacity for agency is violated directly (as under the first normative demand). Rather, the objection will be that preference manipulation for this specific market prevents the attainment of an optimal level of security (the second normative demand). This requires explanation.

Security is a peculiar good in that it has two distinct components. It refers both to objective security (absence of crime) and subjective security (absence of feelings of fear and anxiety about crime).²⁴⁸ Success on both dimensions is required for a successful reduction of threats. 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 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.²⁴⁹ 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

self-perpetuating and self-expanding" (Ibid. 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.

²⁴⁷ It is no coincidence that – contrary to the two kinds of consumer manipulation mentioned in the first objection – anxiety stimulation is not defined as an illegal activity by most states. It is part and parcel of the "game of the market" in which restrictions on persuasion are only justified if tied to *specific* problematic products (alcohol, drugs) or vulnerable groups (children).

²⁴⁸ See for example Lucia Zedner, "The Concept of Security: An Agenda for Comparative Analysis," *Legal Studies* 1 (2003): 155.

²⁴⁹ "given free reign, consumer choices will create a market in security whose extent will be determined by how much people want and how much they are willing to pay. Willingness to pay is determined in part by the success of marketing strategies geared at generating a species of 'security hypochondria' that fuels the security industry." Lucia Zedner, "Too Much Security?," *International Journal of the Sociology of Law* 31 (2003): 176.

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.²⁵⁰

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 interferences with 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.²⁵¹ Given security providers’ interest in such an “overproduction” of feelings of anxiety, a pure security market may be expected to fail on this point. 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.²⁵²

²⁵⁰ Ian Loader, "Consumer Culture and the Commodification of Policing and Security," *Sociology* 33, no. 2 (1999): 381.

²⁵¹ In this formulation, it becomes clear that too low levels of subjective insecurity are also problematic. Zedner reminds us of a different attitude toward subjective security before the modern age: “historically, security in this subjective sense signified an absence of anxiety that was regarded as culpable in its negligence, an open invitation to harm.... Far from being a valued state of mind, security is characterized here by an unfounded confidence, a form of pride before the inevitable fall. By implication, therefore, insecurity was a valued form of prudence.” Zedner, "The Concept of Security: An Agenda for Comparative Analysis," 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.

²⁵² It is worth noting that state provision is potentially subject to the same dynamic of overproduction. Insofar as citizens are disappointed with the achievements of the public

In conclusion, the two objections revisited in this section provide ample grounds for a rejection of security as a pure market good. A pure security market will engage in unjustifiable violence and create unnecessary feelings of insecurity. However, this does *not* warrant the conclusion that security should be completely blocked from the market. It leaves room for the option of an additional market in a context where a minimum level of security is provided otherwise, arguably through the state – which is the third party that we saw is necessary to prevent unjustifiable violence (for the positive arguments in favor of state provision, see the next section).²⁵³ This would create an institutionally pluralist setting for security provision. Well, can a market be justified in conjunction with state provision? Part of the answer to this question depends on whether the problems noted in this section could be prevented from happening in an additional security market. I will take it that this is the case. With regard to our first objection, an additional market would profit from the publicly established controls under which it would operate. A mixed market would emerge, i.e. a market regulated by a public authority, in which the incentive for security firms to practice extortion would remain but would be declared illegal and combated by the state. With regard to the second objection, it would be hard to declare the manipulation of consumer perception of crime illegal; this would probably interfere with the legitimate scope of free expression that agents on the market profit from. On the other hand, a state could try to discourage these practices by

police in countering crime they will press for a more extensive and tougher response from the state. This makes it tempting for politicians, involved as they are in electoral competition, 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, *The Culture of Control. Crime and Social Order in Contemporary Society*, 142. Moreover, if both market and public provision of security have escalated in the last few decades, this seems to be at least as much due to what David Garland has called “a new experience of crime” than to an autonomous upward logic in the responses by market and state to this experience. As Garland convincingly shows, the emergence of routine encounters with crime in the 1960s and 1970s has brought a new consciousness of risk and vulnerability, which shaped the “conditions of possibility” for both market and state to increase their security efforts. Garland, *The Culture of Control. Crime and Social Order in Contemporary Society*, 147.

²⁵³ Some defend as alternative a market in conjunction with a charity-based system: “In the specific case of police there would undoubtedly be ways of voluntarily supplying free police protection to the indigent – either by the police companies themselves for goodwill (as hospitals and doctors do now) or by special ‘police aid’ societies that would do work similar to ‘legal aid’ societies today.” Rothbard, *For a New Liberty. The Libertarian Manifesto*, 223. This is security through informal provision (security delivered as a gift from the rich to the poor). This alternative, however, gives up on security as a basic right (i.e. as a demand of agency). There is no guarantee whatsoever that charity will not leave important parts of the population without security. As with charity work from hospitals and doctors, security charity would probably be selective, fragmented and understaffed.

other means and hold the market's worst excesses in check. 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 (see also Section 5.4).

A more principled obstacle for the conclusion that an additional security market would be legitimate is the claim that security should be *exclusively* delivered as a public good, i.e. by the state. The next section will review the strength of the two main arguments for this claim. As we will see, these arguments will not establish the legitimacy of pure state provision but, while justifying state provision as the primary means for realizing the capability to be secure, they will also point to its limits and leave room for an additional security market.

5.3 The State as the Guardian of Community and Justice

In this section I will concentrate on the two arguments in favor of pure public provision that I consider most forceful: the "argument from community" and the "argument from justice." Roughly, both have to do with the constitution of a common social order. The first maintains that state provision of security is necessary to establish social order, while the second holds that state provision is necessary to hold individuals responsible for their violations of that order. Both arguments purport to show how the character of security provision is crucially different if provided through the market or by the state.

The *argument from community* advances a conception of security as a public good in a "thick, sociological sense."²⁵⁴ To avoid confusion, this argument is *not* based on the economic conception of a public good, for it can be shown quite

²⁵⁴ The following paragraph draws upon Rutger Claassen, "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*, eds Stephanie Roels and Madelon de Keizer (Zutphen: Nederlands Instituut voor Oorlogsdocumentatie & Walburg Pers, 2007). There I offer a more extensive discussion of Loader & Walker's conception. Note that the argument here diverges from the one most often made on behalf of state monopoly, which is Max Weber's sociological observation that the use of force is the prerogative of the state. Weber's linkage between the state and the legitimate use of force can well be interpreted to allow for the use of violence of other parties as long as it is sanctioned in the last instance by the state. Such a monopoly does not preclude a place for a security market in a weak interpretation where the state only "steers" but does not "row." See Loader. Ian Loader and Neil Walker, "Policing as a Public Good: Reconstituting the Connections between Policing and the State," *Theoretical Criminology* 5, no. 1 (2001): 12.

easily that security does not qualify as a public good in that sense.²⁵⁵ The thick conception states that the provision of security has a constitutive function in the constitution of “the social” or “the community.” I briefly summarize the argument of Ian Loader and Neil Walker, who proposed this conception. According to them, 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. According to Loader and Walker 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.”²⁵⁶ 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’.”²⁵⁷ Thus, Loader and Walker conclude that security should be provided as a public good profiting the community as a whole. In terms of capabilities, their argument could be modeled as saying that the security practice faces two normative demands which are external to the good of security itself; to contribute to individuals’ capability for engaging in collective action, and their capability for self-constitution. The claim is that both these capabilities require a community and that collectively provided security is indispensable to the constitution of such a community. Let us examine several aspects of their position in more detail.

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

²⁵⁵ The two characteristics of a public good in the economic sense are non-excludability and non-rivalry. However, (groups of) individuals can 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. See Claassen, “The Useful Myth of State Security. Reflections on the State’s Special Role in Security Provision,” 172-73. See also Philip E. Fidler and Robert W. Poole, “Can Police Services Be Privatized?” *Annals of the American Academy of Political and Social Science* 498 (1988), discussing the possibilities for privatization for the several types of services that the police offers. For a discussion of economic theory as applied to this issue, see H.O. Kerkmeester, “Privatisering Van Veiligheid: Economische Aspecten,” in *Privatisering Van Veiligheid*, eds L.C. Winkel, et al. (Den Haag: Boom Juridische Uitgevers, 2005).

²⁵⁶ Ian Loader and Neil Walker, “Necessary Virtues. The Legitimate Place of the State in the Production of Security,” in *Democracy, Society and the Governance of Security*, ed. Jennifer Wood and Benoit Dupont (Cambridge: Cambridge University Press, 2006), 190.

²⁵⁷ *Ibid.* 191.

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 (see also Section 2.4).²⁵⁸ Moreover, the motivation on the part of citizens to sustain security as a public good symbolizes and underwrites their commitment to that community itself. In contrast, if, as George Orwell said, “all are equal, but some are more equal than others” in the eyes of the police, the “affective glue” that security as a public good 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.

This also implies that the community takes upon itself the charge to secure the provision of a level of security that its members basically need in order to sustain their agency – the argument here is *complementary* and connected to the capability formulated at the beginning of the previous section. At that point I left open whether the required level should be a minimum level or an equal level of security. The argument from community takes a stance on this point: it requires that security should be provided in equal proportion to all as dictated by each one’s actual need for protection. Now this provision of security in equal measure is not easy to realize. Two challenges potentially undermine its practical realization. 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:

²⁵⁸ Steven Spitzer gives a radical version of this point: “The 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. This is not only true insofar as we literally build walls around ourselves, but also in the sense that the search for market-based security makes the possibilities of genuine cooperation more remote. Paradoxically, the more we enter into relationships to obtain the security commodity, the more insecure we feel; the more we depend upon the commodity rather than each other to keep us safe and confident, the less safe and confident we feel; the more we divide the world into those who are able to enhance our security and those who threaten it, the less we are able to provide it for ourselves.” Steven Spitzer, “Security and Control in Capitalist Societies: The Fetishism of Security and the Secret Thereof,” in *Transcarceration: Essays in the Sociology of Social Control*, eds John Lowman, Robert J. Menzies, and T.S. Palys (Aldershot: Gower, 1987), 50.

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.²⁵⁹

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 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.²⁶⁰ 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

²⁵⁹ Adam Crawford, "Policing and Security as 'Club Goods: The New Enclosures?" in *Democracy, Society and the Governance of Security*, eds Jennifer Wood and Benoit Dupont (Cambridge: Cambridge University Press, 2006), 119-20.

²⁶⁰ Blakely and Snyder argue that 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. Edward J. Blakely and Mary Gail Snyder, *Fortress America. Gated Communities in the United States* (Washington D.C.: Brookings Institution Press, 1999).

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, the coercive nature of the second burden provides a *prima facie* argument to allow individuals and communities to engage in additional security efforts. However, it is only after considering the next argument, which will provide support for this point of view, that we can see clearly to what extent the space for these additional efforts is justifiable.

The *argument from 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 its 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. Its main alternative, 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:

The public face of private security is the visible work of patrolling, guarding, door attendants, transport security and cash transit. Superficially, this work is most closely akin to that of conventional policing, though chronologically it is situated prior to the immediacies of crime prevention, temporally located in the nebulous zone of pre-emptive action. 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.²⁶¹

Private security and public security, according to this argument, obey different logics. Private security has a “client-defined mandate.” Private security is not interested in upholding the law against violations, but in preventing unwelcome events from happening. As a consequence, there is a tendency 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

²⁶¹ Lucia Zedner, “Liquid Security. Managing the Market for Crime Control,” *Criminology and Criminal Justice* 6, no. 3 (2006): 270. See also: “The major purpose of private security is to reduce the risk of crime by taking preventive actions; the major purpose of the public police is to deter crime by catching and punishing criminals.” David H. Bayley and Clifford D. Shearing, “The Future of Policing,” *Law & Society Review* 30, no. 3 (1996): 592. Or see Johnston and Shearing, who claim that private security “emphasizes proactive prevention rather than reactive punishment, and actuarial calculation rather than conventional moral proscription.” Les Johnston and Clifford D. Shearing, *Governing Security. Explorations in Policing and Justice* (London: Routledge, 2003), 16.

resources) rather than a legal character. To use some degree of caricature we could say that the state's security effort is directed at "governing the past" (redressing offenses), while risk-based private security emphasizes "governing the future" (preventing offenses).²⁶² Inevitably, then, the influence of private security is at the expense of justice. In the interest of justice, therefore, private security should be marginalized or even completely prohibited.²⁶³

This argument is problematic, for it takes too narrow a perspective on the character of security provision when it is delivered by the state. 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.²⁶⁴ 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 and simultaneously shows us the consequences for the argument from justice.

There have been two dominant explanations for the rise of private security.²⁶⁵ 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.²⁶⁶ The other dominant explanation for the rise of private security is the

²⁶² Johnston and Shearing, *Governing Security. Explorations in Policing and Justice*, 95.

²⁶³ Clifford D. Shearing and Philip C. Stenning, "Private Security: Implications for Social Control," *Social Problems* 30, no. 5 (1983): 499-502.

²⁶⁴ Johnston and Shearing, *Governing Security. Explorations in Policing and Justice*, 17 and 81.

²⁶⁵ For a much more fine-grained overview, see Ronald van Steden, *Privatizing Policing: Describing and Explaining the Growth of Private Security* (Den Haag: Boom Juridische Uitgevers, 2007), 35ff.

²⁶⁶ Shearing and Stenning, "Private Security: Implications for Social Control," 496. For criticism, see Les Johnston, *The Rebirth of Private Policing* (London: Routledge, 1992), 211ff.

“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.²⁶⁷ 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.

A rather different picture emerges when we do not accept the original state monopoly as an adequate account of the historical development that has taken place. Thus, Trevor Jones and Tim Newburn argue – convincingly, I think – 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 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.²⁶⁸

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.²⁶⁹ 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 and other public agents to share the burden of security with “civil society” also make more sense. Using “responsibilization strategies,” state actors have begun to press individuals, local

²⁶⁷ Steven Spitzer and Andrew T. Scull, “Privatization and Capitalist Development: The Case of the Private Police,” *Social Problems* 25, no. 1 (1977), 24-25.

²⁶⁸ Jones and Newburn, *Private Security and Public Policing*, 169. 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 Michael Kempa, Philip C. Stenning, and Jennifer Wood, “Policing Communal Spaces. A Reconfiguration of The ‘Mass Private Property’ Hypothesis,” *British Journal of Criminology* 44 (2004).

²⁶⁹ Jones and Newburn, “The Transformation of Policing? Understanding Current Trends in Policing Systems,” 140-41.

communities, corporations and others to assume more responsibility for their own security situation and to implement preventive measures.²⁷⁰ The explanation by Jones and Newburn makes 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 and occupations. 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.

Two conclusions emerge from the discussion of the arguments presented in this section. 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 of the argument from community 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

²⁷⁰ For an overview of these “responsibilization strategies,” see Garland, *The Culture of Control. Crime and Social Order in Contemporary Society*, 124-27.

argument from community emerged a prima facie 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 logical, quasi-totalitarian conclusions. Overall, then, this means that the state cannot provide more than a minimal level of security to its citizens. To be sure, that level is not necessarily minimalist; it can be quite generous.²⁷¹ 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.²⁷² Nonetheless, it is not without its problems.

5.4 An Institutional Pluralism of Security Services

The stability of institutional pluralism of security services depends on the degree that two conditions are met. The first condition is that of successful cooperation between market and state providers of security, the second that of a balance between both forms of security that does not undermine the minimum level provided by the state.

The condition of cooperation follows from the complementary role of state and non-state agents that is necessary for security provision to be successful (cf. the discussion of the “argument from justice” in the previous section). Cooperation requires that private security firms cooperate in law enforcement, even if that is not in their immediate interest *and* that they 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 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

²⁷¹ 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. Note that while this would define the minimal level that is morally required, a democratic decision to provide a more generous level is morally permissible as well.

²⁷² In the literature on the subject, authors speak of “plural governance,” “plural policing,” “security networks,” etc. See Clifford Shearing and Jennifer Wood, “Governing Security for Common Goods,” *International Journal of the Sociology of Law* 31 (2003); Jennifer Wood, “Research and Innovation in the Field of Security: A Nodal Governance View,” in *Democracy, Society and the Governance of Security*, eds Jennifer Wood and Benoit Dupont (Cambridge: Cambridge University Press, 2006).

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.²⁷³ Others maintain that competition and hostility abound.²⁷⁴ Still others argue that there is neither much cooperation nor much competition; rather, both operate in independent spheres in a relation of “benign coexistence.”²⁷⁵ No matter which of these judgments is correct, it remains that a stable pluralism cannot afford competition or mere coexistence. Only cooperation can render the division of labor between private and public security arrangements legitimate.²⁷⁶

The condition of balance between market and state security is that opportunities for the erosion of the state-provided minimum level delivered to all citizens must be effectively counteracted. This condition relates to the discussion of the “argument from community” in the previous section. There we concluded that, basically, additional security efforts above the minimum level by lower-level communities should be permitted. However, the parochial interests of these communities may conflict with the state’s effort to provide a minimum level for everyone. This tension has the potential of destabilizing institutional pluralism for security. From a moral point of view, the claim on public provision of a minimum level takes priority over the claim on provision of additional security; for the minimum level aims to realize the morally required capability to be secure for everyone (which sustains citizens’ capacity for agency), while additional efforts are not required to this aim, but merely permissible (Section 5.2). Let us consider briefly in what way a conflict between the two claims could arise and what demands follow from the application of the priority rule in those circumstances.

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

²⁷³ Shearing argues that this was an early phase in the relation between public and private policing; subsequently the private police evolved from “junior” to “equal partners.” Shearing, “The Relation between Public and Private Policing,” 411.

²⁷⁴ See Johnston: “relations between the sectors are, as often as not, based on mutual suspicion and avoidance.” Johnston, *The Rebirth of Private Policing*, 194.

²⁷⁵ Jones and Newburn, *Private Security and Public Policing*, 169ff.

²⁷⁶ Empirically, there is no agreement whether such cooperation is achievable or has been achieved. For an optimistic view, see Stenning, “Powers and Accountability of Private Police.” For a pessimistic view see Zedner, “Liquid Security. Managing the Market for Crime Control.” To make matters even more complex, some forms of effective cooperation are objectionable in their own right. See Bob Hoogenboom, “Grey Policing: A Theoretical Framework,” *Policing and Society* 2 (1991).

(tax deductions).²⁷⁷ 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.²⁷⁸ 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.

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.²⁷⁹ 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.²⁸⁰ 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

²⁷⁷ For a discussion of residents from gated communities claiming tax exemption because of their private payments to security personnel, see Andrew Stark, “America, the Gated?” *Wilson Quarterly* 22, no. 1 (1998).

²⁷⁸ Of course this does only pertain to threats from outside; the police might still be needed to intervene in cases of domestic violence, problems between neighbors in the community, etc.

²⁷⁹ Morally it does not matter whether the inequality arises because A has zealous citizens manning the neighborhood watch (informal provision), or whether A has rich citizens paying for private security (market provision). In both cases B is disadvantaged. In practice, of course, differences in wealth are the most common cause of inequalities. In connection with the constitution of communities, reliance on the market may aggravate inequalities in a way that informal and self-provision will not.

²⁸⁰ Gambetta, *The Sicilian Mafia. The Business of Private Protection*, 30.

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.²⁸¹

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 spent 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.

²⁸¹ Crawford, "Policing and Security as 'Club Goods' – The New Enclosures?" 136.

CHAPTER 6

THE MEDIA: COMMUNICATION AS COMMODITY

Since their inception, the mass media have played a crucial role in setting political agendas, shaping social debates, informing the general public and mediating public opinion. Most democratic societies have tried to regulate the media, so that they would perform these functions “in the public interest.” Those committed to this ideal have often regarded commercial media with suspicion. In the Netherlands, for example, most of the 20th century was characterized by a broadly shared political refusal to allow commercial broadcasting for radio and television. Hence the broadcasting system remained a public monopoly until as late as 1989. Representative for the anti-market attitude in this period was the political action that was taken against the rebellious commercial radio station *Veronica* in the 1960s. *Veronica* had started transmissions from an extraterritorial platform on the North Sea in order to evade public sanctions, but its operation was eventually dismantled with the help of legal clauses introduced for the occasion.²⁸² Nowadays, the positions are reversed. After the break-up of the public monopoly, the audience share of commercial channels relative to public channels rapidly increased. As a consequence, it is the justification of public broadcasting itself that now is the subject of political debate. Why spend taxpayers’ money on services that contribute little to what is already available on the market?

This chapter will discuss the marketization of the products of mass media communication. For this purpose, the provision of these products will be treated as forming one single practice. This is justified because, first of all, media communication is a distinctive form of communication, to be contrasted with three other forms of communication on the basis of the number of producers and

²⁸² Egbert Dommering, "Publieke Omroep Tussen Overheid En Markt," this article can be accessed at www.ivir.nl/publicaties/dommering/Pub.omroep.pdf 7. For a history of the Dutch media landscape in English, see Cees van der Eijk, "The Netherlands: Media and Politics between Segmented Pluralism and Market Forces," in *Democracy and the Media. A Comparative Perspective*, eds Richard Gunther and Anthony Mughan (Cambridge: Cambridge University Press, 2000).

receivers involved.²⁸³ A first form is “one-to-one” communication, exemplified by the face-to-face interactions of daily life (unmediated) or through such media as mail, e-mail or personalized chat sessions on the internet. A second form is many-to-one” communication, for example when citizens debate with a politician from their constituency (unmediated) or send him a petition (mediated). Third, there is “many-to-many” communication; think of club meetings, town hall debates or conference chat sessions on the internet. Lastly, there is “one-to-many” communication, such as when a professor gives a lecture to an audience (unmediated) or when a newspaper reports to its readers (mediated). Mass media communication belongs to the last category: it is the mediated type of one-to-many communication, where one media organization communicates a message to a plurality of receivers.²⁸⁴

Treatment of the media as a single practice is furthermore justified because the media are bound together by a set of converging technologies and genres. The kind of technology used normally distinguishes the several media from each other: the printing press (newspapers), the broadcasting mediums (radio and TV) and the internet (websites).²⁸⁵ Each of these technologies has its specific characteristics, so that one might be tempted to prefer discussing them separately (“the marketization of TV,” “...of radio,” etc.). Although there are technological differences, the various media fulfill the same *functions* or types of content: news, current affairs, cultural programs, entertainment, advertising and specific product information.²⁸⁶ Moreover, technological convergence makes it possible to deliver

²⁸³ I take this typology from C. Edwin Baker, *Media, Markets and Democracy* (Cambridge: Cambridge University Press, 2002), 302. Each of these four forms can either be mediated or not. “Mediation” refers to the presence of some intermediary technology in between the producer and the receiver of a communication. See Luhmann, who defines the mass media as “those institutions of society which make use of copying technologies to disseminate communication.” Niklas Luhmann, *The Reality of the Mass Media* (Stanford: California: Stanford University Press, 2000), 2. Technology plays a key role in this definition, the terms “copying” and “dissemination” both point to the one-to-many character of media communication.

²⁸⁴ This does not imply that other forms of communication between the media organization and its audience are absent. The letters to the editor in the newspaper, the phone calls by listeners aired in a radio show or the public votes determining the winner of the *Idols* TV show, are all communications from members of the public to the media organization (sometimes fed back to the rest of the public). However, these “feedback-communications” are only instrumental to the primary product that is delivered by the media organization to the public.

²⁸⁵ My definition allows flexible inclusion and exclusion of new mediums, as soon as the development of new technologies brings new forms of ‘one-to-many’ communication into being. For example, cell phones used to be exclusively designated for one-to-one communication, but as they are technically improved and may communicate news, entertainment, advertising etc., there is no reason to exclude them.

²⁸⁶ Luhmann distinguishes three basic functions: news, entertainment and advertising. See Luhmann, *The Reality of the Mass Media*, 24. The scheme of the Dutch Scientific Council

the same content on various media (e.g. newspaper articles, radio and television programs on the internet). This makes technological distinctions even less important: content becomes primary.²⁸⁷ Should we perhaps discuss separate functions (“the marketization of the news,” “...of cultural programs,” etc.)? Here again, convergence makes distinctions increasingly artificial. Entertainment and news are mixed in *infotainment* and *docusoaps*, advertisement is mixed with other programs by methods of product placement.²⁸⁸ It is increasingly hard to neatly separate one function from another. Moreover, different types of content are each other’s alternatives that compete for the consumer’s budget and attention. All these considerations justify the consideration of “the media” as one practice.

I will start with a discussion of a purely market-based media system. While in the previous chapter the preliminary task was to see whether a pure security market was a feasible institutional arrangement, for the media this is not so much of a problem. Here, the preliminary query is whether the features of media markets that are often mentioned as problematic are really problems about the use of the market, or rather about the contingent structure of most current media markets. In the latter case, a mere reform of markets would be sufficient; we could save ourselves the effort of a fundamental discussion of the merits of the market itself. I will discuss the two arguably most important contingent features of media markets: their dependence on advertising and their concentration of ownership (Section 6.1). The discussion of these features will show the need to formulate a normative theory for the media. In the next section I take up this task and identify two central capabilities: one is the morally required capability to acquire democratic content and the other is the morally permissible capability to acquire entertaining content. I will argue that the market is capable of promoting the capability to acquire democratic content to a larger extent than is often argued, but I will also formulate two specific circumstances in which media markets may nonetheless fail (Section 6.2).

The required kind of democratic media content needs a more specific defense, which I will provide in the context of a discussion of the public sphere, while

in its recent influential report on the media lists six functions: it includes current affairs (as distinguished from news), culture (as distinguished from entertainment) and specific information (as distinguished from advertising). Wetenschappelijke Raad voor het Regeringsbeleid, *Focus op functies. Uitdagingen voor een toekomstbestendig mediabeleid* (Amsterdam: Amsterdam University Press, 2005), 75. Media tied to one specific function only are excluded (e.g. theater plays, restricted to culture).

²⁸⁷ W.M. de Jong, "Technologische ontwikkelingen en de media," in *Trends in het medialandschap. Vier verkenningen*, ed. Wetenschappelijke Raad voor het Regeringsbeleid (Amsterdam: Amsterdam University Press, 2005), 141-53.

²⁸⁸ Wetenschappelijke Raad voor het Regeringsbeleid, *Focus op functies. Uitdagingen voor een toekomstbestendig mediabeleid*, 64. See also McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 145ff.

analyzing Habermas's original text on the public sphere. Media-inherent characteristics and its market-based organization appear as separate potential threats to the public sphere. I will argue that the media is best conceived, not as part of the public sphere itself, but as having a supportive role toward that sphere (Section 6.3). Finally, insofar as the media is to play such a supportive role, I argue that it should be based on professional provision. A separate question is how this is to be financed; here I argue that financing through the state is more promising than financing through the market. Professional provision will then coexist with market-based media that do not support the public sphere. This institutionally pluralist media landscape will only be stable on condition that professional providers have a sufficient financial basis (input) and a sufficiently large audience share (output) Section 6.4).

6.1 Media as a Pure Market Good – the Domain of Owners and Advertisers?

In discussions about the adequacy of media performance usually two potentially problematic features surface which can be classified as internal to the market: media dependence on advertising and concentration of ownership. They are market-internal means in the sense that they arise because of the contingent structure of current media markets. Therefore to the extent that these features prove to be problematic, one could solve them by improving the market's structure; that is, by removing the media's dependence on advertising and dispersing ownership of media providers. There would be no reason for criticism of the use of the market as such and no need to supplement the media landscape with non-market media. In this section I will discuss for both these features whether or not they raise objections against the media market in its current guise.

While most markets involve exchanges between only two parties — producers and consumers — in advertisement-based media markets the structure is complicated by a third party, the advertiser. Advertisement-based media organizations are able to provide their content free of charge to their consumers because the advertisers pay for its production in exchange for access to media consumers. They sell the attention of their viewers, listeners or readers to advertisers. Alongside this market form there are also subscription-based media, where the product — as in a normal market — is sold directly to paying consumers.²⁸⁹ Advertisement-based media give “open access” to consumers while

²⁸⁹ Admittedly, both market types are ideal types: products may be financed by a mix of both kinds of payment: think of newspapers with advertisements and a subscription fee.

subscription-based media rely on the exclusion of non-paying customers. Technology plays a key role in making exclusion – hence, subscription-based markets – possible. For a long time it was technologically difficult to exclude people from the airwaves transmitting TV channels, so that these channels had to rely on advertisements. Nowadays it is technologically feasible to guarantee exclusion, so that people can pay for subscription to a specific channel (pay TV) or even a specific program (pay-per-view).

Now what would be the problem with advertisement-based media markets? Some maintain that advertisement creates a bias in that advertisers will not serve all of the demand from consumers. Advertisers are interested only in those audience shares that are willing and able to buy their products. As a consequence, they will only advertise in conjunction with media content that is uncritical toward consumer culture in general and toward their products and business methods in particular, and more positively, advertisers are interested in content that brings people in a “shopping mood” (for simplicity sake, let’s call content meeting these requirements “corporate-friendly content”). The refusal of American TV stations to allow ads for “Buy Nothing Day” remains one of the nicest illustrations of this bias.²⁹⁰ Put strongly:

Advertisers are paying market-based media to encourage people to be a certain type of person – a person who constantly wants more material goods or commercially provided services and who, when faced with characteristic life problems, responds with purchases as the cure-all for every dilemma.²⁹¹

It is reasonable to suppose that this claim is correct at least to some extent, even though the exact size of the bias is subject to empirically contingent circumstances. As in any market, both parties to a contract will expect to gain by engaging in transaction. It would therefore be surprising if advertisers would systematically conclude contracts that are to their disadvantage. More contentious claims that are sometimes made in relation to the advertisement bias are that advertisers prefer affluent audiences to poorer audiences, less politically sensitive

Similarly, markets may be mixed: the newspaper market, for example, has advertisement-based newspapers and subscription-based newspapers existing side by side. For an overview of the influence of advertising on the media in the US, see McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 139ff. For the Netherlands, see D. Broeders and I. Verhoeven, “Kiezen uit overvloed. Sociaal-culturele ontwikkelingen in vraag en aanbod in het medialandschap,” in *Trends in het medialandschap. Vier verkenningen*, ed. Wetenschappelijke Raad voor het Regeringsbeleid (Amsterdam: Amsterdam University Press, 2005), 78-80.

²⁹⁰ Noreena Hertz, *De stille overname. De globalisering en het einde van de democratie* (Amsterdam: Contact, 2002), 16.

²⁹¹ Baker, *Media, Markets and Democracy*, 89.

content to more politically sensitive content, and larger audiences to niche audiences.²⁹² Nonetheless, advertisement on media that cater to poorer audiences, to audiences with a political bias (e.g. explicitly conservative or liberal viewers) and to niche audiences in general has proven to be viable on many occasions. Remaining agnostic on these latter biases, here I will restrict myself to the bias toward corporate-friendly content.

The normative question is whether it is objectionable. If the normative benchmark is the economic one that supply and demand should be perfectly matched, then one could argue that the market will fail to satisfy consumer demand for corporate-critical media content. Subscription-based media markets would then better match supply and demand, because of the absence of the distorting filter of the advertising party's interests.²⁹³ However, there are two groups of preferences – both neglected in this line of argument – which a subscription-based practice could not satisfy. For one thing, advertisers will continue to seek platforms for placing their messages. A completely subscription-based media system is unable to fulfill their interest in informing and persuading the public of the value of its products, so it does not satisfy their preferences. Second, it is doubtful whether consumers generally prefer paid content to free content, even if the latter is less biased toward corporate life. For example, the newspaper market in the Netherlands in recent years has gone through a reverse trend with the introduction of free newspapers distributed in train stations and other public places. These newspapers have immediately captured a large market share vis-à-vis subscription-based newspapers whose readership continues to decline.²⁹⁴

From an economic point of view, the satisfaction of these preferences is neither more nor less important than the satisfaction of consumer demand for corporate-critical content. The distribution of market supply over the two groups of corporate-critical and corporate-friendly content will simply mirror the distribution of existing preferences; the market will be efficient in exhausting opportunities for mutually beneficial trades. If further objections against

²⁹² An example of a preference for richer audiences is that, according to Baker, the popular British newspaper *The Daily Herald*, despite its large audience share, went out of business because it failed to attract advertisers due to the fact that its audience existed of mainly of member from the lower-paid labor class. Ibid. 182. Curran argues that advertisers generally do not prefer politically sensitive programs and that editorial independence may be victimized as a consequence. James Curran, "Mass Media and Democracy Revisited," in *Mass Media and Society*, eds James Curran and Michael Gurevitch (London: Arnold, 1996), 96-97.

²⁹³ Wetenschappelijke Raad voor het Regeringsbeleid, *Focus op functies. Uitdagingen voor een toekomstbestendig mediabeleid*, 97.

²⁹⁴ The rise of advertising on the internet also suggests that new technologies which make exclusion possible do not automatically lead to an "advertisement-free" future.

advertising are urged, they will have to be based on a normative criterion that goes beyond the economic one of a perfect match of supply and demand.²⁹⁵ One would need to argue that critical reporting on corporate life serves a public interest, which is more valuable than the actual consumer revenues it generates. Such an argument can be made, but it needs to be backed up by a theory about the media's proper ends. Moreover, if such a theory is to be given, there is no reason why its scope would be restricted to criticizing advertisement-based media only. Subscription-based media can fail to generate a supply of corporate-critical content as well, if demand for such content is lacking. In the next section, where I will formulate a local normative theory for the media, the distinction between advertisement and subscription will therefore not play an explicit role; the kind of content that is or is not generated across *both* market forms is what is really important from the normative point of view. Only that will determine whether we have to go beyond the market and establish a case for non-market media provision.

The second potentially problematic market-internal feature is concentration of ownership. This issue is not specific for the media, for concentration happens in many other practices as well. Nonetheless, its consequences may be more worrying for the media than for other sectors. Concentration arises because of the fact that media products are subject to important economies of scale. The fixed costs of producing a media product are usually high, while variable costs are low. Therefore every first copy is expensive to produce while subsequent copies can be produced at much lower rates. This provides an incentive to create large markets for one's products. As a consequence, media markets tend to develop into oligopolies, where ownership is concentrated in the hands of a few corporations.²⁹⁶ Such concentration takes the form of horizontal integration (where a few firms capture the market for one product) and vertical integration (where firms operate in several related markets, e.g. owning a film studio, a TV studio, a cable TV channel, etc.).²⁹⁷ It is possible to counter this trend toward concentration. Appropriate regulation could disperse ownership, breaking up existing oligopolies and preventing new ones from arising. Proposals for

²⁹⁵ Remaining within the confines of economic analysis, Nahuis et al. conclude that a subscription-based media system delivers more diversity than an advertisement-based system, although this conclusion is subject to important exceptions. Richard Nahuis et al., "Onderweg naar morgen. Een economische analyse van het digitaliserende medialandschap," in *CPB Document No. 78* (Centraal Plan Bureau, 2005), 24-33.

²⁹⁶ For a more extensive discussion of economic explanations of this problem, see Baker, *Media, Markets and Democracy*, 20-40.

²⁹⁷ For current trends in concentration in the US, see McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 176-83. For the Netherlands, see Broeders and Verhoeven, "Kiezen uit overvloed. Sociaal-culturele ontwikkelingen in vraag en aanbod in het medialandschap," 71-77.

reforming the ownership structure in the media markets may therefore represent an important step toward the improvement of media markets.²⁹⁸ But this requires that we first establish that ownership concentration is objectionable.

Concentration raises familiar economic problems. Oligopolies often have insufficient incentives to keep prices low and raise barriers to entry for new suppliers. However, suspicion toward media concentration is not in the first place fuelled by these concerns. More important is the question whether oligopolies have incentives to deliver enough diversity in media content.²⁹⁹ Diversity from an economic perspective requires the adequate satisfaction of existing consumer preferences. Economists sometimes advance the idea that a competitive “marketplace of ideas” will deliver the requested diversity to the maximum degree possible; concentration of market power in the hands of a few firms will fail to do so.³⁰⁰ However, other economists claim that the contrary can also be true; an oligopolistic market may also lead to *more* diversity rather than less. A larger number of providers do not necessarily lead to a greater diversity of content – it may also lead to excessive competition for “the middle ground.” Thus, it is sometimes argued that the proliferation of broadcasting channels has led to “more of the same,” especially since commercial and public channels have engaged in competition for the average viewer, offering essentially the same kind of content.³⁰¹ The underlying theoretical explanation is that a monopoly concern may be able to differentiate products to different audience segments in a way that competing companies may not.³⁰² Thus, it may be the case that to perfect the “marketplace of ideas” it is sometimes necessary to allow an imperfectly competitive market structure.³⁰³ In conclusion, the demand for ownership dispersal is not unequivocally supported from the economic point of view.

²⁹⁸ McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 224-40. See also the proposals in C. Edwin Baker, *Media Concentration and Democracy. Why Ownership Matters* (Cambridge: Cambridge University Press, 2007), 163-89.

²⁹⁹ A third problem I only mention here is that excessive bargaining power allows dominant companies to capture the political process of media policy making. See McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 175ff.

³⁰⁰ Jan van Cuilenburg, "Diversity Revisited: Towards a Critical Rational Model of Media Diversity," in *The Media in Question. Popular Cultures and Public Interests*, eds Kees Brants, Joke Hermes, and Liesbet van Zoonen (London: Sage, 1998), 39.

³⁰¹ Els de Bens, "Television Programming: More Diversity, More Convergence?," in *The Media in Question. Popular Cultures and Public Interests*, eds Kees Brants, Joke Hermes, and Liesbet van Zoonen (London: Sage, 1998), 31.

³⁰² Baker, *Media, Markets and Democracy*, 22-24.

³⁰³ As Baker argues: “Whether ownership dispersal actually leads to such content or viewpoint diversity turns out to be a complex empirical and contextual matter. In many circumstances diverse owners will produce more diverse content. No theorist of whom I am aware believes, however, that this is always true. Economists predict and empiricists

Here too if anything is to remain of the objection against ownership concentration, a different normative perspective seems to be needed. Diversity has been the key to democratic theory. From this perspective Edwin Baker argues that the normative touchstone should not so much be to create “viewpoint diversity,” but rather “source diversity.” Many different sources should be able to be heard in the media, whether or not they diverge in the content of what they say. Thus Baker argues that ownership dispersal represents the institutional translation of the basic democratic “one man one vote” principle:

The media, like elections, serve to mediate between the public and the government. For this reason, a country is democratic only to the extent that the media, as well as elections, are structurally egalitarian and politically salient. The best institutional interpretation of this democratic vision of the public sphere is, I suggest, an egalitarian distribution of control, most obviously meaning ownership, of the mass media. The basic standard for democracy would then be a very wide and fair dispersal of power and ubiquitous opportunities to present preferences, views, visions. This is a *democratic distribution principle* for communicative power – a claim that democracy implies as wide as practical a dispersal of power within public discourse. As applied to media ownership, this principle can be plausibly interpreted structurally as requiring ... a maximum dispersal of ownership.³⁰⁴

However, as Baker himself recognizes, this represents only one side of the democratic ideal, i.e. the Millian belief in the progressive value of a free competition of ideas. On the other hand there is a quite different commitment, to the republican belief in the common understandings generated by a unified public sphere.³⁰⁵ Republican theorists fear the fragmentation that comes with a proliferation of media providers. For if everyone is able only to consume media products that satisfy his personal attachments, hobbies and perspectives, then it will become increasingly hard to find support for projects of collective action that require common understandings and motivations. Democracy also demands a common platform where the public is able to generate shared experiences, which would generate a case for large and dominant media providers. For example, a town with one newspaper committed to objective high-quality journalistic reporting is better than a town with two competing newspapers both wedded to

(purportedly) find the opposite in some contexts.” Baker, *Media Concentration and Democracy. Why Ownership Matters*, 15. To complicate matters further, according to some economists whether this is the case depends mainly on the way the product is paid for (through advertisements or directly through subscriptions). See Nahuis et al., “Onderweg naar morgen. Een economische analyse van het digitaliserende medialandschap,” 24-33.

³⁰⁴ Baker, *Media Concentration and Democracy. Why Ownership Matters*, 7.

³⁰⁵ I use the label “republican” here, following two prominent media theorists who have done so. See Ibid. 9. and Cass Sunstein, *Republic.Com* (Princeton: Princeton University Press, 2001), 93ff.

opposed political beliefs and engaged in partisan reporting. It also implies a certain suspicion of market-based media.³⁰⁶ Here I will not attempt to solve the tension between the two currents in democratic theory. For our purposes it suffices to draw the conclusion – similar to the one drawn for advertising – that a well-grounded evaluation of the feature of ownership concentration requires the development of a normative theory for the media. Here this is the democratic ideal of a public sphere, to which I will come back in Section 6.3. Here too, even if the market's structure is adjusted to counter the defect (by dispersing ownership), one could still ask whether such a reformed market delivers what the normative theory requires of it. Such a question, then, is addressed at the use of the market mode of provision itself, not at the contingent peculiarities of the current media's market structure.

6.2 A Local Normative Theory for the Media

The elaboration of a local normative theory about the ends that the media should live up to takes place against a background of scepticism. The central point of the sceptics is that any normative theory that does not restrict itself to the criterion of satisfying actual consumer demands for media products is inherently paternalist or elitist. For example, Richard Posner argues:

So why do people consume news and opinion? In part it is to learn of facts that bear directly and immediately on their lives – hence the greater attention paid to local than to national and international news. They also want to be entertained, and they find scandals, violence, crime, the foibles of celebrities and the antics of the powerful all mightily entertaining. And they want to be confirmed in their beliefs by seeing them echoed and elaborated by more articulate, authoritative and prestigious voices. So they accept, and many relish, a partisan press.... Being profit-driven, the media respond to the actual demands of their audience rather than to the idealized “thirst for knowledge” demand posited by public intellectuals and deans of journalism schools.³⁰⁷

In an attempt to refute this kind of scepticism, many have argued along similar lines in favor of a preference-independent normative theory of the media. In this section, I will engage in a close inspection of their argument, which for convenience sake I will call “the standard argument.”³⁰⁸ The first premise of the

³⁰⁶ Nonetheless, the republican argument leaves open a choice between one or a few commercial providers (oligopoly) or rather a public monopoly of (a) public provider(s).

³⁰⁷ Richard Posner, “Bad News,” *The New York Times Book Review* July 31 (2005).

³⁰⁸ For closely resembling versions of the standard argument, see Baker, *Media, Markets and Democracy*, 80-95. Cass Sunstein, “Television and the Public Interest,” *California Law Review* 88 (2000). Jürgen Habermas, “Medien, Märkte und Konsumenten,”

standard argument contains its normative claim: the media should deliver a specific kind of high quality content, roughly equal to serious journalism (a more precise definition will be given below). The second premise is that market-based media will fail to deliver this kind of content. The conclusion is that some form of market-independent media provision is required. At both stages of the argument I will argue for important modifications of the claims that are being made. While in the end I will endorse the view that there is some space for non-market media, my argument will show that this space is much narrower and more conditional than is usually thought to be the case.

The first premise embodies the normative claim of the argument. This claim is put in terms of the requirement to provide (a) specific kind(s) of media content. Within the standard argument, it is usually formulated in terms of what economists call “merit goods.” The hallmark of a merit good is that it brings beneficial effects over and above the value that is generated by the transaction between a good’s producer and its consumer. Merit goods have “positive external effects.”³⁰⁹ The most prominent example of a merit good in the context of the media is content that keeps the public informed about social and political affairs, enables it to form its own opinions on these affairs and to participate in discussions about them. This specific merit good, which will play an important role in the following discussion, I will refer to as “democratic content.” One can also think of other types of merit good. For example, some argue that the consumption of cultural programs has wide beneficial effects in civilizing people and increasing empathy between them (sometimes all these merit goods are taken together under the heading of “edifying content”). At the other side of the

Süddeutsche Zeitung, May 16th/17th 2007. McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 198-204. Keat, *Cultural Goods and the Limits of the Market*, 151-61. Somewhat apart from the debate on normative media theory there is a debate on the justification of public broadcasting that indirectly discusses these themes. See the following papers: Mark Armstrong, "Public Service Broadcasting," *Fiscal Studies* 26, no. 3 (2005). Machiel van Dijk, Richard Nahuis, and Daniel Waagmeester, "Does Public Service Broadcasting Serve the Public? The Future of Television in the Changing Media Landscape," in *CPB Discussion Paper* (Centraal Plan Bureau, 2005). Shaun Hargreaves Heap, "Public Service Broadcasting," *Economic Policy* (2005). John O'Hagen and Michael Jennings, "Public Broadcasting in Europe: Rationale, License Fee and Other Issues," *Journal of Cultural Economics* 27 (2003). Arguably the most influential normative theory in media studies (surely one of the most comprehensive ones in its details, but rather eclectic and elliptical in its normative foundations) is Denis McQuail, *Media Performance. Mass Communication and the Public Interest* (London: Sage Publications, 1992).

³⁰⁹ Nahuis et al., "Onderweg naar morgen. Een economische analyse van het digitaliserende medialandschap," 19.

spectrum, there are also “demerit goods:” goods with negative external effects. Examples of these include media products with racist, sexist or violent content.³¹⁰

Now the normative claim cannot simply be that the media should – maximally or sufficiently – deliver merit goods and refrain from delivering demerit goods. For demerit goods, it remains to be seen whether or not the negative externality should be borne by media producers and consumers or by the third party being benefited or harmed by the externality.³¹¹ For example, some cases of offending speech are constitutionally protected through the freedom of speech, even though they provide clear harm to the offended person. Similarly not all positive effects automatically qualify for internalization. For example, a country as a whole may prosper economically if part of the population has seen a winning match of the national soccer team and this causes a consumption boom; but this does not oblige the media to broadcast winning soccer games (and refrain from showing lost games). Any normative claim made on behalf of (de)merit goods needs additional argumentation to establish a normative requirement in its favor to be laid upon the media practice. At this point we can imagine different types of merit goods passing this test; in the next section I will argue that democratic content does so for its importance in supporting a public sphere of social and political debate, which in turn is indispensable to a well-functioning democracy. In the remainder of this section I anticipate this argument and continue to talk about democratic content as normatively required (if one thinks other types of merit goods will qualify as well, one can consider the use of the term “democratic content” in the present argument as stand-in for those other goods).

In line with my general moral theory I formulate this normative claim in terms of capabilities. The media should promote people’s capability to acquire democratic content. This capability is to be classified as belonging to the category of morally required capabilities: it is somehow a necessary condition for individuals in order to have the capacity for agency. I will here merely assume that this is correct and postpone the explicit argument for this classification to Section 6.3. Notice that at this point the claim is not that people have to convert this capability into actual functionings: people cannot be coerced to actually consume democratic content. Although this is in line with the general strategy of promoting capabilities, not functionings, we will see that it leads to an important complication at the second stage of the argument. Notice also that nothing is said as yet about the level of democratic content to be provided. The question of the

³¹⁰ See Baker for a long list of potential external effects of media programs (both positive and negative). Baker, *Media, Markets and Democracy*, 44.

³¹¹ For a lucid discussion of the difficulties of making “externalities” the basis of normative judgments, see Trebilcock and the references therein. Michael J. Trebilcock, *The Limits of Freedom of Contract* (London: Harvard University Press, 1993), 58-77.

appropriate level will also be discussed at the second stage of the argument hereafter.

In the context of the media this capability shares the practice with another capability, the capability to acquire non-democratic or merely entertaining media content.³¹² Arguably, the media should also be allowed to let viewers have their daily portion of soap series, quizzes, sports matches, daily shows, etc. Since none of these activities can be labeled as immoral, but neither can they be considered morally required, they are to be classified as morally permissible. In case of conflict, then, the promotion of this capability will have to yield to the higher-order capability to acquire democratic content. Nonetheless, the non-democratic capability represents a separate source of normative claims on the media, even if only of the permissible kind. It is rather uncontroversial that the market is best equipped to realize this capability. This means that at this point we can already conclude that media products should not be “blocked exchanges;” there is a legitimate scope for market-based media.

Now that we have seen the contours (if not its details) of the normative claim on behalf of democratic content, we can move on to the second premise of the standard argument. At this step it is argued that the market is unable to promote the required capability to a sufficient extent; it will tend to offer too little – if any – democratic content. Sometimes an explanation of such low levels is sought on the supply side. For producers, it is often more attractive to produce non-democratic content since such content is generally cheaper to produce. The costs of producing a soap opera are lower than the cost of producing high-quality drama and the costs of producing investigative journalism are higher than the costs of newsroom interviews.³¹³ However, if consumers would press hard enough, it seems that cost problems could be overcome. It is telling that even if democratic content is offered free of charge – for example on public television – it attracts substantially smaller audiences than non-democratic content. This shows that the problem cannot lie solely on the supply side. Economies of scale make it attractive to produce democratic content at sufficient levels once it is in wide demand, so there must also be explanations why demand on the part of consumers is lacking.

The standard argument argues for this point by employing the distinction between preference satisfaction and preference formation. Media content either

³¹² Admittedly, this dichotomy is an ideal type. It allows for nuances in application to empirical circumstances; such as that certain popular programs normally considered to be in the genre of entertainment can occasionally or even structurally arouse interest in democratic matters. Also, the dichotomy could be supplemented with separate categories of non-democratic, non-entertaining content (for an example, see end of Section 6.3).

³¹³ See also McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 201.

caters to existing preferences (preference satisfaction) or leads to the establishment of new preferences (preference formation). Democratic content typically triggers a process of preference formation on the part of the receiver. It stimulates a creation of preferences about objects which were formerly not included in one's preference ordering and aims to challenge existing beliefs, so that people are required to consider a revision of previously held preferences. People in their role as consumers will not exercise (sufficient) demand for this kind of preference-forming content since their preference for it can only be formed by already consuming it. And because consumers do not demand democratic content, market-based media will not offer it and confine themselves to content that appeals to people's wishes to have their actual preferences satisfied. For example, Russell Keat argues:

Just because of this, however, the producers of cultural goods with transformative value can be expected to fare worse than those producing goods with demand-value in the competitive processes of an unregulated market. Television "ratings wars" provide plentiful examples, with programmes carefully constructed to provide audiences with "just what they (happen to) want," forcing out others which, by virtue of their transformative value, present something to their audiences which may challenge those preferences.³¹⁴

On the basis of the two premises jointly, the standard argument concludes that a collective decision should be made to provide non-market media. Such a decision should not be seen as a case of illegitimately overriding people's preferences (paternalism). For preferences are (partly) a function of the setting in which they are expressed. The content of preferences expressed in the market and that of preferences raised in a process of collective decision making may therefore legitimately diverge. By expressing a preference for the provision of democratic content in the latter setting, citizens correct their market behavior. It is a case of auto-paternalism.³¹⁵

In my view the second premise of this argument suffers from a confusing ambiguity in the use of the notion of preferences. On the one hand there are preferences for consuming certain types of media content: entertaining, political, cultural etc. (let us call these "preferences about media content"). On the other hand there are preferences containing beliefs about objects in the world. These preferences are potentially transformed through the consumption of media content: preferences for voting left-wing or right-wing, for believing or denying

³¹⁴ Keat, *Cultural Goods and the Limits of the Market*, 158. Later in his text, Keat recognizes the problem that I discuss in the following paragraphs (contrary to many other commentators), but as I see it he does not provide a satisfactory answer.

³¹⁵ Baker, *Media, Markets and Democracy*, 86-87. Sunstein, "Television and the Public Interest," 522. Habermas, "Medien, Märkte und Konsumenten."

that the greenhouse effect is a problem, for believing in the benefits of multiculturalism or not, for believing that jazz is more deserving than classical music, that Hollywood productions are more interesting than art house productions etc. etc. (let us call these “preferences about beliefs”). As these examples indicate, preferences for beliefs can relate to *any* kind of media content; cultural programs, news, advertising, soap series, etc. Any kind of media content can either engage its consumer in preference satisfaction or in preference formation, or, as will often be the case, in both at the same time. The criticism contained in the standard argument that market-based media “merely” satisfy current preferences while the media should (also) engage in preference formation, is therefore misguided. *Preferences about beliefs* – whether relating to democratic content or to entertaining content – can only be formed by actually consuming such content, so it is absolutely true that one cannot exercise a market demand for transformation x or y of one’s beliefs. However, this failure is inconsequential for the success or failure of the market as long as it is possible to express a *preference about democratic content* in the market – which, if satisfied, would provide opportunities for a revision of countless beliefs. The formation of a preference for democratic content can very well (indeed, practically must) precede the act of consumption, as is confirmed by the fact that part of the media-consuming public routinely demands democratic content. A defender of market-based media might push this point and argue that the market is very well capable to cater to the demand for democratic content to a sufficient extent. Such a defender of market-based media could argue for this by introducing the following thought experiment.

Imagine that ideal-typically the media market consists of two types of consumers. The first type of consumer in principle has a preference for democratic content, but is in the dark about which media goods contain this kind of content. Consequently these consumers may fail to exercise a demand for such content, even though they have the required preference. Call a person suffering from this problem the *democratic-content-seeking consumer*. The problem arises because most media goods – in contrast to standard consumer goods – are either “experience goods” or “credence goods.”³¹⁶ For experience goods, one has to become acquainted with their content to know their value: it cannot be evaluated before the act of consumption. A soap series is an example of an experience good. Only after consuming it for a while one knows its value. For credence goods holds that one cannot evaluate their value, even after consumption. The daily

³¹⁶ John H. McManus, *Market-Driven Journalism: Let the Citizen Beware?* (London: Sage Publications, 1994), 65. Experience and credence goods contrast with normal consumer goods, which are “search or inspection goods... whose quality is evident merely from examining them.”

news is a credence good. It is difficult to evaluate its accuracy in reporting on “reality” since one watches it precisely to learn about the state of reality in the first place. For both types of goods, there is an information problem. Now it can be argued that the market is able to provide a solution for these problems, through the possibility for producers of establishing a reputation for delivering a certain kind of content.³¹⁷ Review sites, consumer organizations, independent prizes and other evaluation mechanisms may all help to inform this consumer which providers serve their mission well. Thus, the reputation mechanism makes it possible for consumers to act upon their preferences by buying media content from providers that are reputed to deliver the requisite kind of content. If one has a preference for being a better-informed citizen, one could take a subscription on the “Citizen Channel.” So the democratic-content-seeking consumers can be helped within the market. They are auto-paternalistic and the market serves their auto-paternalism well.

The second type of consumer is simply too lazy, short-sighted or occupied with other things to purchase democratic media content. Whatever the exact motivation, he has no preference to that end. The problem of this *uninterested consumer* does not originate in a purported lack of information. These customers know that it would be socially better if they consumed democratic content; nonetheless they are sincerely content to neglect their capability to acquire democratic content. Uninterested consumers may complement this attitude with two different policy stances. Either they prefer to have democratic content available to all (delivered by non-market media and financed by taxpayers), as a sort of insurance scheme in case that the unlikely day will come that they come across democratic content and are able to relieve themselves of their own lack of motivation; or – more likely – this type of consumer may refuse this and give up on their prospects for preference formation with regard to democratic content altogether. The existence of the latter group raises a dilemma: should we coerce them into collective payments for the supply of democratic content or respect their autonomous wish not to be involved? If we grant these persons their way of life (which it seems we should), then the market gives them all that they want. Collective action for non-market media cannot be justified on the basis of this group of consumers.

Proponents of a completely market-based media practice will say that the two groups of consumers exactly represent the actual media audience. Either consumers are auto-paternalist and the market can help them out or they are not auto-paternalist and then democratic content needs to be offered outside of the

³¹⁷ Nahuis et al., "Onderweg naar morgen. Een economische analyse van het digitaliserende medialandschap," 22.

market, but this qualifies as real, unjustified paternalism. Some are spontaneously interested in watching democratic content and find the market rewarding their demand; others are not interested and should be left alone. Most importantly, the morally required capability to acquire democratic content is safeguarded by the market, since market demand expressed by the first group creates supply of democratic content, so that those from the second group have supply available to become acquainted with democratic content in case they want to change their mind.

Is there a way around this conclusion? Can the standard argument be saved? I think it can, but only to a limited extent. In the remainder of this section I will argue that there is a justification for non-market provision for democratic content in two narrowly circumscribed circumstances. For these circumstances, then, institutional pluralism is the required media arrangement (given the market's uncontested role in providing entertaining content). It is worth noticing at the outset that the justification is contingent on these circumstances actually obtaining. The market *need not fail*.

The first situation is where, due to whatever reasons, democratic content is threatened with extinction. This occurs when the actual level of market supply of democratic content becomes so low that we cannot reasonably expect of prospective consumers that they are able to find this content and become acquainted with its value through consumption. For example, if markets – on the basis of actual demand – would only provide one hour of serious political discussion a week, this is probably insufficient to become accustomed to it and develop a taste for it. In these circumstances the market fails to realize the capability to acquire democratic content to a meaningful extent. Thus this first type of situation provides a justification for non-market media in case that democratic content falls below the threshold of what is minimally needed to speak of effectively having the capability to acquire such content. One could imagine that this justification is rightfully invoked at an imaginary “first day” of a society, where citizens have no recollection of democratic content whatsoever (for example, the first day after a revolution overturning decades of dictatorship during which broadcasting remained confined to soap series and state propaganda). Or it could apply to a society in which the same thing has happened through a very gradual but ultimately near-to-complete erosion of the demand for democratic content. At any rate, it is clear that this justification applies to a kind of emergency situation where the level of democratic content provided by the market is very low. It will not obtain very often; normally market supply will be above this level.

A further-ranging justification arises in a second type of situation, in which market supply of democratic content is higher than this emergency level, but in

which one may still argue that additional non-market media are required to bring supply and demand of democratic content up to a level needed to make the public sphere function properly (see also next section). The emergency level may be too low for this because it only ensures consumption of democratic content by a small niche of dedicated citizens. For a proper functioning of the public sphere, a second, higher threshold may be needed. The justification for providing non-market content up to this higher level can be based on a criticism of the market proponent's thought experiment. In addition to the democratic-content-seeking consumer and the uninterested consumer there is a third ideal-type consumer, who has adequate information about the reputation of providers of democratic content and is not uninterested. However, he does not want to engage in consuming democratic media content if others do not do the same. Let us call this person *the calculating consumer*, because he conspicuously observes other citizens' behavior before determining whether to watch democratic content or not. Elizabeth Anderson explains the general problem his general attitude gives rise to:

The market gives consumers control only over their own consumer decisions. In deciding what to do, they therefore regard everyone else's decision as given. Some people may decide to recycle their trash simply out of a sense of personal virtue. But most are probably willing to recycle their trash only because they think that enough people are also doing it that their collective efforts are making a real difference to the environment. Others are moved by a sense of justice or reciprocity to express a similar conditional preference. They may be willing to do their part to fix a problem, if others do too. But they don't want to play the chump, carrying a burden that others are unwilling to share. Because markets don't give consumers control over others' decisions, they tend not to be effective vehicles for satisfying the preferences individuals have that are conditional on their confidence that a large number of other people will behave likewise. Call these *large-scale conditional preferences*.³¹⁸

If the preference for democratic media content is a large-scale conditional preference, this may seem to save the case for non-market media.³¹⁹ For now we

³¹⁸ Elizabeth Anderson, "Consumer Sovereignty vs. Citizens' Sovereignty: Some Errors in Neoclassical Welfare Economics," in *Freiheit, Gleichheit Und Autonomie*, eds Herlinde Pauer-Studer and Herta Nagl-Docekal (Wien: R. Oldenbourg Verlag, 2003), 383. Note that there is a parallel between the information-seeking and the calculating consumer: both use a "precommitment strategy" to attain their goal: only the information-seeking consumer uses a private strategy, while the calculating consumer uses a collective strategy.

³¹⁹ There is a debate about whether people have different preferences in private compared to collective contexts, or whether their preferences are continuous but they are unable to attain their highest-valued preference for cooperation in a private (i.e. market) context. In the latter case, the dilemma takes the form of an assurance game (not of a prisoner's dilemma, where the highest-valued option is non-cooperation). For a theoretical explanation see Daphna Lewinsohn-Zamir, "Consumer Preferences, Citizen Preferences, and the Provision of Public Goods," *The Yale Law Journal* 108 (1998): 391-96. For

can explain the lack of market demand for such content by reference to the classical free-rider problem. The consumption of democratic content is a sort of civic duty that media consumers will only take upon themselves if they receive signals that others are doing their part. This would explain why many consumers do not grasp the mere opportunity to become acquainted with democratic content through consumption of content that is already available (as a response to the demand expressed by the small group of democratic-content-seeking consumers). For they think that their individual contribution will not have much of an effect on the overall quality of the public sphere.

This solution faces a problem of its own. For it assumes that collective action will be effective in remedying the individual's motivational defect. In the context of normal examples of collective action problems this assumption is relatively unproblematic. For example, as citizens people can decide to correct their consumer preferences for products whose price doesn't internalize negative pollution externalities by forcing producers to obey environmental regulations. Or as citizens people can protect themselves against the consumption of unhealthy products by prohibiting or severely restricting opportunities for their sale and consumption (e.g. sale of tobacco and smoking in public places). For the media, however, citizen action at the level of policy making cannot on its own resolve the collective action problem. Here individuals have to take up their citizen role at two levels, rather than one. First at the level of policy they have to make a collective decision; and then at the level of media consumption they have to choose actually watching the collectively established media products. Even if people would vote for producing democratic content at the collective level (to be delivered by a public broadcaster or in some other way), this in no way guarantees that they actually watch that content from their living-room couch. In the normal examples collective action is effective because it is designed as a legal obligation backed up with sanctions; smokers in public buildings and polluting firms are penalized for their behavior. For the media, collectively deciding to provide democratic media content is insufficient as long as media consumers cannot be penalized when not actually watching this content (i.e. in the absence of a media police force intruding their homes and forcing people to watch...).

This dependence on voluntary action on the part of citizens is partly a blessing. After all, it seems a defining characteristic of civic virtue that it involves taking upon oneself civic obligations voluntarily; without strategically waiting for assurances that others will move too. In this regard, the obligation of citizens to inform themselves and train their capacities for reflecting upon social and

application in the media context see Sunstein and Ullmann-Margalit, "Solidarity Goods," 141 and 43-44. Sunstein, "Television and the Public Interest," 520.

political affairs with the help of media content is analogous to the obligation of voting. One is supposed to engage in it not because others do so, but because one wants to be member of a community in which others do so for that very same reason. The voluntary nature of the additional effort that is needed on the part of the citizen is a constitutive part of the end goal (the establishment of a democratic society); not – as in the garbage example above – a merely instrumentally necessary effort that one can argue one may abstain from in the absence of simultaneous efforts by others. The flip side of this coin is that it renders the collective effort to provide democratic media content vulnerable to disintegration. When some abstain from watching democratic content, others will wonder why they themselves should keep on paying the required taxes and watch this content. Non-market provision is still no guarantee that people will actually consume. Arguably, policy measures outside of the media practice will be required to stimulate demand, by convincing people of the value of actually consuming democratic content (for a further discussion of this point see Section 6.4).

In the justification provided by the second type of situation, the normative claim itself has changed. For in that situation everyone has the capability to acquire democratic content but few convert it into functioning. In this situation, the reason for justifying attempts to push consumption to a higher level by taking collective action simultaneously at both sides – raising the level of supply and trying to stimulate demand – can only be found in an independent requirement for high levels of actual consumption. The question therefore is: for which kinds of content – if for any – is there such an independent requirement? This question can be added to our agenda. At the first step of the argument we saw that a separate justification is needed for the normative claim on the media practice that it is morally required to promote a capability for acquiring democratic content. To this we may now add that we need to argue why for this kind of content the normative demand extends from the capability to the corresponding conversion into functioning, i.e. explain why it is imperative that there is some threshold of actual consumption of democratic content. These two tasks I will take up in the next section.

6.3 The Public Sphere as the Guardian of Democracy

In this section, I will first discuss the general problem of justifying democratic content as a moral requirement. Then I engage in a close analysis of Habermas's influential study *The Structural Transformation of the Public Sphere* and draw from it two different theses about the effects of the mass media on the public

sphere.³²⁰ This will lead me to formulate more precisely the extent to which the media is able to support the public sphere.

In the previous section I stated that the capability to acquire democratic content should be classified as a morally required capability. This claim can be defended in two ways. One justification is to argue that to have this capability is a necessary condition for anyone to be a person. In this interpretation opportunities for benefiting from media content that enhances the quality of one's democratic participation are valued intrinsically. Baker relies on this type of justification when he suggests that people's collective preference for non-market media can be justified by the fact that "many people would like to be reflective, more self-reliant, more politically energized, more responsive to the needs of others, and more interested in being informed."³²¹ I find this a strong claim. It may be the case that for some people these opportunities are crucial to become the person they would like to be. For many others, however, participation in the public sphere does not play an important role in their self-conception, nor is there a convincing argument that it should do so. For example, what about people spending their life in obsessive engagement with art, sports or science, without any interest in social and political issues? Would they be persons to a lesser extent? That seems hard to defend.

It seems to me more promising to turn to an instrumental type of justification. The capability to acquire democratic content is required because it provides some people with the opportunity to participate in the public sphere, which makes this sphere function well, which in turn is necessary to enhance the quality of decision making in formal democratic bodies and to have a check against these bodies wherever necessary. A well-functioning democracy in turn is required because it is the form of government which – at least in complex modern societies – has the best chances of creating a society in which people can become full agents and have equal standing (see Section 4.4).³²² Thus, the capability to acquire democratic media content is required as a prerequisite for the well-functioning of the type of political system that is best placed to promote each person's capacity

³²⁰ For the influence of Habermas in media scholarship, see for example Baker, *Media, Markets and Democracy*, 138ff. R. Randal Rainey and William Rehg, "The Marketplace of Ideas, the Public Interest, and Federal Regulation of the Electronic Media: Implications of Habermas' Theory of Democracy," *Southern California Law Review* 69 (1996). Curran, "Mass Media and Democracy Revisited." Curran also provides references to more Habermas-inspired media literature.

³²¹ Baker, *Media, Markets and Democracy*, 93-94.

³²² Admittedly, a defense of this claim would require a full-scale comparison between the scores of different political systems, which I am unable to deliver here. In the absence of such a comparison, I rely on the conceptual connection between an ideal-type democracy's principle that each person deserves equal political influence (one man one vote) and the society-wide ideal of equal protection for each person's capacity for agency.

for agency. Following this instrumental argument we can also vindicate the claim that the conversion of the capability into actual functioning by at least a threshold number of the citizenry is required to make the public sphere function well. After all, if nobody watches or listens, the public sphere will be marginalized and lose its influence on the two parts of society it tries to connect: civil society at large and formal political bodies.³²³

One may wonder whether the argument could and should be extended to other types of merit goods than democratic content. Are there any further types of content whose provision should be a normative requirement for the media? Probably the most prominent candidate is the provision of certain forms of art and culture. I must confess having some scepticism as to whether this extension could be successful. However worthy these forms of art are in themselves, it is hard to see that people cannot be full agents if a society would not harbor opportunities to engage in them. They undoubtedly enrich society, but I am inclined to think that it is too strong to say that the development of all citizens' capacity for agency depends on them. On the other hand, a way around this conclusion would be to argue that certain forms of art are necessary to the functioning of democracy. For example, Martha Nussbaum has claimed that reading literature teaches empathy and imagination, which is badly needed by all kinds of decision makers.³²⁴ Such a move would make art fall under the rubric of "democratic content." In this chapter I have chosen to restrict myself to democratic media content that directly supports the public sphere, but I remain open as to the possibility that an argument in favor of these other types of media content could successfully be made.

Let us now consider the connection between the media and the public sphere in more detail. Following Habermas's original study on the subject, the ideal of the public sphere is the ideal of a sphere of rational-critical debate on the part of citizens deliberating among each other. According to Habermas, this sphere arose in the 18th century as the rising bourgeois class emancipated itself from the state and started to discuss political and administrative matters. Discussions were not confined to politics; cultural and literary matters were equally prominent, as the public sphere provided the opportunity to discuss the new experience of subjectivity that simultaneously entered the sphere of the private bourgeois household.³²⁵ The English coffee houses, the French *salons* and the German

³²³ Note that such conversion would *not* be required if we follow the argument as to the intrinsic value of the capability; for then only the capability itself is important to people.

³²⁴ Martha Nussbaum, *Poetic Justice. The Literary Imagination and Public Life* (Boston, Massachusetts: Beacon Press, 1995).

³²⁵ Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: Polity Press, 1989 [1962]), 29.

Tischgesellschaften were the prototype institutional platforms of this public sphere. The role of the media was also essential. The press initially emerged in response to the needs of merchants engaging in long-distance trade: along with intensified traffic came the need for traffic in news. In a second step, many of the “political journals” fell into the hands of state authorities who used them to make public their decrees and control the stream of information. Only in the third instance these journals came to exhibit criticism and debate, as genuine organs of the public sphere.³²⁶

From this point on, two quite different themes can be stressed. The first theme, dominant in Habermas’s account – and in the writings of media scholars following him – is that the market subsequently captured the media. Once controlled by capitalist interests, the media actively contributed to the decline of the public sphere. I will call this the “market subversion” thesis. A second theme, more subterranean in Habermas, is that the mass media in and by themselves, i.e. even when abstracted from their market-based organization, subverted the public sphere. I will call this the “media subversion” thesis. Let us consider both theses in turn.

According to the market subversion thesis, the market initially had a beneficial influence on the public sphere because it provided the means through which people could participate in the public sphere (books, journals, theater tickets, etc.). After a while, however, the media turned against the public sphere. This happened as soon as the media started to commodify culture and critical debate itself, transforming it to fit prepackaged formats easily digestible by large audiences:

To be sure, at one time the commercialization of cultural goods had been the *precondition* for rational-critical debate; but it was itself in principle excluded from the exchange relationships of the market and remained the center of exactly that sphere in which property-owning private people would meet as “human beings” and only as such. Put bluntly: you had to pay for books, theater, concert, and museum, but not for the conversation about what you had read, heard, and seen and what you might completely absorb only through this conversation. Today the conversation itself is administered. Professional dialogues from the podium, panel discussions, and round table shows – the rational debate of private people becomes one of the production numbers of the stars in radio and television, a salable package ready for the box office; it assumes commodity form even at “conferences” where anyone can “participate.”³²⁷

The underlying mechanism that Habermas identifies is that the standards of debate are lowered so that a broad audience has access, but what it has access to

³²⁶ For these three phases see Ibid. 15-16, 20-22, 24-25 respectively.

³²⁷ Ibid. 164.

in no way resembles the original ideal of a public sphere in which participants discussed social and political issues freely:

The different functions of the market had to be rigorously distinguished: whether it created an initial access to cultural goods for a public and then, in keeping with the cheapening cost of the products, *economically eased* the access for an ever larger public; or whether it adapted the content of cultural goods to its own needs in such a way that it also *facilitated* access for broad strata *psychologically*.... The mass press was based on the commercialization of the participation in the public sphere on the part of broad strata designed predominantly to give the masses in general access to the public sphere. This expanded public sphere, however, lost its political character to the extent that the means of “psychological facilitation” could become an end in itself for a commercially fostered consumer attitude.³²⁸

The explanation of this transformation of media content lacks a motive why the media would want to transform the public sphere in the way described. Here Habermas refers to the advent of “the advertising business” that in the course of the 19th century came to dominate the internal organization of the press and later, in the 20th century, of the “new media” (film, radio and television).³²⁹

If we follow the media subversion thesis, the picture is rather different. In Habermas’s account, the direct and live discussions in coffee houses and *salons* (or their present day equivalents) are emblematic for the interactions in the public sphere. If this is so, then the mass media must always misrepresent the nature of that sphere. Debate in the media is always staged, artificially constructed. Whether a TV show is organizing a debate around a social issue of the day, or a journalist interviews citizens on matters of public policy, or a newspaper allows a political dispute to be staged on its pages; the form and content of the resulting exchange is always in the hands of the media provider. The provider selects the topic, the guests, the questions etc. From this perspective media communications cannot escape the predicament of being a *product*. It is bound to be a more or less carefully constructed item that is communicated, not the representation of a spontaneous discussion with open and free access for all. This product nature of media communication is given with its “one-to-many” character, whereas

³²⁸ Ibid. 166 and 69.

³²⁹ Ibid. 184-88. Habermas is somewhat unclear about the exact causes of this transformation. He refers to the fact that the press “could abandon its polemical stance and concentrate on the profit opportunities for a commercial business” because of the “establishment of the bourgeois constitutional state and the legalization of a political public sphere.” Habermas, *The Structural Transformation of the Public Sphere*, 184. However, he also refers to the “necessity” of attracting capital for the “upgrading and perfection of the technical and organizational apparatus.” Habermas, *The Structural Transformation of the Public Sphere*, 185.

communication in the public sphere typically is “many to many.”³³⁰ It is precisely when Habermas tells us that in the early days of the public sphere this was otherwise, that we see how the media’s being part of the public sphere depends on a very peculiar setting:

The periodical articles were not only made the object of discussion by the public of the coffee houses but were viewed as *integral parts of this discussion*: this was demonstrated by the flood of letters from which the editor each week published a selection.... The dialogue form too, employed by many of the articles, attested to their proximity to the spoken word. One and the same discussion transposed into a different medium was continued in order to reenter, via reading, the original conversational medium. A number of later weeklies of this genre even appeared without dates in order to emphasize the trans-temporal continuity, as it were, of the process of mutual enlightenment.³³¹ (emphasis mine, R.C.)

The weekly journals that Habermas describes were so localized and small-scale that they could be considered as an adjunct (“integral part”) to the live discussions in the public sphere. But these journals are only vaguely reminiscent of today’s mass media; they look more like websites destined to (and accessed only by) members of a specific club. From this perspective, the tale of the decline of the public sphere emphasizes rather different developments; most notably, the decline of the original discussions in the coffee houses due to the rise of state bureaucracies, special interest groups and political parties that closed the void between the private sphere and the state. This development in turn provoked a new role for the media, much better integrated with their large-scale technological expansion on a commercial basis; that of “public opinion formation,” the conscious manipulation of the public for the sake of parochial interests.³³²

The clash of these two explanatory accounts is crucial to our conclusion about the market’s relation to the ideal of a public communications sphere. If the market subversion thesis is correct, then the media’s role in sustaining a public sphere can in principle be salvaged, by taking the media out of the hands of commercial (advertising) interests. This is what happens when the state takes over the media

³³⁰ See for this typology the introduction above and Baker, *Media, Markets and Democracy*, 302. Note that the internet, insofar as it is a sphere where people can communicate directly and spontaneously with one another, escapes this predicament of the other media. For a criticism of those who therefore expect the internet to establish a genuine public sphere, see Baker, *Media Concentration and Democracy. Why Ownership Matters*, 97ff.

³³¹ Habermas, *The Structural Transformation of the Public Sphere*, 42. Note that Habermas’s position that the periodicals are an integral part of the public sphere directly contradicts his earlier statement that the products of the media market remained outside of the public sphere itself.

³³² *Ibid.* 197-203.

and establishes public broadcasting.³³³ If the media subversion thesis is correct, however, then there is no rescue possible from the hands of private interests. The “administration of conversation” will happen anyhow, *not* only when the media is taken over by the market, but *also* when media products are manufactured through alternatives such as state provision. A non-market-based mass media will be dominated just as much by groups who capture the relevant organizations. The objection against the market then reduces to the fact that in the market the administration of conversations is geared to commercial interests rather than other (potentially more benign?) interests.

We could also try to reconcile the two theses, by treating them not as exclusive explanations for the corruption of the public sphere but as mutually reinforcing explanations.³³⁴ The media subversion thesis forces us to admit that the *real* public sphere always occurs outside of the manufacturing of the media’s products. Nonetheless, just as a vibrant public sphere is an indirect warrant for the quality of debate and decision making in the official political sphere, equally the media are an indirect testimony to the civic debate that takes place in the public sphere. This opens up the possibility that the media *support* the debate in the public sphere in their products. In this supportive function, the public sphere channels information from the society at large to the formal political arenas and vice versa. It informs citizens about the plans of political bodies and politicians, communicates about political deliberations, exposes corruption within political bodies, etc. At the same time it informs political bodies about the desires, concerns and actions of citizens taken within the public sphere. Thus formulated, the ambition is more modest and has the virtue of not claiming a role for the media that it cannot fulfill.³³⁵ This supportive role for the media would still be

³³³ Ibid. 187-88.

³³⁴ In Habermas’s latter reflections on the public sphere, we may find support for such reconciliation. Consider the following passage, where both the media’s own logic and the market’s influence are faulted for weakening the public sphere: “In conjunction with an ever more commercialized and increasingly dense network of communication, with the growing capital requirements and organizational scale of publishing enterprises, the channels of communication became more regulated, and the opportunities for access to public communication became subjected to ever greater selective pressure. Therewith emerged a new sort of influence, i.e. media power, which, used for the purposes of manipulation, once and for all took care of the innocence of the principle of publicity.” Jürgen Habermas, “Further Reflections on the Public Sphere,” in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, Massachusetts: The MIT Press, 1992), 436-37.

³³⁵ A more detailed account would be needed to elaborate on the structure of the public sphere itself and the demands upon the media, but this formulation of the media’s “core business” suffices for our purposes. Most prominent among these further issues is a solution to the tension between the liberal and the republican perspectives on the public sphere (see Section 6.1), and to the problem of how to integrate smaller groups into the public sphere. See for the latter problem Nancy Fraser’s criticism of Habermas in Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing

quite ambitious, however, in that it aims at a representation that is not hindered by commercial or other particular interests (including state interests!), but driven only by the wish to reflect what is going on among the public and in the formal political decision-making bodies. At this point the market subversion thesis shows us that this supportive role is in danger of being subverted as soon as commercial interests take over the media's role. In Habermas's account these interests are mainly advertising interests; thus it might be thought that if the media were mainly subscription based, this problem would be overcome (see also Section 6.1). However, in the previous section we saw that a market-based media – even if subscription based – may also fail to perform the supportive role with regard to the public sphere due to lacks in consumer demand. Thus, we must now ask whether there are alternative non-market modes of provision that can fill this gap. This will be the subject of the last section.

6.4 An Institutional Pluralism for Media Communication

If the market is to be substituted by non-market media in order to provide for its role in supporting the public sphere, this leaves open two questions. First, What kind of substitution to the market is to be preferred? Second, What are the conditions for an institutional pluralism of market and non-market provision to be stable?

As to the most appropriate form of non-market provision, one preliminary issue must be tackled. At the end of Section 6.2 I argued for a justification of non-market media in two types of situations, where the supply of democratic content falls below two threshold levels. These justifications were presented as contingent on the portrayed circumstances actually obtaining. Strictly speaking, this assumes that one would have to wait until supply actually falls below one of the two levels before one starts providing non-market content. In this section I will relax this assumption. If one is somewhat less strict, one can also argue that non-market provision should be delivered prospectively, as a precautionary measure, because

Democracy," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, Massachusetts: The MIT Press, 1992). See also Habermas's later formulation of the normative claim on the media: "The mass media ought to understand themselves as the mandatory of an enlightened public whose willingness to learn and capacity for criticism they at once presuppose, demand, and reinforce; like the judiciary, they ought to preserve their independence from political and social pressure; they ought to be receptive to the public's concerns and proposals, take up these issues and contributions impartially, augment criticisms, and confront the political process with articulate demands for legitimation." Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity Press, 1996), 378.

it would be too harmful to let the supply of democratic content actually fall below one of the two minimum levels. While granting this relaxation, we ought to be aware of the fact that is not innocent, for it harbors the danger that non-market provision of media products continues for long periods of time when there would be no justification for it because in the counterfactual situation levels of market demand for democratic content would be high enough.

The mode of provision required to fulfill the media's role in supporting the public sphere is professional provision. This follows directly from the fact that the requirements defended above, when suitably worked out, contain the formulation of norms about good provision, not the representation of a particular interest. Both pure market provision and pure public provision in the last instance are directed to the interests that the market (consumers) or the state (government, parliament, etc.) assign to it. Only pure professional provision – at least ideally – is directed to the fulfillment of substantive norms as these are elaborated in a professional body of knowledge (see Section 2.3). Only professional provision can be faithful to Habermas's original positioning of the public sphere as a sphere in between market and state and not pervaded by either of them.³³⁶ Professional provision for the media, however, cannot be *pure* professional provision. Pure professional provision would require voluntary funding by the public and this seems highly unfeasible as a general model for the media. Some civic organizations do fund their own magazines through contributions of their members, but these magazines very often are merely voicing the parochial interests of the organization. Professional provision will therefore have to be realized in alliance with either the market or the state, funded by consumers and advertisers or by taxpayers. It will be mixed provision at best, in a market-professional or a state-professional mixture.³³⁷ Which of these two mixed options is to be preferred?

The main reason to be critical of market-professional provision is that the space for professionals to act upon their professional norms may be restricted in the market, given by now familiar problems: the absence of demand (Section 6.2) as well as the fact that it is not always in advertisers' interests (Section 6.1).

³³⁶ This characterization is not meant to sketch an overly rosy picture of professional provision. Independence from pressure of market and state serves as a *necessary*, not a *sufficient* precondition for the establishment of substantive norms that direct media provision toward support of the public sphere. To prevent that these professional norms degenerate into self-serving norms for professionals, suitable background conditions are necessary as well (the formulation of these conditions falls outside the scope of my investigation here).

³³⁷ For a characterization of professionalism in the media context, see Daniel C. Hallin and Paolo Mancini, *Comparing Media Systems. Three Models of Media and Politics* (Cambridge: Cambridge University Press, 2004), 33-41.

Furthermore, private providers, especially in the oligopolistic market structure often obtaining, may capture the regulatory process. The history of the Fairness Doctrine – requiring a fair hearing from both sides of a political dispute – provides an example of both forms of evasion. First US broadcasting networks tried to get around the imposition of the standard by simply broadcasting less public affairs programming that would require them to adhere to the standard. Simultaneously they lobbied successfully to abolish the requirement.³³⁸ This does not mean that professional provision is inconceivable in a market context; many newspapers have shown the contrary. However, it does mean that the professional is dependent on the consumer who is willing to pay for granting the professional his latitude; in other words, the professional depends on an audience of democratic-content-seeking consumers who are already convinced of the value of supporting the public sphere.

In contrast, professionals working for a public provider *a priori* do not have to work against the logic of their institutions; after all, these institutions were founded precisely to serve the public sphere. This does not mean that the latter face no institutional constraints whatsoever. Public provision also has its dangers, the most obvious one being that the state will use the media it funds to further its own interests.³³⁹ Countries differ enormously in the extent to which publicly funded media organizations have achieved independence from the state.³⁴⁰ This danger of state influence has to be assessed comparatively to the analogous danger of commercial influence in a market-professional mixture. In this comparison, it seems fair to say that

³³⁸ McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 43-44. See also Baker, *Media, Markets and Democracy*, 204, 341. Sunstein, *Republic.Com*, 73-74.

³³⁹ An alternative arrangement, which defies an easy classification as “market” or “public” provision, is to have “public interest requirements” which are forced on private providers. Some require that they dedicate proportions of their programming to specified types of content (such as children’s programming, art, or public affairs). Others require adherence to well-specified standards when providing for these types of content, such as the requirement to give each party in a dispute the chance to advance its viewpoint (the so-called Fairness Doctrine). Another intermediate option is to realize certain types of programming through public subsidies and then to obligate private channels to broadcast these programs. For an extensive discussion of different regulatory regimes, see Sunstein, “Television and the Public Interest,” 525ff. Several institutional options for the Dutch situation are discussed in Wetenschappelijke Raad voor het Regeringsbeleid, *Focus op functies. Uitdagingen voor een toekomstbestendig mediabeleid*, 171-79. In the Dutch context, I have advocated a system of quality competition for public broadcasting in Rutger Claassen, “De media: Marktplaats of plaats voor ontmoeting? [the Media: Market Place or Place for Encounter?],” *Socialisme & Democratie* 63, no. 5 (2006).

³⁴⁰ Hallin and Mancini, *Comparing Media Systems. Three Models of Media and Politics*, 30-31 and 56.

In general... the independent watchdog role of the media is more liable to be subverted in the deregulated than in the regulated sector, in liberal democracies with mature public broadcasting systems. Owners of private media have greater legitimacy within their organizations than do government ministers seeking to influence public service broadcasting organizations. They are less likely to encounter obstruction when seeking to assert control, whereas government ministers are hedged in by checks and balances in autonomous broadcasting systems developed in order to prevent their interference. Public concern about the manipulation of private media is also less well developed than it is in relation to public media, and so provides a less adequate form of protection.³⁴¹

Another danger is that public broadcasters will not provide (enough) democratic content because they are pressed by the political system to attain target audience shares. The result then is service to the public sphere in name only; in reality it represents a programming schedule that largely resembles what commercial competitors already supply. This danger is exacerbated when governments require public broadcasting agencies to finance their activities partly through advertising, but it may also materialize in the absence of such a requirement. It points to a recognition that we should not jump too quickly from an identification of the providing agent (commercial or public) to the conclusion that a certain type of content is provided (entertaining or democratic). Only a separate assessment of the content can reveal whether or not the respective media are supporting the public sphere or not. Although I cannot go into this problem any further, it is worth noticing that in this respect there is an inherent tension for public broadcasting organizations; for even though they do not have to provide entertaining content as such, it may be necessary to use entertaining elements within programs to attract the public's attention which is subsequently turned to matters of social and political concern.

Assigning the production of all kind of entertaining content to the market and democratic content to a public-professional provider, then, gives us an institutionally pluralist setting for the media. The next question is what conditions must be realized for such a pluralism to be stable. I will mention two conditions: adequate funding for the public-professional mode of provision (input) and a sufficient level of actual consumption of professional content (output).

The first condition concerns the input. In the media context, institutional pluralism is sustainable only if each of the institutional forms has a fair chance of survival in the competition between them. More specifically, a publicly-based provider needs to have sufficient resources for competing for audience attention with commercial providers. Public and commercial providers have to compete (partly) for the same pool of personnel, have to make use of the same (costly)

³⁴¹ Curran, "Mass Media and Democracy Revisited," 90.

production technologies, etc. The allocation of funds to public providers differs widely between different countries. For example, the US government allocates a yearly budget of 365 million dollar to its Public Broadcasting Service, compared to approximately 600 million euros for the Dutch public broadcaster (the same would vice versa be true for adequate commercial funding, of course, but that is less of a problem in current practice).³⁴² Given the differences in population size (and therefore in expenditure per inhabitant), this suggests that either the US broadcaster is massively under-funded or the Dutch broadcaster is massively over-funded...

The second condition concerns the output. This condition requires operationalization of the required minimum levels of democratic content. This is a complex matter, for it requires a more specific interpretation of democratic content (which programs are to count as such?) and determination of the required levels of both production and consumption in quantitative terms: how many hours of programming are to be supplied and how many consuming viewers are required per hour? Inevitably, these matters of operationalization will themselves have to be the subject of democratic debates.³⁴³ Analogous to the threat of evasion of public contributions to security (Section 5.3), here the threat is that public attention will be so minimal that it undermines the motivation to contribute to the funding of public content. A judgment about when this is the case should not be made too quickly however. For the same kinds of measurements may communicate the same kind of success for different genres of media content. For example, 100.000 viewers may be very few for a ballet program (if compared to what entertainment programs regularly reach). Nonetheless, compared to the number of those visiting the same ballet in a theatre it made this form of art accessible to a far broader audience. Similarly, if broadcasting of political deliberations in the House of Representatives enables 100.000 citizens to be informed about important public issues, this may still be a success compared to

³⁴² For the US figures see McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century*, 243. For the Dutch figures see Raad voor Cultuur, "De publieke omroep voorbij. De nieuwe rol van de overheid in het mediadomein," (2005), 19. This document quotes an empirical study which established a strong relation between funding per inhabitant for public broadcasting in different European countries and success in capturing audience attention (NB this cannot be simply translated as a success for democratic content given public broadcasters' making quasi-commercial programs).

³⁴³ This condition of effectiveness also has an impact on the exact form of public intervention chosen. The placement of public sphere-related programs in between standard commercial programs may have the advantage of being encountered by viewers that are habituated in watching commercial programs. On the other hand a separate public provider has a higher degree of visibility in the media landscape: if one is looking for public sphere-related programs, one knows where to find them. Relatedly, this may have the symbolic effect that the public provider is a symbol of the public community (such as the BBC is in Britain).

the number of citizens that can be accommodated on the gallery. Whether it is enough for the public sphere to function well – and whether actual attention for these matters in present-day modern societies attains this level – are matters that I cannot answer in the abstract.

Despite all these problems of practical judgment, some measure of output should be included as a condition for stability. It is not enough to state, as Sunstein does:

Of course public interest programming will do little good if people simply change the channel. No one urges that the government should require people to watch governmentally preferred programming. The only suggestion is that if the government, responsive as it is to citizen aspirations, seeks to ensure more public interest programming than the market does, there is no principled ground for complaint. In any case it is likely that some people would watch the resulting programming and develop a taste for it; *that empirical probability is all that is necessary to vindicate the suggestions made here.*³⁴⁴ (emphasis added, R.C.)

It seems to me that faith in “empirical probabilities” reflects a normative strategy that is not sufficiently attentive to sociological realities. Normative legitimacy of collective action also depends on a sufficiently broad acceptance by the public concerned. I would not be prepared to defend the legitimacy of allocating funds to public broadcasting agencies that (virtually) nobody is actually watching. Insofar as that threatens to be the future predicament, it points to the need for *either* giving up and abolishing those agencies *or* for more efforts in creating interest in the subjects of public interest programming via practices other than the media. For example, schools would have to attempt to instill interest in democratic content on the part of pupils and train them in interpreting this material. Also, formal political processes would have to be reformed so as to make them more accessible to a larger audience. Anyhow, here we see one example of how the stability of institutional arrangements in the service of normative required ends in one practice may well depend on coordinated efforts in other practices.

³⁴⁴ Sunstein, "Television and the Public Interest," 523.

CHAPTER 7

CARE – A SERVICE TO THE VULNERABLE

Giving and receiving care is one of the primary functions of any society. In caring for those who are vulnerable and dependent, societies express responsibility for their members when these are unable to sustain themselves without help. At the same time, since giving care usually involves the expenditure of considerable time and energy, care is an economic practice. Choices have to be made about the ways in which care should be provided. Sometimes these choices are met with resistance and criticism, where prevailing patterns of the organization of care work are contested. In many Western societies, this is currently the case. Ingrained patterns of care provision are contested from the perspective of women who have been responsible for the bulk of care to children, elderly and sick people. Their entry in the labor market stimulates the outsourcing of care to the market. Simultaneously, attitudes to the value of care provision outside of the household are changing. These developments necessitate new ways of thinking about the responsibility for care work and the division of labor between households, markets and the state. In this chapter I will concentrate on what this means for the choices between market and non-market forms of care.

First, however, let me delineate the subject matter. In talking about “care” in this chapter I take this term to refer to a restricted set of activities. It will not refer to a general interpretation of social relations or a branch of ethical theory. Rather, care here refers to what is often called “care work.” More precisely, I will take the practice of care provision to refer to the provision of caring activities on a structural basis to people who are in a position of dependency or vulnerability.³⁴⁵ Two features of this definition deserve further specification.

First, the provision of care refers both to a *kind of action* and a *motive*. This dual nature can be explained with the help of the dichotomy of “caring for” and “caring about.” To care for a person is to deliver care to that person; i.e. to fulfill

³⁴⁵ My approach, in focusing on care as a set of interrelated activities (a practice) that can be delivered through several alternative modes of provision, differs from that of Irene van Staveren, who presents care as a distinct value domain within economics (on a par with the value domains of freedom and justice). Although I subscribe to her characterization of care in terms of the emotions, commitments and deliberations involved, I do not share the exclusive allocation of care to the *oikos* that she seems to endorse. See Irene van Staveren, *The Values of Economics. An Aristotelian Perspective* (London: Routledge, 2001), 57.

the needs of the person (physical as well as emotional) through a myriad of caring activities. To care about a person is to have a caring disposition toward that person; it refers to a specific type of motivation (often referred to as “the caring motive”).³⁴⁶ Successful action and the right motive do not necessarily concur. It is possible to care for a person without caring about that person; one may receive loveless care from an overworked nurse or a frustrated mother. Conversely, it is possible to care about someone without caring for her: the well-intentioned but ineffective care of a clumsy neighbor. Wherever one side of care’s dual nature is lacking we may be tempted to judge that what is provided “is not really care.” But that would have the unwelcome consequence that these activities disappear from our purview. Therefore I will say that care takes place wherever someone responds to a reasonable demand or expectation for care without that person necessarily succeeding (completely) in fulfilling the demand (that is to say, care may differ in quality). This brings into focus those instances where a tension between action and motive emerges. As we will see later, this tension has important implications for the way in which care is provided.

Secondly, care is provided to people whose *dependency* or vulnerability is of a certain degree of severity and permanence. This necessitates the deliverance of care on a structural basis. Allowing every type of dependency as an object for the practice of care would make our definition overly broad. Following Eva Kittay, I will restrict my attention to care for the person who “cannot survive or function within a given environment – or possibly within any environment – without assistance” and consequently “needs to be *in the charge* of another for her care and protection.”³⁴⁷ This excludes care work in a more extended sense, where a person either cares for someone who could take of himself (Kittay mentions examples as the care of a wife for a husband), or where caring activities are an integral but not a central part of a professional engagement (the care of a waitress

³⁴⁶ Susan Himmelweit, “Caring Labor,” *The Annals of the American Academy of Political and Social Science* 561 (1999): 29. Similarly Nancy Folbre and Thomas E. Weisskopf, “Did Father Know Best? Families, Markets, and the Supply of Caring Labor,” in *Economics, Values, and Organization*, eds Avner Ben-Ner and Louis Putterman (Cambridge: Cambridge University Press, 1998), 172-73.

³⁴⁷ Eva Feder Kittay, *Love’s Labor. Essays on Women, Equality, and Dependency* (London: Routledge, 1999), 31. Similarly, in an elaborate discussion of how to define care, Engster defines care as those activities sustaining the dependents’ basic biological needs and basic capabilities and helping to avoid or relieve suffering and pain. Daniel Engster, “Rethinking Care Theory: The Practice of Caring and the Obligation to Care,” *Hypatia* 20, no. 3 (2005): 51-53. This contrasts with the broader treatment of care in the variant of the capabilities approach offered by Martha Nussbaum. See Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice,” 50ff. and Nussbaum, *Women and Human Development. The Capabilities Approach*, 264-70.

for her clients).³⁴⁸ The main examples of the dependencies that are included are care for children (especially in their earliest years) and care for the elderly and the sick, insofar as old age or poor health makes them dependent on care.³⁴⁹

Who should care, that is, which (combinations of) modes of provision are appropriate for care in present-day modern societies? More specifically, to what extent should care be entrusted to the market? These will be our leading questions in this chapter. As a preliminary matter, I will first outline a typology of five main forms of care provision and on the basis of this I will present three different ways in which care can become commodified. One of these I will focus upon: the formalization of informal care (Section 7.1). This sets the stage for the normative discussion. I will formulate care's local normative theory in two relevant demands arising from the care practice: the basic need for care on the care recipient side and the capability for caring on the caregiver side. Next I will discuss two objections which aim to show that market-based care undermines the caring motives essential to care; one of them because of its reliance on contracts and the other because of the corrupting influence of payment on motivation. I reject both objections, but I do show that important practical conditions for market contracts and payments have to be fulfilled in order to make the market compatible with good care (Section 7.2). If both market care and informal care are legitimate, the question arises what their mutual relations in an institutionally pluralist setting should be like. This question cannot be answered before an additional complication is taken into account: the care practice also has to accommodate an external normative demand, viz. the capability to engage in work (in the labor market). To think about how work and care should be combined, I will present Nancy Fraser's framework of several models that each combine care provision and labor market participation in a different way. Her preferred model assumes that all workers are also caregivers and requires a transformation of work. In criticism of this model Angelika Krebs proposed

³⁴⁸ In the following, I will use "him" for the care recipient and "her" for the care giver, to confront the reader with the actually existing gendered nature of the division of care labor, not in any manner to endorse that division (as will become clear from the discussion).

³⁴⁹ The precise formulation of the ends of the care practice varies according to the type of dependency. For example, some propose that maternal care for children involves three ends: "preservative love," "fostering growth," and "training for social acceptance." (Kittay, *Love's Labor. Essays on Women, Equality, and Dependency*, 33.) Such a specification cannot be extended to other types of care without modification; care for elderly dependents, for example, does not involve training for social acceptance. The problem of specifying precise ends is further complicated by the fact that the very nature of care precludes an overly concrete formulation of the activities that have to be undertaken. Care work is "functionally diffuse," in contrast with the more "functionally specific" work of classical professions. See Kittay, *Love's Labor. Essays on Women, Equality, and Dependency*, 39.

another model, which gives people the financial means to choose between themselves caring in person or buying care on the market (Section 7.3). Finally, I argue that to decide between those models we have to make a distinction between two types of care relations. For those care relations for which an obligation to care (on an informal basis) can be addressed to specific caregivers, Fraser's model is to be preferred. This is mainly the case for parental care for children. For other care relations where such an obligation cannot be established, Krebs's model is to be preferred (Section 7.4).

7.1 Toward a Pure Care Market?

In this section I will distinguish five forms of care provision and discuss how far the transitions between them amount to a "commodification of care." In doing so, my main aim is to warn against a facile identification of the marketization of care with payment for care activities. Many forms of payment, as we will see, do not instantiate a full-blooded market for care. The five forms of provision fall into two different categories: two informal and three formal forms of care provision.³⁵⁰

The origin of caring relations in informal provision lies in a previous personal relationship between a caregiver and a care recipient. Some social context has brought them together: the family, the neighborhood, a network of friends or voluntary association, etc. When dependency of one of them arises, both feel that engaging in care activities is appropriate or even (morally) obligatory. When informal provision is *unpaid*, care takes the form of gift exchange (for "gift" as a subspecies of informal provision, see Section 2.2). The standard form of reciprocity in gift exchanges is that the recipient of the gift reciprocates fully what he received; think of children who are expected to return the debt to their parents by taking care of them when they are old. However, many care relations do not take this standard form; other patterns of reciprocation are at least as frequently encountered.³⁵¹ *Paid informal provision* differs from the unpaid variant in that a payment is attached to the performance of care activities. Payment

³⁵⁰ For a somewhat different typology see Clare Ungerson, "Social Politics and the Commodification of Care," *Social Politics* 4, no. 3 (1997).

³⁵¹ Two other patterns are important in caring practices. One is that the person cared for only offers some kind of repayment to the extent that his capabilities permit (which is usually severely limited extent, given his dependency) and that the care giver receives compensation from the rest of society, for example by being supported financially. The other is that care givers and recipients form a chain in which one returns to the next generation what one has received from the previous one; this kind of reciprocity is characteristic for many parents and children. Both are forms of "nested reciprocity." Freely adapted from Kittay, who talks about "nested dependencies." See Kittay, *Love's Labor. Essays on Women, Equality, and Dependency*, 67-68.

sometimes takes place between caregivers and care recipients directly, as when an elderly person gives money to her daughter who takes care of her. More often – at least in welfare states – a dependent person receives a personal budget for a specified level of care out of a public fund.³⁵² He then uses this budget to pay relatives who already care for him (the question whether this kind of payment transforms care into a market good will be considered below). In contrast, formal forms of care provision are characterized by the fact that the origin of the relationship between caregiver and care recipient lies in a contractual agreement, not in a preexisting personal relationship. Here the caregiver is a professional who is paid a wage by the care recipient or by a care institution for which she works. For *public provision* the payment out of public funds is made directly to care institutions, which receive compensation per patient depending on the level of care that is needed. Care recipients receive care according to one or more objective criteria, for example medical criteria (urgency), time (a waiting list), geographical considerations (ZIP code), etc. These institutions are effectively acting as executive agencies of the state. Normal *market provision* takes place where dependents pay caregivers out of their own pockets. Such reliance on private resources arises where public funds are unavailable, either because social and political norms dictate that one uses private resources (as for parents who bring their children to day care centers without receiving public support), or simply because of a general lack of public funds (as in poor countries). It may also arise where individuals prefer to bypass publicly available funds, as the wealthy sometimes choose to do. For *quasi-market provision* care recipients are allocated a personal budget out of public funds (as in paid informal provision), which they now spend on buying care from professionals or institutions. As in normal market provision, the care recipient is a consumer who pulls the strings, professionals and institutions have to compete and different levels of price and quality may result. Nonetheless, since the budget comes from public funds, we can speak of a quasi-market at best.³⁵³ The personal budget is a voucher, which guarantees every dependent the resources necessary to buy care on the market. No reliance on one's private resources (endowments), characteristic of normal markets, is necessary.

³⁵² Here and below, I speak of “public funds” to denote both payments from funds that are filled by general taxes and payments from funds generated by insurance premiums (the latter may be privately owned, but functioning under public rules which set the entitlements for drawing from these funds).

³⁵³ Julian Le Grand and Will Bartlett, eds, *Quasi-Markets and Social Policy* (London: MacMillan, 1993).

A. Typology of forms of care provision	
Informal care	Formal care
1. unpaid informal provision	3. public provision
2. paid informal provision	4. market provision
	5. quasi-market provision
B. Three candidates for the commodification of care	
(i) monetization of informal provision (from 1 to 2)	
(ii) privatization of public care (from 3 to 5)	
(iii) formalization of care (from 1 or 2 to 3, 4 or 5)	

When is care commodified? Several transitions between the five forms of care provision are conceivable, where one form substitutes for another. Three of these transitions are candidates for the label “commodification of care.”

The first candidate is the *monetization of informal provision*, i.e. the transition from unpaid to paid informal care. This transition is currently occurring in many welfare states, where “cash for care” schemes are introduced.³⁵⁴ However, payment does *not* necessarily introduce a market for care. First, payments for informal care providers do not function as a normal salary, but rather as a compensation of expenses for doing the care work itself (such as transportation costs, medical costs, etc.) and for forgone earnings on the labor market. The aim of these schemes is to promote that people care for each other instead of relying on care professionals and institutions. Furthermore, due to the basis of caring in the previously existing personal relationship, market-like competition is absent. The care recipient does not contemplate to ask the caregiver to bid on the job that can be weighed against other offers. Finally, in many cases the caregiver would also care for the dependent if no compensation were forthcoming.³⁵⁵ Quite contrary to worries of monetization, then, paying informal care might well be the only way to sustain informal care in view of the demands it makes on caregivers’ time and energy. If such payment were not available, many dependents would have to resort to formal care of some kind. This is especially true for those who are willing to give care to dependents but who cannot depend (financially) on

³⁵⁴ For an empirical study comparing five countries’ schemes (Austria, France Italy, The Netherlands and the UK) along two axis (regulation/non-regulation and presence of the option of paying relatives), see Clare Ungerson, “Whose Empowerment and Independence? A Cross-National Perspective On ‘Cash for Care’ Schemes,” *Ageing & Society* 24 (2004).

³⁵⁵ In a recent study, 75% of caregivers reported they would continue to provide care even without payments. Clarie Ramakers and Mary Van den Wijngaart, *Persoonsgebonden budget en mantelzorg. Onderzoek naar de aard en omvang van de betaalde en onbetaalde mantelzorg* (Nijmegen: ITS, Radboud Universiteit Nijmegen, 2005), 62.

others to sustain these efforts. The wife who lives on her husbands' income can take care of her sick mother during a substantial part of the week, the divorced woman who wants to do the same needs public support. A second candidate is the *privatization of public care*, i.e. the substitution of quasi-market provision on the basis of public budgets for publicly delivered care.³⁵⁶ The cash for care schemes mentioned above can also be used to support this form of substitution, where these schemes do not support informal care but rather privatize publicly delivered care, i.e. care already shifted away from its former informal setting (for example, because it turned out to be medically impossible or burdensome to rely on relatives and informal networks). The aim of privatization often is to give the consumer-patient more freedom in making choices between competing caregivers, rather than having him rely on a publicly determined monopoly supplier. Privatization indeed represents a genuine commodification of care. Nonetheless, I will not focus on it in the remainder of this chapter, since the most interesting normative problems – as I see it – arise with our last candidate for the commodification of care, where care crosses over from the informal to the formal sector (see below). However, there is a connection between the two forms of substitution. For insofar as care is transferred from the informal to the formal compartment, given the current popularity of the

(quasi-)market over public provision *within* the formal compartment (privatization), this transfer in most cases is from informal to (quasi-)market provision.

The *formalization of care*, then, is the substitution of (quasi-)market-based care for informal care. Wherever care is formalized, people stop caring for each other in person and rely on care by professionals and institutions competing for their bids. As a consequence, preexisting personal relations are less likely to generate willingness or obligations to care for each other.³⁵⁷ The commodification of care in this sense has invited the harsh critique that the family, once the safe

³⁵⁶ Given the prevalence of quasi-market constructions, I leave out of consideration the possibility of privatizing care without providing public funds for care recipients (i.e. toward normal market provision).

³⁵⁷ There is also a limited tendency to the reverse process of *informalization* of care provision. In the Netherlands, the policy aim has been to stimulate the social integration and participation of (mainly disabled) dependents, by bringing them back into informal settings (this is called “*vermaatschappelijking van de zorg*,” socialization of care). This policy has both a physical and a social component. The aim is to make dependents live in small units in normal neighborhoods rather than in large-scale institutions, and to pressure family, friends and neighbors to assume a larger part of the burden of care. This policy has met with many obstacles. A recent report concludes that normal society remains physically and socially “inaccessible” to the disabled. H. Koops and M.H. Kwekkeboom, *Vermaatschappelijking in de zorg. Ervaringen en verwachtingen van aanbieders en gebruikers in vijf gemeenten* (Den Haag: Sociaal en Cultureel Planbureau, 2005), 59.

haven erected to compensate for the impersonality of capitalist societies, is now itself being threatened with dissolution. For example, Arlie Hochschild presents the indictment in the following terms:

The cold modern solution is to institutionalize all forms of human care. How much of a child's day or older person's life is to be spent in institutional care is a matter of degree, but the cold modern position presses for maximum hours and institutional control. Its premise is that what need for care we have can mostly be met outside the family. Don't rig it so that families can do more. Rig it so families can do less. An example is the Soviet model of 7:00 A.M. to 7:00 P.M. daycare, with alternative weeklong sleepover childcare available as well. The public debate reflecting this position often centers on what means of care is the most "practical, efficient, and rational," given the unquestioned realities of modern life.... The basic question for parents who put their children in daycare and middle-aged people who put elderly parents in senior citizens homes is: "How genuine or personal is institutional care?"³⁵⁸

The above passage articulates deep suspicion of the formalization of care. The basis of this suspicion is that formal care lacks the personal character that is required for care activities to be done with the right kind of motivation; the "caring motive" that I mentioned in the Introduction. In the following section, I will try to judge the merits of this complaint and evaluate the performance of formal (market-based) care in a systematic way.

7.2 A Local Normative Theory for Care

In deciding about the best mode(s) of care provision, we first have to formulate a local normative theory of care provision. I will do so by presenting and classifying the relevant normative demands for both the care recipient and the caregiver. Then I will discuss in how far market-based care can accommodate these demands.

For the care recipient, care is a prerequisite of developing and exercising his capacity for agency. As heavily dependent persons, care recipients depend on care for their physical survival, their emotional stability and their mental development. Being able to receive care therefore is a morally required capability or basic need.³⁵⁹ Moreover, this moral claim extends to a conversion of the

³⁵⁸ Arlie Russell Hochschild, *The Commercialization of Intimate Life. Notes from Home and Work* (Berkeley, California: University of California Press, 2003), 221-22.

³⁵⁹ Indeed, it is a commonplace in the literature on the subject. See Kittay, *Love's Labor. Essays on Women, Equality, and Dependency*, 55, locating the claim in the vulnerability of the dependent (following Robert Goodin). This way of grounding the claim is criticized and an improved basis – I think – is proposed by Engster: "We may all be said to have obligations to care for others not so much because others are vulnerable to us, but rather

capability to be cared for into actual functionings: care recipients can claim to have care actually delivered to them, not just the abstract opportunity to be taken care of. The moral claim to care on behalf of dependents normally goes uncontested. More problems arise in determining the appropriate level of care to be provided and the addressee of the obligation. As to the appropriate level, it is not possible for all dependent persons to become an agent in the full sense, even with extensive levels of care. Care for a young baby cannot make the baby speak, deliberate and choose like a full agent, just as care for a severely disabled individual will be unable to restore his capacities for agency. The basic need for care must therefore refer to a level of care that brings the person the capacities for agency that the person in question can reasonably be expected to attain. Second, this level varies with the demands that are placed on the agency of members of a society in different socio-historical contexts. In modern societies persons are required to make life choices which often require complex cognitive and emotional skills: orienting oneself in dynamic fields of opportunities, relationships, convictions, expectations, etc.; understanding the options available; being able to assess their likely consequences, etc. This raises the burdens on the diverse forms of care. Childcare, for example, will have to be adapted to start developing the required skills from a very young age. Finally, medical possibilities, economic resources and social convictions about care change over time, transforming our beliefs about what is due to dependent persons.³⁶⁰ All these factors co-determine the level of care that counts as fulfilling the basic need for care for persons in a given society.

The question of the addressee of the obligation to care necessitates a shift of our attention to the caregiver. The normative claim that she has is of a different kind. The capability to care for others is not a constituent part of being an agent, that is to say, one can be a person without practicing intensive and long-lasting care activities for dependents. Indeed, in many societies a life without these care activities has for long been proclaimed to be the normal kind of life for one of the main social roles, that of a male breadwinner. This ascription was complemented with the ascription of the caring activities to the other main role, that of the housewife who was supposed to have a “natural” proclivity for caring. These ascriptions taken together have had the effect of translating supposed “innate

because we are dependent (and have been or will be) upon others.” Engster, “Rethinking Care Theory: The Practice of Caring and the Obligation to Care,” 59.

³⁶⁰ There may be a universalist core in our evaluations of what good care should be like. For example, we may now have convictions about care on the basis of which we retrospectively condemn the living circumstances in pre-industrial asylums for mentally retarded patients (as vividly depicted in the movie *Amadeus*). Still, a historically sensitive understanding of these convictions remains necessary, given the heavily fluctuating insights in what kind of care is best.

needs to care” (or not to care) into social obligations that are hard to escape. This should make us think twice about ascribing a need for caregiving to any group of persons or even to persons as such. Persons (of whatever gender) do not *need* to care in order to be persons. Rather, they have a morally permissible – not a morally required – *capability to care*: they may or may not exercise their agency in caring for others. To take this specification of the capability as our starting point frees us from postulating doubtful biological essences of men and women. Moreover, it frees both caregiver and care recipient from being “condemned to each other.” Not only is the caregiver released from fixed obligations to care, also the care recipient is liberated from persons that may want to take care of him against his wishes. The latter cannot justifiably claim a “right to care” for the dependent, who should always be able to refuse to receive care from anyone he judges unfit (he may do so because the care giver is violent, aggressive and unpleasing, but also, for example, because he prefers care from an institution rather than being dependent on his family). Potential caregivers for their part have the legitimate opportunity to refuse converting their capability to care into actual functioning (see criterion 2b in Section 4.3).³⁶¹

The asymmetry between the care recipient’s needs and caregiver’s capabilities to care means that it is an open question whether or not the dependent’s care needs will be fulfilled and if so, by whom. If no person has an obligation to take upon herself care responsibilities, but if nonetheless dependents have a basic need for care, then the obligation falls upon society at large to create an institutional setting in which enough people will voluntarily choose to care for those in need of it (convert their capability to care into actual functioning) – either informally or as care professionals. What this institutional setting should be like is what we want to know. More specifically, we want to know whether and to what extent informal provision and market provision can and should deliver the care that is needed; this will make it possible to evaluate the desirability of the commodification of care that is at stake when informal provision is replaced by market provision.

There is little doubt that informal provision is a legitimate mode of care provision. This does not mean that we have to endorse the stronger claim sometimes made, that informal provision is the most preferred or most natural way to provide care.³⁶² The argument underlying this stronger claim is that the

³⁶¹ The case of care for children is special in this regard, since here parents normally have an obligation to care (which can be defeated where custody is taken from them), and the child cannot choose his own caregiver(s). This has important consequences for our argument: see Section 7.4 below.

³⁶² Unfortunately much of the literature on care work makes this assumption, often implicitly by assuming that care work will be done informally, and by paying no attention to formal care (thus begging one of the most fundamental questions of the organization of

origin of informal care in preexisting personal relations guarantees or at least makes more likely the presence of the caring motive characteristic of good care; and this to a greater degree than in formal care. This argument seems to me to be contentious. Much will depend on the contingent circumstances that influence the quality of informal or formal care. I will therefore restrict myself to the weaker claim that informal provision is a legitimate form of care provision. Later I will get back to the precise status of informal provision (Section 7.4). For the moment let us concentrate on the market, whose legitimacy with regard to care is far more often disputed. Two potential objections, allegedly emerging from special characteristics of the required kind of personal relationships, try to establish the market's inferiority. The first objection maintains that contract-based care cannot specify and enforce the personal relationship required for care. The second objection maintains that the caregiver's capability for caring is impaired where it is motivated by payment instead of an intrinsic concern for the care recipient.

First, market-based care (like all formal care) relies on personal relations formed after care is contracted for between a consumer and a provider. The contractual origin of market care, so the objection goes, prevents the creation of the kinds of personal relationships necessary to sustain good caring activities. The reason is that marketized care is based on contracts that specify the amount and kind of care that is to be delivered and – by implication – the amount and kind of care that the dependent can *not* be expected to receive. Contracts purport to make care into a good with transparent and well-specified boundaries. Contracts therefore fail to accommodate caring obligations, which by their very nature are unspecified and without clear boundaries:

Family work allows no eight-hour day; it offers no free weekends, no five-day week, no fixed holidays a year, no paid sick leave. What can be called a different rationality owes at least *prima facie* to the fact that family work is not really operationalizable, cannot be stipulated in a contract, for those who work in their own families. Living with one's own child can at times be extremely anarchic and can easily take up twenty-four hours in a day. In other words, no beginning or end can be structured into the working day. An infant, for instance, needs and expects care all day long. It is hard to imagine a contract stipulating working hours here – at least not for the caretaking parents, and we are only concerned here with them.³⁶³

care). For an explicit statement, see Engster: "We have a primary duty to care for our children, parents, spouses, partners, friends and other intimate relations because we usually are best suited to provide care for them and have a relational history with them that allows us to anticipate and understand their needs." Engster, "Rethinking Care Theory: The Practice of Caring and the Obligation to Care," 66.

³⁶³ Beate RöSSLER, "Work, Recognition, Emancipation," in *Recognition and Power. Axel Honneth and the Tradition of Critical Social Theory*, eds Bert van den Brink and David Owen (Cambridge: Cambridge University Press, 2007), 141. This argument is brought forward in a slightly different context, that is, in a discussion about the appropriateness of

The problem with this objection based on the open-ended nature of care responsibilities is that the scepticism about the possibility of molding such responsibilities in contractual terms is based on an over-demanding view of contractual specification. Contracts require a specification of the time during which the contracted person or institution is responsible and of the kind of care to be provided. Of course, not every separate action can be foreseen and described in such a contract; in that sense the contract necessarily remains global. However, these kinds of global contracts are quite usual in many parts of economic life (especially for services). There is no reason why care would be different in this regard. Furthermore, the fact that care is also needed outside of the contracted hours does not argue against these kinds of contracts; for in these hours somebody else takes over responsibility for the dependent person. Moreover, nothing prevents one from concluding a more extensive contract for these hours. In principle, a child or elderly person can even be cared for in an institution 24 hours a day (as in orphan houses or elderly houses), where professional care givers – even if in shifts – make sure that care is provided around the clock.

The objection might be slightly reformulated; now to argue that any contract, because of its global nature, will be insufficiently attentive to the specific needs of care recipients. The impersonal rules governing contracts prevent caregivers from catering to the special demands of patients in the way that caregivers in an informal setting can.³⁶⁴ However, the conclusions of a recent study on care institutions for disabled persons point in the opposite direction. Markets make it possible for clients to differentiate in the care that they buy with the personalized budgets allocated to them. As a consequence, institutions do indeed differentiate between patients, depending on the care obligations contracted with each of them.³⁶⁵ Markets – at least in theory – are very well able to ensure that care is matched to specific needs of dependents. I add that markets can ensure this “in theory,” because there are practical difficulties of meeting these conditions. The trick for market provision of care is to make sure that medical need and market demand coincide sufficiently well, i.e. that patients get a personal budget that is

paying for family work (in the scheme offered in section 7.1, this is the question of paid informal provision, not market provision). However, the open-ended structure of care commitments is equally relevant to the possibility of having market-based care provision.

³⁶⁴ This objection is made by Iris Marion Young, "Recognition of Love's Labor. Considering Axel Honneth's Feminism," in *Recognition and Power. Axel Honneth and the Tradition of Critical Social Theory*, eds Bert van den Brink and David Owen (Cambridge: Cambridge University Press, 2007), 208.

³⁶⁵ Kor Grit and Antoinette de Bont, *Zorgaanbieders en de ethische aspecten van marktwerking. De praktijkopgave van het creëren van een passende zorgmarkt* (Rotterdam: Instituut voor Beleid en Management van de Gezondheidszorg, 2007), 49-50.

adequate for buying the care that fits their needs; that patients are sufficiently capable or assisted to purchase the care they need and to claim their contractual rights in cases of conflict. If the contractual nature of market provision points to a limited appropriateness for market-based care, it lies in the difficulties of organizing these practical conditions. Wherever it turns out to be impossible to create markets that fulfill these conditions, markets run the danger of failing to meet vital care needs of dependents. The second objection to market-based care is more radical. For even if contractual specifications of care obligations turn out to be possible, one may hold that the explicit nature of the exchanges based on these contracts corrupts what care should be about. "Real care" is motivated by genuine concern for the other and such concern by definition cannot be bought and sold. The required caring motive is incompatible with explicit "commensuration" of the performances of the caregiver (care) and the care recipient (payment for care). Let us call this the incommensurability objection. It holds that caring activities are corrupted when performances are commensurated on a common scale, that of money, i.e. when a monetary value is attached to their performance (see also Section 2.2). Commensuration is a social process: societies may grant or refuse commensurating certain goods with money.³⁶⁶ In cases where commensuration of goods is refused, goods are treated as *constitutively* incommensurable. The standard example is that of friendship and money: it is said to be constitutive for friendship that it is not to be commensurated with money. One cannot exchange a friend for money.³⁶⁷ Similarly some hold that care cannot be commensurated. It is an essential part of care that it is delivered out of a caring motive and this motive cannot be transferred from one person to another. Just as one cannot buy a friendship, one cannot buy care. If we buy and sell care services, the product is

³⁶⁶ Incommensurability is normally taken to be about the question whether the value of two ends, options for action, etc. can be measured on a common scale. This question is often treated as a deep philosophical question about the structure of value: when we choose one action over another, do we actually (have to) commensurate the value of the options in order to be able to make a choice? In treating commensurability as the social process of assigning a monetary value (price), it becomes clear that there is nothing in the goods themselves or in our choice process that forces commensurability or incommensurability upon us. See Wendy Nelson Espeland and Mitchell L. Stevens., "Commensuration as a Social Process," *Annual Review of Sociology* 24 (1998). The underlying philosophical position is that (in)commensurability is a construction of practical reason. We commensurate goods when it makes sense to do so, according to social norms that have to be justified and can be criticized. See Elizabeth Anderson, "Practical Reason and Incommensurable Goods," in *Incommensurability, Incomparability and Practical Reason*, ed. Ruth Chang (London: Harvard University Press, 1997).

³⁶⁷ Raz, *The Morality of Freedom*, 345ff. This position is criticized in Ruth Chang, "Against Constitutive Incommensurability of Buying and Selling Friends," *Nous* 35, no. 1 (2001). and Richard A. Epstein, "Are Values Incommensurable, or Is Utility the Ruler of the World?" *Utah Law Review*, no. 3 (1995).

not what it seems to be: what actually happens is that a non-caring service is being transacted.³⁶⁸

This set-up of an insurmountable dichotomy between care and market provision (or indeed all formal forms of provision, as they rely on payments being made) is unhelpful. For friendship a distinction can be made between a direct exchange of friendship for money on the one hand (“Here you are. My friendship with Anthony. That’ll be 30 dollars.”), and the fact that people make indirect trade-offs between friendships and money, as when they accept a job offer that will allow them less time to spend with friends. The inappropriateness of direct exchange does not entail that options are incomparable and choices impossible to make. Rather it means that we make those comparisons and choices in a different way; by refining our interpretation of the demands that we face in the context of different relationships.³⁶⁹ Similarly, for care there is no direct exchange of the caring motive for cash. A nurse is not supposed to say to an elderly patient: “pay me an extra 50 dollars and I’ll care for you more.” On the other hand, caring institutions will have to choose between hiring cheap and badly trained personnel or more expensive and well-qualified personnel; or between prescribing brief or extended periods of time for a nurse to spend per patient. Indirect trade-offs between care and money, wherever they are necessary, will and can be made.

This response could move the defender of care incommensurability to another argument. He might claim that indirect trade-offs in the case of care are themselves inappropriate. In the friendship example the person finds himself in a situation in which a job offer and time for friendship have to be weighed. Both being in the job market and having friendships are normal and justified courses of action; consequently, a conflict may arise. We might say: this is the structure of the world. In contrast, the example of the personnel policy of the care institution could be portrayed as an example in which such a trade-off should not arise in the

³⁶⁸ The arguments of most authors are ambiguous between the ontological impossibility of market-based care and its normative undesirability. See Kittay, *Love's Labor. Essays on Women, Equality, and Dependency*, 111 (on the “nonfungibility” of care work) and Kathleen Lynch, “Love Labour as a Distinct and Non-Commodifiable Form of Care Labour,” *The Sociological Review* (2007) (on the “constitutional impossibility” of commodifying primary care). There is an overlap between these objections to market-based care for dependents and the objection to market-based health care (medical care). For representative examples of the latter, see Edmund D. Pellegrino, “The Commodification of Medical and Health Care: The Moral Consequences of a Paradigm Shift from a Professional to a Market Ethic,” *Journal of Medicine and Philosophy* 24, no. 3 (1999); M. Cathleen Kaveny, “Commodifying the Polyvalent Good of Health care,” *Journal of Medicine and Philosophy* 24, no. 3 (1999); Annelies van Heijst, *Menslievende zorg. Een ethische kijk op professionaliteit* (Kampen: Klement, 2005) and Annemarie Mol, “Klant of zieke?” in *De logica van het zorgen. Actieve patiënten en de grenzen van het kiezen* (Amsterdam: Van Gennep, 2006).

³⁶⁹ Anderson, *Value in Ethics and Economics*, 62-63.

first place. The world should have been structured in such a way that care institutions do not exist at all – and all care would be done informally, outside of the corrupting influence of markets and monetary rewards. This argument tries to show that if the constitutive incommensurability of direct exchanges is socially constructed, so is the (non-)permissibility of indirect trade-offs. But this idea rests on the naïve view that there is a world available in which care is not traded off against other goods. Even if care is provided informally, it has to be traded off against all kinds of other goods, not the least against money, for the simple reason that care work consumes time and energy and requires that the caregiver give up other activities.³⁷⁰ If the provision of care out of caring motives is to imply the impermissibility of any trade-off with other goods, then care would be an unrealizable good.

This establishes, I take it, that there is no principled objection to paying for care. Payments for care do not necessarily corrupt the personal relationships and concomitant caring motives associated with good care. This transforms the issue into a more diffuse, empirical issue about whether payment tends to *crowd out* caring motives. The simple version of this hypothesis is that the payments usual on markets tend to crowd out the caring motives essential to personal relations of care (analogously to Richard Titmuss's thesis about the market crowding out altruism in blood donation).³⁷¹ This hypothesis may be used to explain why care work has traditionally been poorly paid: the reluctance to commodify care actually keeps wages low (the so-called "care penalty").³⁷² In this explanation, the great intrinsic reward for caring "compensates" for low wages – it provides the opportunity for signaling that one is not in it for the money (in a way mimicking informal care). That explanation has a very cynical edge, however, for its

³⁷⁰ Some may hold that this sacrifice itself is constitutive of "real care;" but that is a contentious argument: the care definition only demands the presence of a caring motive, and it is not self-evident that a sacrifice of other goods is necessary for one to have such a motive. The argument from sacrifice can also be politically used to convince people how noble care is and meanwhile pay them lower wages.

³⁷¹ Folbre and Weiskopf, "Did Father Know Best? Families, Markets, and the Supply of Caring Labor."

³⁷² This is only one of several possible explanations. England and Folbre note five causes for the care penalty: devaluation of care work because of a gender bias, low wages as a "compensation" for the intrinsic rewards of care work, inability to internalize all the public goods benefits of care (free ridership), voter unwillingness to provide the public sector with generous funding, and the belief that care would be demeaned by commodification. They remain uncertain about the size of the care penalty and the respective influences of each of the causes mentioned. See Paula England and Nancy Folbre, "The Cost of Caring," *Annals of the American Academy of Political and Social Science* (1999). For a distinction between neoclassical and institutionalist explanations, Nancy Folbre, "Holding Hands at Midnight: The Paradox of Caring Labor," *Feminist Economics* 1, no. 1 (1995).

practical implication is that paying lower wages will result in care of higher quality. According to Julie Nelson,

the belief that being interested in money signals “greediness” may also reflect, in some cases, a strong gender and class bias. The notion that anyone could live somehow above the financial struggles of this world may be a vestige of the image of the white, middle-class femininity idealized in the Victorian “angel in the house.” Squeamishness about money is a luxury only affordable by those who can assume that someone else will take care of them. The rest of the world knows all too well that gaining access to money is a necessity.³⁷³

A more complex hypothesis has been developed, stating that payment may actually crowd-in care at lower levels of payment and only crowd-out care at higher levels of payment. At low levels, payment makes people feel socially rewarded and recognized so that they tend to increase their supply of care with increases in payment, while at higher levels of payment the opposite happens and payment crowds out intrinsic motivation and supply of care.³⁷⁴ There is empirical support for this more complicated hypothesis. As I described in the previous section, the use of payment for informal provision does not undermine the willingness to provide care informally. Payment as such does not seem to be the problem. A study of home health care (i.e. formal care delivered by professionals) confirms this. Caregivers devise strategies to pretend that money does not play a role in the relationship with their clients. In addition, they regularly perform tasks that remain unpaid.³⁷⁵ The real problem for many caregivers, according to this study, is not the introduction of money in caring relations. Rather, it is the bureaucratization of care that comes with the political and managerial control of care. Most forms of formal care are paid for by third parties, who are not a party to the primary care relationship (either investors in market-based care companies or government agencies controlling public funds). These third parties press for minimization of costs, either to increase profits and please shareholders or to minimize public spending and please tax payers. This puts a constant pressure on

³⁷³ Julie A. Nelson, "Of Markets and Martyrs: Is it Ok to Pay Well for Care?" *Feminist Economics* 5, no. 3 (1999): 49. Such an interpretation is reinforced by the fact that in many other professions intrinsic reward is not penalized at all. As England and Folbre state: "But every job disproportionately attracts people who find the job requirements an amenity. For example, intellectually demanding work attracts those who enjoy using their mind, yet cognitive requirements have a positive, not negative, return." England and Folbre, "The Cost of Caring," 44.

³⁷⁴ Julian Le Grand, *Motivation, Agency and Public Policy. Of Knights and Knaves, Pawns and Queens* (Oxford: Oxford University Press, 2003), 51-55.

³⁷⁵ Deborah Stone, "For Love nor Money. The Commodification of Care," in *Rethinking Commodification. Cases and Readings in Law and Culture*, eds Martha M. Ertman and Joan C. Williams (New York: New York University Press, 2005).

primary care relations; these need to be made “more efficient,” by obeying standardized procedures and minimizing expenditure of time and energy per patient.³⁷⁶ This suggests that the real issue is not so much on the supply side (caregivers’ motives and payment) but on the demand side. Care suffers from underdemand – and this explains both why care is poorly paid and why the expression of caring motives in care work is stifled. Underdemand is the consequence of a lack of real power on the part of care recipients, given the control of third parties over budgets.³⁷⁷ If the issue of payment presents a limit to formalized, marketized care, then, this is due to the practical inability or unwillingness of these third parties to give care recipients effective control and adequate budgets for care. A practical condition for having legitimate care provision through the market is that it solves this deficiency, wherever it arises.

In conclusion, neither of the two objections to market-based care succeeds. The contractual nature of market-based care provides no principled problem to the open-ended structure of care, nor do payments necessarily prevent the required caring motives from arising. As I argued, the practical conditions under which market care is delivered are crucial. Both market provision and informal provision are legitimate in their own way. When care is provided informally, care is sustained by an intrinsic interest of persons in each other (as in friendships), a biological bond (family or relatives), a “community of fate” (as in neighborhoods or voluntary associations), etc. These care activities express and reinforce the different kinds of previously existing relationships. The market, because of its contractual basis, cannot perform a similar function. In the market new care relations are forged only at the moment of and for the sake of care activities themselves (see Section 2.4 on the impersonality of the market). Nonetheless, in providing an alternative for care on the basis of previously existing relations (when these are absent) or even an escape from them (when these are unwanted), the market has its own useful function in the institutional landscape of care. This amounts to saying that an institutional pluralism is the best arrangement for care: informal and market-based care should exist side by side.³⁷⁸

As for many other goods, an institutional pluralism for care can prove to be an uneasy alliance in which protagonists of each mode of provision try to assert the superiority of their preferred mode of provision, e.g. by changing cultural and legal norms that govern care relations. We still have to establish what the relation *between* informal and market provision *within* the setting of institutional

³⁷⁶ Ibid. 282-86.

³⁷⁷ Nelson, "Of Markets and Martyrs: Is it Ok to Pay Well for Care?" 56.

³⁷⁸ Note that this is one example where the alternative institutional strategy of “incomplete commodification” cannot do justice to the distinct process value of both modes of provision for caring; see Sections 3.1 and 3.2).

pluralism should be. The remainder of this chapter will be devoted to that question. To answer it the internal perspective that we have taken so far is insufficient. We do not only need to establish the legitimate normative demands of caregiver and care recipient upon the practice. We also need to establish the external demands by the wider social context upon the care practice. What is the place of care amidst other social practices? What kinds of demands do these other practices put upon care?

7.3 Work as the Guardian of the Caregiver's Emancipation

The single most important external factor influencing the opportunities to engage in caring activities is the extent to which people participate in formal employment through the labor market. For convenience sake, I will refer to this form of participation as “work.”³⁷⁹ The fact that those who have done and still do the bulk of caring, women, engage in work to an increasing extent has given rise to the problem of the “work–care balance.”³⁸⁰ In this section I will first qualify this external influence in terms of capabilities and then discuss the three models Nancy Fraser has sketched to deal with the problem that working commitments raise for the organization of care.

As an addition to the local normative theory for care developed in the previous section, we should recognize the importance of the capability to engage in work. It is to be classified as a morally required capability. This claim should be understood – as all the other claims about the status of capabilities – in a contextual manner. In present-day modern societies it is a fact of life that many kinds of human activities can only be realized to a meaningful extent in work. Put bluntly, for many activities the corresponding hobby simply is not an alternative that is comparable in worth – it lacks the degree of organization, the level of skill, opportunities for social esteem, etc. This role of work in giving access to these activities is not a universal and timeless truth, but its current predominance requires giving each person the capability of engaging in work. In addition, the

³⁷⁹ As should be clear from the discussion so far, I consider caring also as work. In this section I bow to common usage and use the term “work” to refer to having a job that competes with informal care aspirations and obligations.

³⁸⁰ For a well-balanced empirical study of the problems in combining work and family obligations in the US, see Jerry A. Jacobs and Kathleen Gerson, *The Time Divide. Work, Family, and Gender Inequality* (Cambridge, Massachusetts: Harvard University Press, 2004). For an analysis from the perspective of comparative welfare state analysis, see Margarita León, “Welfare State Regimes and the Social Organization of Labour: Childcare Arrangements and the Work/Family Balance Dilemma,” *The Sociological Review* 53, no. 2 (2005).

financial independence that may be gained through work also counts in favor of making this capability a moral requirement. It is hard if not impossible to have equal standing as a person in a society if one belongs to a group that is systematically excluded (through formal laws or informal, social norms or both) from labor market participation and the financial independence that it brings. This kind of equal standing has proven to be especially problematic for women. Women's emancipation involves giving women the capacity to act upon their choices and given the centrality of work, they cannot have this capacity without having the capability to work. Therefore this capability should be available to everyone, not just to the male half of the population. The normative claim is *not*, of course, that the conversion of this capability into actual functionings is required. Men and women alike may choose not to work if they want to (and can afford to).³⁸¹ There is no legitimate dictate that people should be forced to cooperate to ensure maximum labor market participation throughout the population.

As a consequence, there are now *two* capabilities for potential caregivers that play a role in organizing care, not just one: the capability to work and the capability to care. Our question now becomes what the relation between these two should be. To answer that question, in the remainder of this section I will present and discuss Nancy Fraser's thorough normative investigation of the relations between "work" and "care" in the current "postindustrial welfare state." She outlines three models to restructure the relations between work and care in the face of the decline of the male breadwinner model, in which families divided work and care responsibilities along gender lines.³⁸² The first model she calls the "universal breadwinner model." Its aim is "to enable women to support themselves and their families through their own wage earning," by creating "full-time, high paying, permanent jobs" for them. Under this model, care would be "shifted from the family to the market and the state, where it would be performed by employees for pay."³⁸³ The universal breadwinner model requires that care be

³⁸¹ The price paid for this focus on combining work and care is that I will be unable to discuss the very important issue of those unable to work; that is, whether parents (mainly mothers) with childcare responsibilities should be able to receive welfare support from the state and be exempted from work obligations. See Elizabeth Anderson, "Welfare, Work Requirements and Dependant Care," *Journal of Applied Philosophy* 21, no. 3 (2004). and Nancy Folbre, *The Invisible Heart. Economics and Family Values* (New York: The New Press, 2001), 83-108.

³⁸² Fraser's model is applied to evaluate child care policies in France and the UK by Diane Perrons, "Care, Paid Work, and Leisure: Rounding the Triangle," *Feminist Economics* 6, no. 1 (2000).

³⁸³ Nancy Fraser, "After the Family Wage: Gender Equity and the Welfare State," *Political Theory* 22, no. 4 (1994): 601-02. For an outline of similar models with some small

commodified to a large extent. The second model is the “caregiver parity model,” which aims “to enable women with significant domestic responsibilities to support themselves and their families, either through care work alone or through care work plus part-time employment.”³⁸⁴ The main institutional innovations to implement this model, according to Fraser, are a system of caregiver allowances to compensate women for care activities plus workplace reform which guarantees opportunities for part-time work, flexible working hours, parental leave, etc. As a consequence, the bulk of care work will remain in the household, instead of being outsourced to the market or the state.

Fraser uses a complex set of seven criteria to evaluate both models. In the end, she concludes that neither of them satisfies gender equity. The universal breadwinner model is faulted for universalizing the male norm of paid work, while only valuing female work (that is, care work!) instrumentally: “it is what must be sloughed off to become a breadwinner. It is not itself accorded social value.”³⁸⁵ Also, the imposition of this norm will still work out unfairly to women insofar as the commodification of care work can never be complete. It gives rise to new coordination tasks, which will mainly befall on women: their “second shift.” The caregiver parity model values care by financially supporting it. However, it will institute a labor market segregated into full-time career jobs and part-time flexible jobs (the “mommy track”). As a consequence, care giving ‘remains associated with femininity. Breadwinning likewise remains associated with masculinity. Given those traditional gender associations, plus the economic differential between the two life styles, care giving is unlikely to attain true parity with breadwinning.’³⁸⁶ In two different ways, then, the two models fail to achieve gender equity *and* equal status for care work compared to paid work. Fraser summarizes her findings as follows:

Although both are good at preventing women’s poverty and exploitation, both are only fair at redressing inequality of respect: Universal breadwinner holds women to the same standard as men while constructing arrangements that prevent them from meeting it fully; caregiver parity, in contrast, sets up a double standard to accommodate gender difference while institutionalizing policies that fail to assure equivalent respect for feminine activities and life patterns.... Neither model, however, promotes women’s full participation on a par with men in politics and civil society. And neither values female-associated practices enough to ask men to do them, too; neither asks men to change.³⁸⁷

variations, see Jane Lewis, “The Decline of the Male Breadwinner Model: Implications for Work and Care,” *Social Politics* (2001), 157.

³⁸⁴ Fraser, “After the Family Wage: Gender Equity and the Welfare State,” 606.

³⁸⁵ *Ibid.* 605.

³⁸⁶ *Ibid.* 609.

³⁸⁷ *Ibid.* 610. Of course, the choice between a feminist ideal of competing on male terms versus an equally feminist ideal of valuing difference is long known to be a headache for

The solution, then, according to Fraser, would be to develop a third model in which gender itself is deconstructed, so that both work and care activities would be associated with masculinity and femininity to an equal extent. She admits this is utopian under current circumstances, but nonetheless provides a rough outline of what this model of deconstructed gender would mean for the practice of the welfare state:

Unlike caregiver parity, its employment sector would not be divided into two different tracks; all jobs would assume workers who are caregivers, too; all would have a shorter work week than full-time jobs have now; and all would have employment-enabling services. Unlike universal breadwinner, however, employees would not be assumed to shift all care work to social services. Some informal care work would be publicly supported and integrated on a par with paid work in a single social-insurance system. Some would be performed in households by relatives and friends, but such households would not necessarily be heterosexual nuclear families. Other supported care work would be located outside of households altogether – in civil society. In state-funded but locally organized institutions, childless adults, older people, and others without kin-based responsibilities would join parents and others in democratic, self-managed care work activities.³⁸⁸

Fraser does not give her preferred model a name; I will refer to it as the “universal caregiver model.” Before assessing the choice situation that her three models provide us with we have to make one important modification.

This modification concerns the caregiver parity model. Here Fraser suggests that taking the route of paying for care means that women will keep on doing so, be it with better remuneration. However, there are at least three possible payment schemes, with very different results.³⁸⁹ The first kind of payment is where the caregiver is compensated for buying care services in the market (cf. the quasi-market mode of provision). This fits the universal breadwinner model. A second kind of payment scheme is where the caregiver is compensated for providing care herself (cf. paid informal provision). This is what Fraser has in mind; it supports the caregiver parity model. In a third kind of payment scheme a budget is allocated to the caregiver who can choose herself among both of these options. This leads to an unknown outcome, depending on how people will choose to use the budget. It could lead to a realization of any of the three models. If people

the feminist movement. See Kittay on the “dilemma of difference.” Kittay, *Love's Labor. Essays on Women, Equality, and Dependency*, 9-11. For a clarifying discussion of the policy implication of these two stances, see Folbre, “‘Holding Hands at Midnight:’ The Paradox of Caring Labor,” 83-87.

³⁸⁸ Fraser, “After the Family Wage: Gender Equity and the Welfare State,” 613.

³⁸⁹ Adapted from Angelika Krebs, *Arbeit und Liebe. Die Philosophischen Grundlagen sozialer Gerechtigkeit* (Frankfurt am Main: Suhrkamp, 2002), 75-77.

would use their budget to buy care services to replace their personal care activities, it would lead to universal breadwinner. If they would use it to compensate women for care work it would lead to caregiver parity. If they would use it to realize equal care and work combinations for both men and women, it would lead to the universal caregiver model. In addition, this kind of payment scheme could lead to a heterogeneous situation where different parts of the population would go in different directions, not realizing one particular model at all but rather a combination of all of them.

Angelika Krebs has explicitly proposed this third option (let us call it the “caregiver choice model”) as superior to Fraser’s utopian universal caregiver model. She raises two objections to Fraser’s model, both of which are pertinent to our subject. The first is that simply rearranging work time on the assumption that every wage-earner will also have care responsibilities does not necessarily cause men to assume care responsibilities, especially not in the absence of additional social pressure. Krebs’s second objection is even more important. She appeals to the fundamental value of choice to argue that people should decide for themselves whether or not they want to assume care responsibilities or not.³⁹⁰ Let us consider each of these objections in turn.

I think that Fraser can very well admit that the first objection provides an important practical difficulty for her preferred model. The realization of the model requires the very shifts in cultural norms about caring and gender roles that its policy measures want to facilitate in bringing about.³⁹¹ This circular structure is part of what makes the model so utopian. It does not however provide a decisive argument against the model. For this kind of circular structure is characteristic of many other cases where shifts in public policy and in cultural norms mutually presuppose each other (think of laws promoting the interests of

³⁹⁰ “So ökonomisiert das Halbtags-Modell zu wenig. Denn ohne gesellschaftlichen Druck, allein durch Reduktion der formellen Arbeitszeit, werden Familientätigkeiten sicher nicht Teil der Biographie eines jeden Gesellschaftsmitgliedes werden.... Gegen gesellschaftlichen Druck zur Überwindung der geschlechtlichen Arbeitsteilung hätten wir auch nichts einzuwenden. Aber gegen das Lebensformdiktat der *Familiendienst*-Variante haben wir sehr wohl etwas einzuwenden. Es muss jedem Menschen selbst überlassen sein, ob er Fortpflanzungs- und Pflegearbeit leisten will oder nicht. Solange familiäre Kinderaufzucht und Altenpflege damit sinnvollerweise gesellschaftlich arbeitsteilig organisiert sind, gehören sie in den ökonomischen Raum, und auch der Verweis auf die Selbstverwirklichungspotentiale dieser Tätigkeiten läuft ins Leere.“ Ibid. 70. Eva Kittay in the end also opts for this route, and hopes that care can be degendered by paying for it, in combination with side-policies such as “training young boys, as well as young girls, in caring skills.” and “restructuring the work place.” Eva Feder Kittay, “A Feminist Public Ethic of Care Meets the New Communitarian Family Policy,” *Ethics* 111, no. 523-547 (2001): 544-45.

³⁹¹ Kevin Olson, *Reflexive Democracy. Political Equality and the Welfare State* (Cambridge, Massachusetts: The MIT Press, 2006), 74.

the disabled, of non-smokers, of animals, etc.; all presupposing the sensitivity for these interests among the electorate that they seek to promote). In practice such circularity is overcome by incremental steps forward in both norms and policy that mutually support each other. Moreover, Krebs's own preferred solution suffers from the same weakness. If cultural norms remain static, giving families a choice in spending budgets does not promote further gender equality in caring. On the contrary, those budgets will be considered compensation for women's care burdens, which remain unaltered. It can well be argued that Fraser's model, if anything, performs better on this problem. Rearranging working time will at least make time for men to assume care responsibilities, thus providing women with a strong claim against men, who can no longer excuse themselves by pointing at the burden of their work responsibilities. Krebs can only escape this conclusion by arguing that gender equality is less important than choice for parents. And this consequence is, as the saying goes, the bullet she bites.

For, with the second objection Krebs argues against those feminists who object to payments for care on the grounds that it supports current gender roles. She complains that these feminists act paternalistically and probably also counterproductively by enforcing their preferred choice upon the whole of society. Just as attaching a right to payment only to informal care would be paternalistic, so would attaching it only to the purchase of commercial care. Giving women a real choice between caring and working is just what is due, she maintains.³⁹² This dispute goes right to the heart of the issue. Those who want to defend the universal caregiver model can reply that any choice under current circumstances is not completely free either because social norms may prevail that favor using personal budgets for female care work rather than market-based care (leading to the caregiver parity model) or vice versa (leading to the universal breadwinner model). The pressure to conform to such norms may be hard to resist. Nevertheless, this response is insufficient to establish a preference for the universal caregiver model over the caregiver choice model. Krebs might reply that a formal choice is better than no choice. A separate argument is needed why the substantial outcome of both sexes engaging in care and work, without (completely) commodifying care responsibilities (i.e. the universal caregiver model) is required.

³⁹² Krebs, *Arbeit und Liebe. Die Philosophischen Grundlagen Sozialer Gerechtigkeit*, 89-90.

7.4 An Institutional Pluralism for Care

So far, the normative discussion of care provision has established two points. First, both informal and market provision are legitimate modes of provision for care. They each organize care in a distinctly valuable way. This makes the case for institutional pluralism (Section 7.2). Second, the capability to engage in work has been added to the discussion, which led to the problem of combining work and care responsibilities. Two main contending models have been considered which propose to deal with this balancing problem in a different way: supporting care financially, and redistributing care and work equally over the sexes (Section 7.3). Both models acknowledge that care is to be supported institutionally, but they do so in a very different way. Which model is to be preferred? In this section I will argue that this question must be answered differently according to the type of dependency at stake. For those care relations for which an obligation exists to act upon the preexisting personal relation between care receiver and caregiver, Fraser's model is to be preferred. For other care relations, Krebs's model is to be preferred.

Let us begin by reinstating the importance of the morally required capability of the care receiver. Basic needs for care on the part of care recipients are to be fulfilled. It is not at all self-evident that these needs will somehow be satisfied (see Section 2.5 on the strategy of non-satisfaction in general). Indeed, Arlie Hochschild argues that one "solution" to the care deficit created by the breakdown of traditionally gendered families, is that norms for care are shifted downwards, as when latchkey children are redefined as "children in self-care," or when elderly people in institutions are suggestively portrayed as "content on their own."³⁹³ This scenario is a likely outcome if the problem of combining care and work remains thoroughly privatized, that is, if it is treated as a problem that is created within families and should therefore also be resolved by those families.³⁹⁴ Furthermore, privatization of the problem leads to a situation where care needs will not only go unfulfilled, but also where many solve the dilemma by not having children to care for in the first place.³⁹⁵ The question, then, is how we

³⁹³ Hochschild, *The Commercialization of Intimate Life. Notes from Home and Work*, 219-20.

³⁹⁴ For an analysis of the care problem in terms of the privatization of modern risks, see Ulrich Beck, *Risk Society. Towards a New Modernity* (London: Sage, 1992), 116-17. The privatization point of view is sometimes defended with the argument that families that choose to have both men and women work choose to forgo the gains of specializing in household tasks that the classical role of housewife offers. See Joseph Heath, *The Efficient Society. Why Canada Is as Close to Utopia as It Gets* (Toronto, Ontario: Penguin, 2001), 246.

³⁹⁵ Given declining birthrates, this part of the scenario is already happening. In view of the fact that many Western societies are already ageing, a further decline in birth rates has

ensure a sufficient supply of care in face of the fact that when the costs of caring for individuals are sufficiently high they will try to evade caring responsibilities.

One could argue that commodifying care provides a perfectly feasible solution to realize this commitment. So why not bring care to the market to a nearly complete extent? It would enable care recipients to receive care and it would enable women to work on an equal footing with men. If the market is as legitimate as informal provision is (as I argued in Section 7.2), why not let it predominate care? Of course we would not have to prescribe such a solution; for in the kind of payment scheme that Krebs argues for, people are – at least formally – free to choose between both forms of care. But would there be any problem if, on the basis of such a scheme, people by and large prefer to marketize care instead of providing it informally? Here it seems insufficient to point to the distinct value of informal care in embedding care activities in pre-existing personal relationships. For on the one hand there is no reason to think that the establishment and continuation of personal relations are impossible without care. Many personal relations go on most of the time without one person being in a state of dependency and the other caring for him. On the other hand many care relations develop in a market setting without this necessarily leading to care of lesser quality.

A legitimate reason to impose a model that restricts the commodification of care responsibilities arises only in those cases where caregivers have an *obligation* to care for their dependents. In Section 7.2, we saw that the caregiver normally has the legitimate opportunity not to act upon her capability to care; she can refuse to take care of dependents. Here we encounter the possibility that the right to this refusal has to be declined for those cases where the care receiver's capability to be taken care of has to be interpreted as the capability to be taken care of *by some specific person* (since the latter is a morally required capability, the application of the priority rule overrides the caregivers' capability). The paramount example of this case is children, who have a claim that their parents take care of them.

Society expects – and needs – parents to provide their children with continuity of care, meaning the intensive, intimate care that human beings need to develop their intellectual, emotional, and moral capabilities. And society expects – and needs – parents to persist in their role for eighteen years, or longer if needed. A variety of

severe social consequences. As Nancy Folbre has argued (and many others as well), children are a public good. Folbre, *The Invisible Heart. Economics and Family Values*, 111.

social and legal institutions convey a common message: Do what it takes to give your children the continuing care that they need. Put simply: “Do not exit.”³⁹⁶

It is important to be clear about the basis and scope of this obligation. Its basis is the child’s interest in developing her capacity for agency, not the parents’ interest in having a relationship with the child. This interest is best protected if at least one adult provides her with what Anne Alstott calls “continuity of care.” This position does not require defending that the mother is better placed than the father to be this person. There is no commitment to naturalized gender roles. Neither does this position require defending that no additional caretakers can be involved, as they are in day care centers. The obligation is that parents have the main responsibility, not exclusive responsibility. Nor does this position require that parents are biological parents to the child. For example, they may also have been put in that role as foster parents. Finally, this position also does not require a denial of the fact that in exceptional cases it may be in the best interest of the child to be removed from her parents’ care giving efforts (or lack of them). All that is required is a parental obligation that ensures continuing care for the child.³⁹⁷ As far as I can see, there is no knockdown argument why such an obligation could not be extended to other forms of care, for example to care for elderly relatives (or even to care for those with whom one doesn’t have a biologically determined connection, like friends or neighbors). Nonetheless, the child’s case with its interest in having continuity of care is arguably the easiest one to make. In the end this differential judgment about childcare and other forms of care may betray a culturally variable, Western judgment on care relations; but that only proves once again the inescapable context-sensitiveness of the application of the capability theory.³⁹⁸

³⁹⁶ Anne Alstott, “What Does a Fair Society Owe Children – and Their Parents?” *Fordham Law Review* 72 (2004), 1942.

³⁹⁷ My argument here relies on the fact that as a general rule we may assume that parents are the addressees for this obligation because they are best placed to take care of their children. Some are sceptical that this general rule best captures the child’s interests. They are impressed by the force of the redistribution problem: if the well-being of children is crucial, why not redistribute them to those who can take care of them best, whomever that may be? If one takes this problem seriously, a switch from a child-centered argument to a parent-centered argument would be needed, showing the parent’s interests in having a relation with their children. One such argument is offered in Harry Brighouse and Adam Swift, “Parents’ Rights and the Value of the Family,” *Ethics* 117 (2006), 92-95. I think however that we can have more faith that as a rule parents will be the best caregivers for their children, and then allow exceptions and contemplate a removal from their parents when these have proven to harm or neglect their child’s well-being.

³⁹⁸ An empirical study on elderly care put the matter as follows: “Taking account of the views of elderly people and their families, it is clear that the assumption of a general preference for informal care is too simple a view. Particular family members may be irreplaceable in some ways – a visit from a voluntary visitor does not have the same

Whatever the exact circle of relations to which obligations to care extend, *if* there is such an obligation then at least part of the care activities in question should not be handed over to market-based care institutions. For it is impossible to take upon oneself the primary responsibility to care for the well-being of children (to stick with them), without actually doing the care-taking oneself, at least part of the time – otherwise no meaningful personal relation between parent and child will be established in the first place. Even if it is conceivable that parents remain primarily obliged to care for their children while practically delegating the task to others, at some point delegation prevents the caregiver from exercising her primary responsibility. Where exactly that point lies remains a source of debate. This parental obligation requires an institutional setting which makes it possible to fulfill it, while at the same time giving opportunities for the conversion of that other morally required capability into functioning – the capability to work. The conflict between these two capabilities (the child's capability to receive parental care and the parents' capability to work) cannot be resolved by discharging either one of them, since they are both morally required. Therefore a solution must be found which reconciles them as much as possible.

It is to this end that Fraser's universal caregiver model is superior to the caregiver choice model. In redistributing care for children and work responsibilities over both men and women, it accommodates the fulfillment of obligations for informal childcare and the opportunity to work on a gender-neutral basis. Insofar as a system of payments to caregivers would be able to reach the same substantial outcome, it would be an alternative. However, the fact that it requires people who voluntarily choose to fulfill care obligations to put themselves at a job disadvantage compared to others who choose to formalize their care obligations, or who have none, makes for the most important argument against it. In assuming that all workers are also caregivers, Fraser's model does make a choice that puts workers without care responsibilities at a disadvantage (because they have to restrain their work efforts; see below). However, this is the price to be paid for supporting those who do have care obligations. There is no

meaning as a visit from a daughter – but it is not easy to see why this argument about social contact necessarily extends to the performance of practical tasks." [i.e. to caring activities, R.C.] Hazel Qureshi, "Boundaries between Formal and Informal Care-Giving Work," in *Gender and Caring. Work and Welfare in Britain and Scandinavia*, ed. Claire Ungerson (London: Harvester Wheatsheaf, 1990), 68. Even though there often is a responsibility generated on the basis of family ties to ensure that care is being taken by someone (most often, some institution), the conviction that such care can be formalized is strong. Qureshi even notes that many elderly themselves prefer not to burden their children with extensive care obligations. Qureshi, "Boundaries between Formal and Informal Care-Giving Work," 67. However, in other types of societies and cultures there has been and still is strong obligation to care for the elderly in person, grounded in the conviction that it is a constitutive part of the elderly person's basic need for care.

middle ground – a policy that does not support caregivers implicitly supports those without caregiving obligations.

The flip side of this argument is that there are clear limits to the obligation of primary caregivers as well. For the care recipient (child) the reception of care exclusively by the primary caregiver (parent) is detrimental to her basic need of care. At some point receiving care by their parents prevents them from becoming acquainted with the wider society (other children, other adults).³⁹⁹ Children also have an interest in learning from others than their parents and experiencing a wider range of views on all kinds of matters.⁴⁰⁰ These limits suggest the appropriateness of a division of labor between primary caregivers obligated to deliver care informally, and formal forms of care to fill up the remaining need for care and give children a wider range of encounters while simultaneously giving parents opportunities to work.⁴⁰¹ It is this substantive division of labor between informal and formal care that should inform the institutionally pluralist setting that we are looking for in the context of childcare. What would it require in practice? Jerry Jacobs and Kathleen Gerson argue in their study on the *Time Divide* that three sets of policies are required. First, high quality childcare and after-school programs to ensure that caregivers can also work. Second, flexibility in work schemes combined with equal opportunity protection to those who choose to make use of such flexible schemes. These two sets of policies are not enough, however:

While individuals need more options and supports, such efforts need to be part of a larger, more integrated effort to restructure the choices and alternatives that form the context of choice. Individual choices put the onus on workers to use family-friendly policies, even when doing so can endanger one's job, career, and financial security. As long as the culture of the workplace and the message from bosses and supervisors

³⁹⁹ One may argue that there is no need for care beyond primary caregivers (such as parents) to be formalized if *others* in the informal setting take care. Indeed, Fraser argues that the part of childcare that parents cannot fulfill should be taken over by civil society at large. This calls for the reversal of the nuclear family and the return to village-like situations in which broader circles of persons take responsibility for children. While I have no principled problem with this in general (to the contrary), its realization seems very far from contemporary realities.

⁴⁰⁰ For elderly persons the limit lies where care by a family member at some point becomes impossible because medical needs require care by others who are more professionally apt to perform intensive forms of care.

⁴⁰¹ Folbre and Nelson argue that the part of care that is commodified is the time that parents would only have been "on-call" anyway, with their primary attention elsewhere. The part of care that is retained for informal provision is the more intensive time with their children. Nancy Folbre and Julie Nelson, "For Love or Money – or Both?" *Journal of Economic Perspectives* 14, no. 4 (2000): 128-29. There is an analogy between the formalization of care for such time and the formalization of security responsibilities formerly executed as part of non-security professions (see Section 5.3).

equate work commitment with overwork, workers face a “damned if you do and damned if you don’t” set of alternatives that exact considerable costs no matter what the choice. Those who take advantage of family-support policies must bear the costs at work, and many will understandably forgo such “opportunities” in favor of protecting their work and career prospects.⁴⁰²

Therefore, they propose that work time be regulated by mandating payment for overtime for professional and managerial workers, extending health care and other work related benefits to part-time workers, limiting mandatory overtime, and most radically, by proposing a general reduction in work time: a 35-hour workweek. Although I agree with them that this last set of policies is necessary to realize Fraser’s universal caregiver model, I will not try to defend it here.⁴⁰³ However, in the next chapter I will return to the issue of work time, arguing for the same position for completely different reasons.

Finally, a separate practical condition for the stability of this form of institutional pluralism is that formal and informal caregivers concerned with the same care recipients must cooperate wherever cooperation is necessary to provide continuity of care. They will have to exchange information about the dependent’s physical and mental condition, medications and treatments he should receive, etc. (this condition is similar to the condition of cooperation for public police and commercial security providers that we encountered before in Section 5.4).

To conclude this chapter let us now turn briefly to the other category of care activities, where no obligation for care is established. I stated that institutional pluralism should take the form of leaving a choice between informal and formal care. To that end one might use Krebs’s caregiver choice model, although in many situations the more logical solution will be not to leave the choice to the person wanting to discharge care responsibility (e.g. the child toward her elderly parent) but to the care recipient himself. However these budgets are allocated, one may object to this conclusion by saying that care for these dependents may also give rise to a conflict between care and work. For those situations the gender problem will not be solved if women disproportionately engage in these kinds of care because of prevailing social norms. Given the burden of care, their capability to work will not be completely realized, that is, they will still be more or less heavily disadvantaged in the labor market, having to choose part-time or less-fulfilling jobs.

⁴⁰² Jacobs and Gerson, *The Time Divide. Work, Family, and Gender Inequality*, 169-202.

⁴⁰³ In the Dutch context I have argued for the establishment of a nationwide 30-hour workweek. See Rutger Claassen, "Kindertijdwerk. Een pleidooi voor de 30-urige werkweek [Kidtime work. A Plea for the 30-Hour Workweek]," *Socialisme & Democratie* 64, no. 1/2 (2007). There I also discuss economic objections (about allegedly missed productivity growth and GDP growth).

My response to this objection consists of three parts. First and most fundamentally, since for these forms of care no strict obligation can be established, society cannot be expected to do more than to support financially those who choose to do it, by compensating their expenses and forgone earnings (see Section 7.1 on paid informal care). In mitigation of the (perhaps for some) harsh consequences of this form of institutional pluralism, two counterbalancing considerations must be taken into account. Second, the conflict between care and work for these other forms of care should be somewhat downplayed. Childcare, given its long-lasting and comprehensive character, is far less easy to combine with work than care activities for others (and to the extent that these others require very intensive care, such as heavily disabled persons, a non-institutional solution will be unfeasible anyhow). Third, we can say that the quite radical social rearrangement of work that the universal caregiver model requires, although primarily directed at solving the work–care problem with respect to childcare, would also benefit those needing time to care for non-child dependents. A general reduction of working time can be used to engage in a host of other activities: care for other dependents is one example, but one might also think of forms of care and concern for others that fall outside of the strict definition of care that I have been using in this chapter, but that nonetheless contribute to the creation, sustenance and flourishing of all kinds of personal relations.

PART III FINAL CONSIDERATIONS

CONCLUSION

It is time now to bring the first and the second part of this study together. What can be learned from the applied chapters with regard to the usefulness of the main elements of the theoretical framework? I want to present seven conclusions, organized around two themes: the capability theory (presented in Chapter 4) and various parts of the institutional analysis (presented in Chapter 3).

1. The Capability Theory for Practices

In Section 4.3 I formulated three criteria for guiding the formulation of a local normative theory for practices, pertaining to agency protection, agency development and agency exercise. At the end of Section 4.4, I explained that adhering to these criteria required three tasks: selecting the relevant capabilities, classifying them in moral terms (categories of morally permissible, morally required and immoral capabilities) and resolving conflicts between them. Four conclusions on the various parts of this capability framework can be drawn from comparing the three practices of security, media and care.

A first conclusion is that *the agency protection criterion played a minor role* in the three practices I studied. These practices, as all practices in general, are subject to the requirement that they refrain from promoting immoral capabilities (see a-clause of the criterion in Section 4.3). This general demand does not necessitate explicit incorporation in the local normative theory of a practice; it is merely a test that these theories have to pass: they may not propose to realize ends that would violate this demand. In contrast, the second part of the agency protection criterion requires explicit precautionary measures in the event that the conversion of an immoral capability into actual functionings can reasonably be foreseen (the b-clause). This was the case for only one of our three practices. With respect to the provision of security, the conversion of the capability to exercise violence into actual violent acts is reasonably foreseeable, unless the practice is organized to counter this tendency. There is the threat of violence exercised against prospective consumers of security services and of violence exercised in the business of protection itself, exceeding the level necessary and proportional to guarantee adequate protection. Since this threat proved to be most urgent in the case of market provision, the agency protection criterion played an

important part in rejecting a key role for market-based security provision (see Section 5.2). For media and care no immoral capabilities were identified. This does not necessarily mean that there are no violations of agency to be foreseen in these practices; it only means that none were identified which could have made a difference to the question of how to organize these practices with regard to their economic base (the choice between modes of provision).

A second conclusion is that with regard to the application of the other two criteria – agency development and agency exercise – the dividing line between morally required and morally permissible capabilities can be drawn both within and between capabilities. The first form is where the same capability is partly classified as morally required and partly as morally permissible. This was the case for the capability to be secure, where the dividing line was drawn by defining a minimum level of protection for the relevant security community, which represents a basic need for each member of the community. Below that level the capability is morally required, while above that level it is merely permissible. Even though I did not identify a similar split between a morally required and a morally permissible part as such for the relevant media and care capabilities, one can argue that it is characteristic for all morally required capabilities. For given the fact that a threshold must always be set to define what is minimally necessary to develop person's capacity for agency, there will always be space for the realization of "luxury" levels of the capability, referring to whatever exceeds the mentioned threshold (and there will always be the danger that I noted explicitly in the case of security's conditions of stability, i.e. of luxury provision eroding the social basis of basic provision).

The other form is where the morally required and the morally permissible are assigned to two separate capabilities. This was the case for the media, where the capability to acquire democratic content was classified as morally required and the capability to acquire entertaining content was classified as morally permissible. For care provision the analysis also took this second form, with a morally required capability to be cared for (for care receivers) on the one hand and a morally permissible capability to care (for caregivers) on the other hand. Note that for care provision the relevant capabilities were assigned to agents at both sides of provision: the producer/caregiver and the consumer/care receiver. This contrasts with security and media provision where, as we saw, the relevant capabilities only related to agents at the consuming side. However, the restriction for these practices to the consumers' interests in provision should not be interpreted as suggesting that no capabilities are at stake for the producers within these practices (police officers, journalists). Here too, this restriction was made for methodological purposes of not complicating the analysis unnecessarily. In the interest of informational parsimony, only those capabilities should be selected

that will co-determine the moral conclusions. Arguably, for media and security, including these capabilities would not have made a difference in the analysis.

A third conclusion is that in all three practices *the conversion of capabilities into actual functionings* turned out to be important at some stage of the argument. The “default position” in much of the literature on the capability theory is that capabilities should be normatively important, not functionings. I have argued that – at least for criteria guiding the formulation of local normative theories for practices – the conversion into functionings should also be part of a practice’s ends and subject to important conditions. The three criteria introduced in Section 4.3 therefore each of them contained an a-clause about capabilities and a b-clause about their conversion into functionings. In the three practices studied in Part II this need for considering functionings was confirmed. For two of these practices, a tension between the practice’s ends and a person’s wish to refuse conversion appeared to be important. In the case of the media the central normative claim – about the capability to acquire democratic content – was initially formulated as a claim about realizing this capability. However, in the course of the argument it was made clear that the contribution that this capability has to make to the well-functioning of the public sphere requires a sufficiently high level of conversion into functionings as well. Enough people have to watch democratically oriented programs for the public sphere not to lose its teeth vis-à-vis the political bodies it is to hold in check. Nonetheless, the refusal of persons to watch these programs still has to be respected and direct coercion to make them watch is not to be applied. The final solution does not remove this tension: the respect for this refusal and the moral requirement to continue supplying democratic programs and trying hard to stimulate sufficient levels of demand for them will have to exist side by side.

For care provision a similar tension between capabilities and functionings arises. I argued that the capability to care is merely morally permissible; this means that potential caregivers have the option to exit; the care practice can only convert this capability into functioning for voluntarily joining participants in the practice (see b-clause of agency exercise criterion in Section 4.3). However, for one specific class of caregivers – parents – this conclusion has to be overridden in favor of the obligation to care; not because giving care to children is morally required for parents (i.e. necessary for them to become agents), but because children have a specific claim to receive care from their parents. As a consequence, parents have no claim to refuse the conversion of their caregiving capability into functioning. They lack this right, not because they are not full agents (as application of the b-clause of the agency development criterion would suggest), but because the children’s capability is to be prioritized over the parents’ capability (given the priority rule formulated in Section 4.4). Finally, for

security provision the distinction of capability and functioning did not generate the same problem. No tension between the capability to be secure and its conversion into functionings arises because normally people do not refuse its conversion into functioning, that is, to benefit from public policing efforts.

A fourth conclusion is that all of our applied discussions stress the *interdependence of practices*. In Section 4.1, when discussing MacIntyre's notion of practices, I emphasized the importance in moral theory of not merely relying on a description of internal goods, but being open to the possibility that a practice also should serve social ends. Consequently, the more open category of "final ends" was proposed, whose content is to be determined by a separate moral theory (Section 4.1). The importance of this point is confirmed by the fact that in each of the three practices important normative demands came from outside of the practice at hand. Security provision does not only aim at making citizens secure; which surely is an "internal good." In the arguments about community and justice it was shown that security provision also has to contribute to the establishment of a collective agency that enables citizens to engage in other forms of collective action, i.e. the state. This interest arguably is external to security provision itself. Similarly, the media were shown to have an important function in supporting another practice, i.e. the public sphere of debate necessary for democracy. This end is also external to the media itself; it cannot be described with reference to the media alone. Finally, care provision has to be organized not only to guarantee the caring needs of dependents, but also the need for caregivers to be able to engage in another practice, i.e. work on the labor market. Here too, an external demand proved to be present which puts an additional burden upon the practice, that is, over and above the internal good of providing caring activities itself. Overall, we should remain sensitive to the interrelations between practices; they are anything but closed and self-contained systems of activity.

2. Institutional Analysis

The institutional analysis is about the means chosen to realize the required capabilities and functionings and the criteria for choosing between these means. In Chapters 2 and 3, these means were first identified as ideal-type modes of provision and then as institutional strategies in which these ideal types figure. Also, three criteria for institutional choice were proposed. What can the results for the practices of security, media and care teach us about these institutional tools?

Our fifth conclusion is that *both the criteria of process value and of outcome value proved indispensable*. In Section 3.2 I have proposed to compare alternative

institutional arrangements as to the outcome value and as to the process value they are able to generate (for the third criterion, stability, see below, the seventh conclusion). The argument there focused on defending that the process value of engaging in a specific mode of provision is a separate potential source of value, to be distinguished from the – traditionally uncontested – emphasis on outcome value. In the case studies, I have not explicitly referred to these criteria, but in retrospect it is not difficult to discern their influence. The media is the only practice for which outcome value proved to be sufficient to draw the conclusions. The modes of provision – both market and non-market – were assessed solely with regard to their ability to provide certain types of media content; i.e. democratic and entertaining content. There was no process-type argument for having professional provision for democratic content; rather, this mode of provision turned out to be a necessary means of filling the gaps that the market might leave open in two well-specified circumstances of lacking demand for such content (see end of Section 6.2).

For the other two practices, in contrast, both process value and outcome value appeared vital. For security, both the prevention of the immoral capability of exercising violence and the realization of the capability to be secure required a focus on outcome value, in judging to what extent markets are capable of actually rendering people free from threats to life and property. When a positive argument for public provision was needed, process value considerations came in. The main arguments presented in favor of public provision (the arguments from community and from justice in Section 5.3) both not only showed that the state could realize security, but they also presented public provision of security as constitutive of a communal identity and the state as a symbolic representative of a just social order. The provision of security as a public good therefore was not merely valuable for its outcome but also for the fact that it (helped) enable people to become citizens under a collective entity.

For care, outcome value related to the need of getting cared for. From the perspective of the care receiver, this is what matters in the first place. A weighty second consideration however is that the care receiver may value the fact that care is received from a particular person or group of persons; from family, friends or neighbors, or rather from professionals and care institutions. For the person considering whether or not to care for a dependent, too, it may matter whether she is able to engage in caregiving activities herself or rather to discharge caring activities by delegating them to professionals and care institutions. On both sides, then, there are potentially important process-value considerations with regard to the distinct value of having formal or informal care, which are separate from the outcomes in terms of the care actually delivered. These considerations, combined with the interpretation of the relevant capabilities on both sides, led to the

conclusion that an institutional setting in which there is a choice between formal and informal care (institutional pluralism) should be available.

At the end of Section 3.4, I formulated two key questions with regard to institutional pluralism, one of which was what the specific division of labor between the modes of provision in an institutionally pluralist arrangement should be. To that end, our sixth conclusion states that *within institutional pluralism the division of labor is such that the market is sometimes to be used to realize morally required capabilities, at other times to realize morally permissible capabilities*. Thus, no generally valid connection between the market and one category of capabilities can be said to obtain. It is not the case – as is sometimes argued – that the market should only be used for the pursuit of “trivial” things (the morally permissible) while the fulfillment of basic needs (the morally required) should be guaranteed by public provision. The strongest counterexample can be found in the practice of care. Here market-based care was judged to be wholly legitimate to fulfill people’s basic need for care, even though two specific warnings were also mentioned about suitable market conditions (see Section 7.2). Since informal provision is also a legitimate mechanism toward the same end, the division of labor for care was such that market and informal provision are directed to the realization of the same capability. However, depending on the type of dependency (children or other dependents, see Section 7.4) their mutual relation is different. For childcare, informal provision by parents is the normatively required benchmark and the market performs a subsidiary role (if still indispensable to fulfill the basic need), while for other forms of care the choice is open to individual preferences of the care receiver.

For security provision the opposite conclusion was drawn: markets should not be used to realize the morally required part of the capability to be secure. This had to do with the peculiarity of security that a market without a public authority to oversee it would lead to unjustifiable instances of violence between security providers (comparable to the state of nature for individuals). Therefore the market had to content itself with the subsidiary place of providing additional security to lower-level communities that wish to have a higher level of security than is strictly necessary from a moral point of view. Finally, the media at first sight seem to be similar to security provision: the realization of the morally required capability (democratic content) is assigned to a non-market mode of provision while the realization of the morally permissible capability (entertaining content) is assigned to the market. The media are rather an intermediary case however, in the sense that it is not impossible for the market to realize the morally required type of democratic content. It can do so in response to a demand from democratic-content-seeking consumers. Stronger, this is what part of the media routinely does. Nonetheless, whether they do so is contingent, therefore the moral

requirement was addressed to professional provision rather than to market provision.

Our seventh conclusion relates to the stability that I have argued institutional pluralism – just like any institutional arrangement – requires. It states that for the three practices studied *the main condition of stability for institutionally pluralist arrangements is adequate financial input for the non-market alternative, to be delivered through public funds.*⁴⁰⁴ Unsurprisingly, security, assigned to public provision, was shown to need funds from taxation. The danger to stability was that local communities providing their own security will demand tax deductions, thus eroding the financial basis of public provision. For the media, public funds were also shown to be necessary, namely to support financially the professional mode of provision (e.g. a public broadcasting agency). Here too, there is a threat that the political support for these taxes wanes if an insufficient number of citizens perceive professional provision as worthy of financial support. Finally, informal care in one of the two models (the caregiver choice model) was also dependent on financial support from public funds; either allocated to care receivers as a voucher to be spent in the market or to caregivers (parents) to choose to buy care for children or other dependents.

Judging from the study of these three practices, then, the role of the relevant public authority (most often still the nation state) in financially supporting a diversity of institutional forms should be an important one. This role exceeds its narrower role of being the providing agent for the public mode of provision. The resort to the coercive power of the state to support non-market security, care and media efforts can be explained as a consequence of the fact that for each of these practices the provision of the good is morally required. This means: provision should not fail to be realized, even if individuals lack the resources (security, care) or the willingness (media) to purchase these goods themselves. However, I would like to emphasize that these requirements are politically underdetermined in terms of their distributional design. For public broadcasting, for example, there is a regular debate in many countries whether they should be financed from the general tax revenues or through a license fee targeted at TV and radio owners. For specific care services there are struggles over whether entitlements should be means-tested (cf. in the Netherlands recently there was political debate about whether elderly people should not be obliged to pay for their own rollators

⁴⁰⁴ The discussion here as in the applied chapters is concentrated on guaranteeing the viability of the non-market alternative, from the premise that the market alternative will be sufficiently strong in itself. The latter need not always be the case, of course. Also I omit discussion of a separate stability condition: whether modes of provision have to cooperate or not (see the discussion of this point for security in Section 5.4 and for care in Section 7.4).

instead of getting them reimbursed from publicly supported insurance funds). Whether supply of morally required services should be generic or rather aim at those unable to pay for themselves remains a question that is analytically separate from the question of stability. Similarly, the distributive question at the other side, i.e. about the creation of public funds through taxation is still left open by the conclusions that I have drawn here (flat tax versus progressive tax rates and everything in between).

Although an institutionally pluralist arrangement has specific conditions of stability depending on the practice that it is to apply to, it may be thought that there is also a *general* stability problem for pluralism. The stability of non-market alternatives, however desirable from a moral point of view, could be fatally undermined by the fact that markets in contemporary society are embedded in a capitalist dynamic. This brings us to the question of how markets and capitalism relate to one another. In this study, there has been much talk of markets, but little or no talk of capitalism. This might strike some as an unpardonable flaw. Since markets in our modern societies are always capitalist markets these objectors may urge that the market question can only be fully appreciated in the overarching structure of capitalism. More specifically, they might hold that capitalism will undermine the stability of the institutionally pluralist arrangements that I have been advocating. This charge is important. Desirable social arrangements proposed by normative theories are not *eo ipso* stable. Stability is an added virtue and any normative position may well want to ensure itself of its possession. Therefore in the next chapter, I want to defend my conclusions against the charge of instability that could be raised by pointing at the capitalist nature of modern markets. In doing so, I make one assumption that I am unable to defend here; that is, that apart from the practices of security, media and care, our societies are made up of many *other* practices for which an institutional pluralism of market and non-market provision is the most defensible arrangement alongside of a range of purely market-based practices and a range of purely non-marketbased practices. This presupposition will allow me to speak in a generic sense of the “pluralist position,” which represents the defense of such an institutionally pluralist economy. We can then ask the question: Is a pluralist economy stable?

CHAPTER 8

CAPITALISM AND THE STABILITY OF PLURALISM

Two different kinds of critique of the market-based economy have been made which are clearly moral in character.⁴⁰⁵ Let us call them the “exploitation critique” and the “leisure critique.” Both of these critiques have treated the market in the context of ‘capitalism’ and both lead to the conclusion that markets should be abolished or highly marginalized. In this chapter, I will restrict myself to the leisure critique. To justify setting aside the highly influential exploitation critique, let me briefly say why I do so.

The problem with the exploitation critique is that it holds that capitalist systems *necessarily* exploit workers by treating them unfairly (in some definition of unfairness). This seems to me an untenable position. By this I do not mean to suggest that exploitation does not occur in capitalist economies – of course it does. But theoretically, it does not seem impossible to pay fair wages and create fair working conditions for workers. In practice this is confirmed by the accumulated successes of institutions such as regulated labor markets, trade unions and welfare-state programs. These successes lead to think that by and large, capitalism and exploitation do not form an indissoluble conceptual unity. Those who disagree should at least face the challenge that any economic system, like every other form of cooperation, may be manipulated to give rise to exploitation of some by others. Every economic system in history has done so. The exploitation critique therefore has to be comparative in nature and show that capitalism does *worse* than alternative systems. That seems to me an enormous challenge. I see no good reason why capitalism would score worse than alternatives such as economies based on slavery, serfdom, or communist plans.⁴⁰⁶

⁴⁰⁵ I leave out of consideration a third kind of critique, which is empirical and holds that capitalist markets suffer from contradictions and are ultimately self-destructive. Since Marx’s reasons for holding this view (relating to the falling rate of profit) are discredited, this kind of critique faces grave theoretical difficulties. See Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), 155. Anyhow, the two moral critiques are directly competing with the moral positions developed in this dissertation and therefore more important for my purposes.

⁴⁰⁶ As Moishe Postone says: “One can distinguish in every historical form between the amount of production required to reproduce the laboring population and an additional amount, expropriated by nonlaboring classes, ‘necessary’ for society as a whole.” Moishe

While this is obviously inadequate as a discussion of the exploitation critique, I do hope it is enough to motivate my choice of focusing on the leisure critique.

The leisure critique is made up of the following two premises. First, the economy should be subordinated to opportunities for the realization of the good life, consisting of self-realization in leisure activities (the “moral claim”). Second, when the economy is predominantly market-based this subordination fails to occur, since the market tends to occupy the predominant place in the economy and so tends to prevent the creation of a non-economic domain of leisure (the “empirical claim”). The conclusion then is that the only way to prevent this predominance from happening is to prohibit markets or assign them a minor place in the economy. The first section below is devoted to a more detailed exposition of this critique as formulated by some recent interpreters of Aristotle and Marx. It serves to highlight the overall structure of the argument as well as the different variants of both claims. As we will see, Aristotle and Marx differed in their account of what the good life consists in and in their account of the threat that the market poses for attempts to live the good life (Section 8.1). The leisure critique champions an alternative moral perspective on the market that competes with the institutionally pluralist position. It holds that since capitalist markets are incompatible with the realization of the good life, the institutionally pluralist position is insufficiently critical of the market.

In the following sections I will discuss the two central claims of the leisure critique. First, the moral claim about the good life in leisure time devoted to self-realization is discussed on its merits. The claim is disputed on the basis of the potential value of labor itself toward self-realization and the good life. I argue that a domain of leisure should nonetheless be guaranteed, so that individuals have the choice of realizing the good life in labor or leisure or both. Ideally, the appropriate labor–leisure balance would be a completely private choice. However, given certain interaction effects between labor-preferring and leisure-preferring persons, this ideal solution is impossible. Certain restrictions on labor time are necessary if people are to have the option of leisure at all (Section 8.2). Second, the empirical claim is discussed by introducing the concept of a “capitalist dynamic:” markets, once sufficiently generalized in a capitalist economic system, generate productivity increases. These increases in turn generate capital accumulation (if the volume of market-based activity remains constant). This newly generated capital must be invested somewhere; either in the market or outside of it. On the assumption that a large part will be reinvested in

Postone, *Time, Labor, and Social Domination. A Reinterpretation of Marx's Critical Theory* (Cambridge: Cambridge University Press, 1993), 374. Similarly William James Booth, *Households. On the Moral Architecture of the Economy* (Ithaca, New York: Cornell University Press, 1993), 186-87.

the market, new markets will constantly have to be found to offer investment opportunities. The non-market parts of pluralist practices are attractive candidates for being these new markets. This seems to confront the pluralist with an apparent dilemma: either to abolish markets completely or to allow them to undermine non-market alternatives. In both cases pluralism has to be given up (Section 8.3). In the final section, two routes to escape this conclusion are presented: the reduction of working time to prevent capital accumulation and the expenditure of accumulated capital in the non-market part of pluralist practices as well as in their market-based part, so that the balance between both parts of these practices is maintained, rather than undermined by the capitalist dynamic. Both solutions are able to guarantee the stability of pluralism; which one is to be preferred depends on considerations beyond the concern with institutional pluralism in this study (Section 8.4).

8.1 The Promise of Leisure and Abundance

Overall, I think it is fair to say that the main proponents of the leisure critique have been Aristotle and Marx. Their critique has provided a blueprint for many other theorists' critiques of the market.⁴⁰⁷ I will confine myself to two interpretations of their work. The first interpretation is by Gerald Cohen, who, writing from a Marxist position, faults capitalism for leading to a "distinctive contradiction" of labor and leisure. The second is by William Booth, who interprets both Aristotle and Marx as criticizing markets for undermining two kinds of freedom; from others (autarky) and from nature (leisure).⁴⁰⁸ Although I will occasionally refer to the original texts by Aristotle and Marx, I focus on these interpretations. I do so, because first, Booth and Cohen point out very neatly the

⁴⁰⁷ For example, the basic scheme is also clearly present in Hannah Arendt's theory of the *vita activa* in Hannah Arendt, *The Human Condition*, 2nd ed. (Chicago: The University of Chicago Press 1998 [1958]). For this aspect of Arendt's thought, see Claassen, *Het eeuwig tekort. Een filosofie van de schaarste* [The eternal shortage. A philosophy of scarcity], 195-206. Similar critiques are given by André Gorz, *Critique of Economic Reason* (London: Verso, 1989). Postone, *Time, Labor, and Social Domination. A Reinterpretation of Marx's Critical Theory*. Peter Ulrich, *Integrative Wirtschaftsethik. Grundlagen einer lebensdienlichen Ökonomie*, 3rd ed. (Bern/Stuttgart/Wien: Verlag Paul Haupt, 1997), 214-33.

⁴⁰⁸ For Cohen see Gerald Cohen, "Labor, Leisure, and a Distinctive Contradiction of Advanced Capitalism," in *Markets and Morals*, eds Gerald Dworkin, Gordon Bermant, and Peter G. Brown (Washington: Hemisphere Publishing Corporation, 1977). For Booth, see Booth, *Households. On the Moral Architecture of the Economy*. William James Booth, "Gone Fishing: Making Sense of Marx's Concept of Communism," *Political Theory* 17, no. 2 (1989). William James Booth, "Economies of Time: On the Idea of Time in Marx's Political Economy," *Political Theory* 19, no. 1 (1991).

aspects that I am interested in, and second because it would be unworkable in the space of this section to give a full-blooded overview of Aristotle's and Marx's thought on markets. The latter would raise many exegetical questions (especially with Marx) that I would like to avoid. My interest is not in exegesis but in the substantive argument that has been drawn from Aristotle and Marx by the two authors that I will discuss. I start by an exposition of the Aristotelian version of the leisure critique and subsequently discuss the Marxian modifications of the Aristotelian scheme.

Aristotle, in the first book of his *Politics*, defined economics as the "art of household management" (*oikonomike*). For this art to succeed another art is needed, which is the "art of acquisition" (*chrematistike*). Acquisition provides the household with the means, which it has to manage with an eye on their usage by the household's members. Aristotle made a distinction between two forms of acquisition: a proper and an improper form.⁴⁰⁹ The proper form provides the household with the wealth that is needed in order to satisfy the consumption needs of its members. In this form the level of consumption needs determines the boundary of economics; since these needs are given by nature the boundary is fixed. The limitedness of economics serves the purpose of guaranteeing freedom in a double sense. On the one hand, economic activity frees household members of their dependency on non-household members. This is the ideal of autarky. On the other hand, economic activity frees them from their dependency on nature and the struggle against the scarcity of goods inherent in nature. This is the ideal of a leisured life. Without sufficient wealth, one remains both dependent on others and on nature for survival and one lacks the freedom to enjoy leisure.⁴¹⁰ Leisure, in turn, makes possible the good life; that is, a life spent in activities free from constraint and undertaken without a further aim. For Aristotle, political activities in the community, friendships, and philosophy are the most important examples of these activities. In sum, while the acquisition of wealth is a necessary presupposition for leading the good life, this does not entail that it is sufficient for such a life to consist merely of wealth acquisition. On the contrary, the good life consists of activities outside of the economic domain.

Although economic activity is necessary toward these ends, Aristotle holds that it may also threaten their realization. This happens with the improper form of

⁴⁰⁹ Aristotle, *The Politics and the Constitution of Athens*, ed. Jonathan Barnes (Cambridge: Cambridge University Press, 1996), 1256b27-57a5. For a clear exposition of Aristotle's argument, see Scott Meikle, *Aristotle's Economic Thought* (Oxford: Clarendon Press, 1995), 43-67.

⁴¹⁰ Booth, *Households. On the Moral Architecture of the Economy*, 43-45. Meikle suggests that the self-sufficiency sought is primarily being free from deficiency, and only secondarily being free from dependency on others. Meikle, *Aristotle's Economic Thought*, 45.

economics, in which people strive for an unlimited amount of wealth. This form knows no boundaries and is only aimed at providing a maximum amount of pleasure. This, according to Aristotle, produces an unfree, “slavish life.” There are several related reasons for his condemnation of the improper form of economics.⁴¹¹ One is that a pleasurable life is not the kind of life which distinguishes man from animals. Man has a separate end of life that consists in living the good life. The improper form of acquisition reverses the order of means and ends by becoming an end in itself instead of a means toward the art of household management. Another reason is that the pleasure-seeking person detaches himself from his community; his desire “takes him outside of the binding, closed horizon of the *philia* of his community, whether the household or the city, and gives him another fatherland, that of wealth.” This is problematic since an important part of the good life is bound up with activities expressing membership in the community.⁴¹² Finally, a life spent in wealth acquisition is not free because it is driven by the compulsion of one’s desires. When this happens, the properly ruling element of the soul, reason, will have lost its grip on the person. As a consequence, one becomes dependent not only on one’s desires but also on others to satisfy them. The wealth-seeking person must engage in exchange to fulfill his desires. This is where the market comes in.

Although the market is not entirely absent from a life in which economic activities have their proper place, it remains a marginal institution. According to Booth, the household in Aristotle’s time was already insufficiently autarkic: it had to rely on exchanges with other households in the same community (*polis*). Nonetheless the aim still was to exchange in order to acquire the amount of wealth necessary and sufficient for leading a free life in the sense of a leisured life. The economic policies of the *polis* were aimed at this end, so that the community as a whole could reach autarky.⁴¹³ Exchange between households started as simple barter (in Marxist theory this form is denoted as “C-C”). It soon developed into exchanges of consumption goods mediated by money (C-M-C’). The integration of goods into a web of monetary exchanges effectively establishes a market. The presence of markets and money as a means of exchange is what creates the opportunity for a life of unlimited acquisition, where money is exchanged for the purpose of making more money (M-C-M’) instead of acquiring consumption goods. Although the activities characteristic of the improper form of acquisition may look similar to those characterizing the proper form of acquisition, for Aristotle they are fundamentally different, since their final ends

⁴¹¹ Here I follow Booth. See Booth, *Households. On the Moral Architecture of the Economy*, 51.

⁴¹² *Ibid.* 53.

⁴¹³ *Ibid.* 50.

are different; use value (consumption goods) in one case, exchange value (money) in the other.⁴¹⁴

Aristotle's ideal of the autarkic *oikos* was a heavily non-egalitarian one. The aim was to ensure a leisured life for the master of the household, and the activities of the other members of the household served the purpose of making this possible. Both women and slaves were the victims of this division of labor. Although they provided the material conditions for the good life of the master, they had no part in it themselves.⁴¹⁵ A similar fate was shared by those not directly living under the command of a master, but living of their own economic activities; such as independent farmers, tradesmen, artisans and wage laborers. For Aristotle their self-employment did not qualify them as free. They were dependent on the will of others and hence unfree, essentially in the same category as slaves.⁴¹⁶ Thus, the ideal of the good life required a hierarchically structured household where some dominated others in order to provide the economic conditions for living the good life. One may wonder why this is so: why couldn't *all* live a leisured life? The explanation lies in the condition of scarcity. Natural conditions simply do not permit all men to live a life free of the constraint of providing for the necessities of life. It requires time and effort on the part of many to generate these necessities; natural conditions allow a surplus only sufficient for some to be free of the constraint of having to engage in economic activity.⁴¹⁷

Marx's central debt to Aristotle is that he takes over his distinction between two forms of economic activity. Marx does so in his two formulations of the circulation of money and commodities. In C-M-C, commodities are sold for money in order to buy other commodities. Money here serves as a mere means of exchange; the purpose of this circuit of transactions is to acquire commodities, i.e. to satisfy needs with the help of these commodities. The purpose, in other words, lies in acquiring the use value of these commodities. However, in M-C-M' the order is reversed. Here the purpose is the acquisition of (a larger amount of) money. There is no limit to this; each circuit is but a springboard to the next.

⁴¹⁴ Meikle, *Aristotle's Economic Thought*, 58. Note, however, that Aristotle's description of the life of unlimited acquisition as one spent in "pleasure" suggests that at the end of the day the excess money made by means of exchange must also be converted into consumption goods. The difference between the two ways of life lies in the fact that the improper form of acquisition takes up a whole life, so that one doesn't reach the point where one can engage in the non-economic activities of the good life.

⁴¹⁵ Booth, *Households. On the Moral Architecture of the Economy*, 68-74.

⁴¹⁶ *Ibid.* 70. Interestingly, Booth notes that at this point Aristotle's judgment might have been more severe than that of his society; he suggests that the prevailing ethos in classical Athens may have been to be self-employed. However that may have been, "metic activity" was economically indispensable to the ancient polis. See M.I. Finley, "Aristotle and Economic Analysis," *Past and Present* 47 (1970): 23.

⁴¹⁷ Booth, *Households. On the Moral Architecture of the Economy*, 82-84 and 92-93.

Commodities are only exchanged for their exchange value and money is turned into capital. In capitalism this form of exchange becomes generalized. The economy is now directed toward the generation of ever more exchange value instead of the acquisition of use values. As for Aristotle, for Marx this reversal perverts the end of economic activity. Marx deviates from Aristotle in two respects: first, in why this perverse reversal is bad (the moral claim), and second in how it comes about (the empirical claim).

In contrast to Aristotle concerning the moral claim, Marx does not have a specific moral anthropology prescribing the kind of non-economic activities that make up the good life.⁴¹⁸ Marx refuses to say what people should be doing with their free time (once the economic system enables them to have it), apart from the qualification that these activities would aim at man's "self-realization." This deliberate vagueness may be interpreted, as Booth does, as a sign that Marx was impressed by the liberal criticism of the ancient conception of the household. Instead of trying to define the good life, the liberal conception of a free life is that each should be able to lead the life that he wants to and chooses to have.⁴¹⁹ A famous passage from the *German Ideology* serves to illustrate this "liberal turn" in Marx.

The division of labor offers us the first example for the fact that man's own act becomes an alien power opposed to him and enslaving him.... For as soon as labor is distributed, each person has a particular, exclusive area of activity which is imposed on him and from which he cannot escape. He is a hunter, a fisherman, a herdsman, or a critical critic, and he must remain so if he does not want to lose his means of livelihood. In communist society, however, where nobody has an exclusive area of activity and each can train himself in any branch he wishes, society regulates the general production, making it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, breed cattle in the evening, criticize after dinner, just as I like, without ever becoming a hunter, fisherman, a herdsman, or a critic.⁴²⁰

⁴¹⁸ Some have maintained that Marx's predominant concern was not to render man free *from* economic activity as such, but rather to render him free *within* the economic domain (see next section, where I will come back to this controversy). In this line of thought Marx's debt to antiquity is also interpreted differently. For example, Claudio Katz maintains that Marx was concerned overall with the control of workers over their work conditions, broadly conceived. According to this interpretation, Marx admired in the ancient Greeks not their ideal of leisure but their democratic practice which allowed small peasants access to an independent political sphere where they had the same standing as their richer upper-class fellow citizens and could co-shape legislation relevant to their economic activities. Claudio Katz, "The Greek Matrix of Marx's Critique of Political Economy," *History of Political Thought* XV, no. 2 (1994).

⁴¹⁹ Booth, *Households. On the Moral Architecture of the Economy*, 259.

⁴²⁰ Karl Marx and Friedrich Engels, "Die Deutsche Ideologie," in *Marx Engels Werke Band 3* (Berlin: Dietz Verlag, 1990 [1845-1846]), 33. (the translation is taken from Karl

People should be able to choose their daytime occupations as they want to; freedom of choice is integral to the ideal of self-realization.⁴²¹ Marx's statement that the free man chooses his occupations without holding one of these occupations as a profession is then meant to show that this is impossible as soon as these occupations are turned into economic positions, where they will constrain man again. Insofar as Marx advocates restrictions on the grip of the economy on man's time, it is for the sake of an abstract ideal of an autonomous life, not for the sake of a substantive ideal of the good life (for the remaining substantiveness of the ideal of self-realization in Marx see Section 8.2 below).

Turning now to the empirical claim, we note that the difference with Aristotle is in the explanation of the attractiveness of the life spent in wealth acquisition, or in Marx's terms, capital accumulation. For Aristotle, its attractiveness was ethical: it operates on the desires of man and weakens the grip of reason in controlling these desires. It was a matter of ceding to the vice of avarice (*pleonexia*).⁴²² For Marx, in contrast, the attractiveness is a matter of systemic forces.⁴²³ Once markets are so pervasive that they have transformed the economy into a capitalist economy, every agent has to act within a system whose purpose is the accumulation of capital. The capitalist system requires that each agent for its survival aims at the expansion of exchange value. Producers are constrained by the fact that if they do not try to maximize profits (i.e. to render the difference between M and M' as large as possible), they will be out competed by other

Marx, *Selected Writings*, edited by Lawrence H. Simon, Hackett Publishing Company, Indianapolis, Indiana, 1994, p. 119).

⁴²¹ Jon Elster, "Self-Realization in Work and Politics: The Marxist Conception of the Good Life," in *Alternatives to Capitalism*, eds Jon Elster and Karl Ove Moene (Cambridge: Cambridge University Press, 1989), 132.

⁴²² Booth, *Households. On the Moral Architecture of the Economy*, 247. Meikle complicates this somewhat. At one point he says: "The desire for too much is always there to cause bad behaviour, and Aristotle is not one to forget it. But that is not what he has in mind.... His point is about the nature of the activity and the end it embodies. It is in the nature of M-C-M that it has no limit built into its form. For that reason, those who pursue it are engaged in a form of activity whose end is of such a kind that it has no limit. Whatever the degree of their personal propensity to greed may be, the nature of the end of the activity they are engaged in will usually ensure that their behaviour is greedy." Meikle, *Aristotle's Economic Thought*, 78. However, somewhat later he concedes: "Aristotle may blame money rather than human frailty for the evils of exchange value, but human frailty has a share in the blame. The forms of exchange value, which are socially devised, exacerbate what are already human propensities for seeking pleasure and acting on shallow ideas of human well-being, and those natural propensities in turn reinforce the social forms." Meikle, *Aristotle's Economic Thought*, 80. The emphasis on the systemic side would bring Aristotle closer to Marx than the opposition that I sketched in the main text suggests.

⁴²³ In this paragraph I follow Cohen, "Labor, Leisure, and a Distinctive Contradiction of Advanced Capitalism," 115-16.

producers. The way to maximize profits is to increase productivity. As a consequence of these competitive pressures, technological innovations are made on a scale hitherto unknown. These increases can be used to the fulfillment of two aims: either to “reduce toil and extend leisure” or to increase output.⁴²⁴ But there is a bias that renders one of these aims unfeasible. Gerald Cohen explains this as follows: “Capitalism inherently tends to promote just one of the options – output expansion – since the other, toil reduction, threatens a sacrifice of the profit associated with increased output and sale, and hence a loss of competitive strength.”⁴²⁵

In order to absorb the expanded level of output, consumption also has to expand; a consumer society comes into being with unprecedented levels of consumer goods. According to Cohen, there is considerable tragedy in this:

The productive forces of advanced capitalism create an unparalleled opportunity of lifting the curse of Adam and liberating man from toil, but the production relations of capitalist ownership prevent the opportunity from being seized. The economic form most able to relieve toil is least willing to do so.... In earlier periods of capitalist history, the bias toward output gave capitalism a progressive historical role. Capitalism is an incomparable engine for producing material wealth in conditions of scarcity, and is its “historical justification” But as scarcity recedes, the same bias renders the system reactionary – it cannot realize the possibilities of liberation it creates. It excludes liberation by feverish product innovation, huge investments in sales and advertising, and contrived obsolescence. It brings society to the threshold of abundance and then locks the door. For the promise of abundance is not a maximum of goods but a sufficiency produced by a minimum of unpleasant exertion.⁴²⁶

The market is the economic institution that corresponds to the “contractual man” who is liberated from the hierarchical bonds of the ancient household to buy and sell his labor on the market and to obey only the contracts that he has concluded

⁴²⁴ Ibid. 117.

⁴²⁵ Ibid. 118.

⁴²⁶ Ibid. 119-20. Similarly Booth, saying that it is “one of the supreme paradoxes that he attributed to capitalism: that an economic transformation dedicated to the greatest possible minimization of the constraints on time (i.e. necessary production time) is also a process that more than any other binds the time of human beings.” Booth, “Economies of Time: On the Idea of Time in Marx's Political Economy,” 14. With regard to scarcity and abundance, Booth frames the argument differently than Cohen does: overcoming the constraints of capitalism is not a matter of overcoming scarcity, but of using scarce time for other means: non-economic instead of economic activity. Booth, *Households. On the Moral Architecture of the Economy*, 78, 84, 90. To solve this confusion, elsewhere I stressed the importance of distinguishing between scarcity as an attribute of action and as an attribute of specific institutional settings. See Rutger Claassen, “Schaarste en overvloed. Een strijd tussen twee interpretaties van de menselijke conditie [Scarcity and abundance. A cContest between two interpretations of the human condition],” *Tijdschrift voor Filosofie* 69, no. 1 (2007).

himself.⁴²⁷ Nonetheless, for Marx, the market constrains man anew. It promises freedom but only to bring a new kind of impersonal domination, this time by the laws of the market. Capitalism promises an aristocratic, leisured life for everyone but fails to deliver it.

With this overview of the leisure critique before us, the question can be confronted how it relates to the pluralist position: are these two mutually exclusive, compatible or mutually reinforcing? A powerful reason to think that they are mutually exclusive is that while the pluralist position reserves an important place for the market, the leisure critique rejects (if even partially) a market-based organization of the economic sphere because such a place for the market will drive out opportunities for non-economic activity, as in Cohen's account of output production which is systematically privileged over toil reduction. If we want to defend pluralism, we therefore have to investigate whether the leisure critique is right. There are two options available to criticize the leisure critique. We can object to it on the level of its moral claim, holding that freedom from toil is not a worthwhile ideal, or we can acknowledge that the end is worthwhile but that its rejection of the market does not follow. In the next two sections I will therefore engage in an evaluation of the two claims making up the leisure critique and discuss how the pluralist position I have been defending should relate to these claims. In the next section the question is whether leisure, conceived as the freedom to engage in self-realizing non-economic activities, is defensible as a moral end that should guide the organization of the economy.

8.2 The Moral Challenge: The Good Life in the Realm of Freedom

The principal way to cast doubt on self-realization in non-economic action as a moral ideal is by deconstructing the opposition between labor as economic and necessary activity and leisure as non-economic and self-realizing activity. To see the potential power of such a deconstruction, consider the problem that Gerald Cohen gets into when he defines the two options of "toil" and "leisure:"

"Leisure" is used broadly here, in rough synonymy with "freedom from unappealing activity," while "toil" abbreviates "unappealing activity." Leisure means that a person's time and energy are not spent in the service of goals he would prefer fulfilled without such expenditure. One toils to the extent that the motivation of his activity is remuneration or other external reward. It follows that leisure time can be filled strenuously. It also follows that amelioration of working conditions counts as expanding leisure. The economic distinction between job time and time off coincides imperfectly with the distinction here envisaged between toil and freedom from it.

⁴²⁷ Booth, *Households. On the Moral Architecture of the Economy*, 212.

Some “gainful employment” is enjoyable, and some time off is spent toilsomely. *But the distinctions are sufficiently coextensive for the purposes of my argument.* It is enough that for most people most of the time earning a living is not a joy. Most people are so situated that they would benefit not only from more goods and services but also from reduced working hours. It is clear that advances in productivity enable gains in either direction, typically at the expense of gains in the other direction.⁴²⁸ (emphasis added, R.C.)

Cohen’s definition brings out the core of the leisure/toil distinction. Toil refers to instrumental activity, done for an external reward only (remuneration), while leisure refers to intrinsic activities, where the expenditure of time and energy is part of the fulfillment. So far so good. But he gets himself into trouble by complicating the distinction with the characteristics of “appeal” or “joy.” For now he must acknowledge that labor can be leisure-like (i.e. appealing or joyful) and leisure can be labor-like (i.e. unappealing) – with the rather absurd implication that improved working conditions count as “leisure.” This is by no means an unfortunate, but accidental, feature of Cohen’s writing.⁴²⁹ The idea that labor can itself be appealing is precisely the basis upon which some commentators argue that Marx’s realm of freedom actually points to a realm for self-directed, self-realizing labor, *not* to a realm of action beyond labor.⁴³⁰ The most important thing, for this position, is that self-realizing labor is labor unconstrained by others. On this interpretation, Marx extols labor and condemns time spent in mere amusement, idleness and pleasure-seeking. He promotes a life spent in “active creation” and condemns a life spent in “passive consumption.”⁴³¹ Such a life is

⁴²⁸ Cohen, “Labor, Leisure, and a Distinctive Contradiction of Advanced Capitalism,” 117-18.

⁴²⁹ Notice that Cohen does not associate the opposition of labor versus leisure with the opposition of constrained (or alienated) versus self-realizing activities, but with that of unappealing versus appealing ones. Thus, he gives a more subjective twist to the problem of labor.

⁴³⁰ For example, see Allen W. Wood, *Karl Marx*, 2nd ed. (London: Routledge, 2004), 37 and 272-73. On this interpretation, the self-realizing kind of labor in the realm of freedom would aim at realizing human needs (as all labor does), but these needs themselves would be of a higher kind. Similarly, see James C. Klagge, “Marx’s Realms of ‘Freedom’ and ‘Necessity,’” *The Canadian Journal of Philosophy* 16, no. 4 (1986). Sean Sayers, “Creative Activity and Alienation in Hegel and Marx,” *Historical Materialism* 11, no. 1 (2003). However, even they recognize that Marx *also* advocated a realm of freedom beyond labor. This seems to be the best interpretation of Marx’s famous statement that “the realm of freedom begins only where labour which is determined by necessity and mundane considerations ceases; thus in the very nature of things it lies beyond the sphere of actual material production.” Karl Marx, *Das Kapital. Kritik Der Politischen Ökonomie* (Stuttgart: Alfred Kröner Verlag, 1957), 716.

⁴³¹ Elster, *Making Sense of Marx*, 79. He gives a substantive argument for self-realization in welfarist terms. See Elster, “Self-Realization in Work and Politics: The Marxist Conception of the Good Life,” 134-35 (based on diminishing returns in consumption compared to increasing returns in self-realizing activities). On the origin of the

best spent in labor for the market, albeit under improved control over one's working conditions.⁴³²

Note that there are two ideas here, which are easily confused. The basic idea is that self-realization happens only in creative, productive forms of action (not in idleness and consumption) – and these are labeled “labor.” The additional idea is that labor thus defined happens *within* the economic domain. For Marx, the fusion of these ideas may have been deliberate: under conditions of socialization of the means of production, everybody would contribute to the economy in a spontaneous, self-directed manner.⁴³³ This deprives the distinction of the economic and the non-economic of its cutting edge. For us, however, given the utopian nature of that fusion, the two ideas must remain analytically distinct. Since we accept only a few basic mechanisms for economic organization (the five modes of provision from Chapter two or some variation of them), each of which guides and thus constrains the actions of agents in a particular way, there is no completely spontaneous and non-constraining form of economic action available.

For us it is a *contingent* matter whether economic activities (labor), despite their inherent constraints, are nevertheless able to embody the kind of self-realizing activity that characterizes “the realm of freedom.” In some instances they may do so, in others they may not. One general reason why they may do so is given by Jon Elster, who remarked: “the work situation is in many respects a suitable context, since it offers the external discipline that is often a condition for self-realization. Knowing that the customer might not want the product tends to concentrate the mind wonderfully.”⁴³⁴ On the other hand, Elster in the same discussion realizes that in labor there will always be “conditions of coordination and supervision that severely restrict free, creative activity.”⁴³⁵ Some norms and

glorification of labor in the modern tradition, see Booth, *Households. On the Moral Architecture of the Economy*, 161.

⁴³² For Marx, the problem is that control over one's own actions is undermined by the fact that capitalism turns labor itself into a commodity. Although workers contract their time and energy freely in the market, once they enter the work place the capitalist has the same authority over them as over any other use value that is bought and sold. Re-establishing worker control in the workplace is therefore crucial to freedom within the economic sphere.

⁴³³ Gorz argues that this is utopian: communism will have to resort either revolutionary faith or to external incentives (wages and consumer goods) to motivate workers to do the part of the work assigned to them by the plan. In neither case is the work self-directed. Gorz, *Critique of Economic Reason*, 40-41. Similarly, Miller objects that the voluntary nature of work in communism will not be able to sustain the conscious and spontaneous cooperation characteristic of developed “individuality” in capitalism. Miller, *Market, State, and Community. Theoretical Foundations of Market Socialism*, 231-19. The difference is that Miller thinks the market provides the right incentives to this end, while Gorz is equally critical of labor under communism and of market-based labor.

⁴³⁴ Elster, *Making Sense of Marx*, 523.

⁴³⁵ Loc.cit.

rules will always be characteristic of the working place and therefore normally no worker will be able to act simply as he wishes. Moreover, the conditions of coordination and supervision are reinforced by the need to produce for the market – the market may not demand the products of one’s self-realizing activity.

In addition to contingent failures of labor to be of the self-realizing kind, there may be valuable ways of passing time that *necessarily* cannot be organized as a form of labor. First, a life spent in idleness is of this kind. While idleness has a bad name, once one labels it “contemplation” or “meditation,” we are not so certain that it has no value. Contrary to the Marxian exclusive valuation of creation and production, passing time in a receptive and meditative state of mind may well be valuable to some. There is no reason to exclude the latter from the set of legitimate conceptions of a good life that individuals may choose. Opportunities for contemplation cannot be gained in labor; they depend on the availability of leisure. The same is true for a second way of life excluded in the Marxist ideal of self-realization. The useful disciplining of the workplace might be valuable to anyone who wants to achieve great heights in exercising some of his capacities, but the endless drive for maximum excellence in achievement contains an individualistic bias.⁴³⁶ Some of the activities that Aristotle classifies as part of the good life fit uneasily with such a drive. While we normally do conceive of entertaining friendships as a form of self-realization, or various forms of community service reminiscent of “political activity” in a broad sense, no one would portray these as a strenuous quest for enhancing our skills and talents. Again, the opportunity to spend time in these communal activities depends on leisure labor, insofar as their labor-like organization would be subject to an individualistic bias that greatly diminishes their communal character.

To conclude: given these contingent and necessary failures to accommodate certain conceptions of a good life, opportunities for leisure time should be available as a guarantee for some people’s opportunities for self-realization. Labor’s contingent failures warrant the adoption of a precautionary stance: since no individual can be assured that his labor provides him due opportunities for self-realization, it is prudent to have leisure available to anyone if labor fails to do so.⁴³⁷ In addition, labor’s necessary failure to accommodate conceptions of the

⁴³⁶ That the ideal of self-realization has an individualistic bias which may turn it against community, is also recognized by Elster. See *Ibid.* Booth argues that Marx’s Robinson Crusoe-like portrayal of creative self-realization distracts him from the problem of coordinating individuals’ activities in communism: “because it was a single-actor economy, Crusoe’s world allowed Marx to sidestep the issue of noncoercive coordination in an interdependent, nonmarket society.” Booth, *Households. On the Moral Architecture of the Economy*, 287.

⁴³⁷ This might be compatible with Marx’s line of thought. As Cohen states: “One cannot decide *a priori* the extent of compatibility between labor and creative self-fulfilment. Marx

good life centered on contemplative and communal ways of spending time also point in the direction of having a domain of leisure. The famous passage of the *German Ideology* (quoted above) neatly captures this ideal, even though Marx has not been able to hold on to it wherever he argues that activities freed from the constraints of labor should nonetheless be spent in specific productive and creative forms of self-realization.

With this conclusion we have scaled back the moral claim of the leisure critique. Instead of saying that the good life is spent in leisure (non-economic activities of self-realization), we have seen that it might be spent either in leisure or in labor. The leisure critique has been forced to retreat one step; the justifiable claim is that each person should have the *capability* to have sufficient leisure. Our next question is: what kind of organization of social life would correspond to this reformulated version of the leisure critique's moral claim? The leisure critique's original stance on this, i.e. that the economic sphere is to be restricted as much as possible for the sake of creating maximum opportunities for non-economic activities, can now no longer be endorsed. This would be clearly disadvantageous to those who prefer to realize their conception of the good life within the economic sphere itself. No longer can we state, as Cohen does, that it is a "pretty tall assertion" to say that the satisfaction to be had from labor and the goods it buys is so great that "no matter how much is being consumed it remains desirable to consume more instead of expanding freedom from labor."⁴³⁸ For maximum work-and-spend might nonetheless be the content of some or even many persons' conception of their good life.

The ideal social organization, of course, would be one in which each could have it his or her own way: labor-preferring persons could labor as much as they want while leisure-preferring persons could enjoy leisure as much as they want. In terms of the ancient fable, Grasshoppers could dance and sing while Ants could work and spend (the Grasshoppers would need to do so on their own expense, of course). No social arrangements regulating working time would be made. This would be left to individuals freely contracting with one another in the labor market. This ideal organization is bound to dissatisfy one of the two groups of persons however; for two reasons that both have to do with power differentials.

First, workers that compete with one another in the labor market will find that they have a competitive advantage if they are willing to work longer hours. Employers will generally prefer those who want to work long hours, since this minimizes burdens of coordination (which arise between part-time workers) and

thought he knew the compatibility would always be small. Hence his need to forecast a virtual disappearance of labor." Gerald Cohen, "Marx's Dialectic of Labor," *Philosophy and Public Affairs* 3, no. 3 (1974): 261.

⁴³⁸ Cohen, "Labor, Leisure, and a Distinctive Contradiction of Advanced Capitalism," 123.

enables maximum output. If labor market conditions allow employers to take their pick among (many) workers, then, leisure-preferring workers will lack enough power to bargain for the number of working hours that they prefer.⁴³⁹ Even if they would have more bargaining power, for example if they would be in a segment of the labor market where not many well-qualified workers are competing with them, it could be impossible to obtain their preferred working hours, for example if the nature of the work requires coordinated hours of presence on the job. This need for a standardized organization of work can also disadvantage the labor-preferring worker, of course. In many sectors, work is limited to 40 hours a week and it is impossible to get a contract for more than 40 hours a week. For purposes of the argument here, it does not matter whether the labor-preferring or the leisure-preferring person is disadvantaged. What matters is that both operate in collective structures (the labor market and the work environment), where both groups of persons exert pressure on each other: competitive pressure in the labor market and organizational pressure on the job. This makes it highly difficult to qualify a formally free scenario as one giving each group an equal chance of realizing his preferred labor/leisure balance.

A second problem for the ideal scenario is that, even if each would get it its own way in terms of working hours, those preferring to work long hours would through their productive efforts create a society with a higher standard of living than would otherwise prevail. This might affect those with a preference for leisure, in that falling behind the standard of living too far will be highly disadvantageous to them, even given their modest, leisurely conception of the good life. The reason for this is that their fallback in relative position may make their survival more difficult. As economist Robert Frank wrote:

Many important resources are distributed in accordance with relative rather than absolute capabilities. For example, as the economist Amartya Sen has emphasized, there is always *some* food available, even in the most severe famines, and the question of who gets it is settled largely by relative wealth holdings.⁴⁴⁰

⁴³⁹ Historically, this is how rising capitalism forced 19th-century workers to increase their working hours to an enormous extent. Juliet Schor, *The Overworked American. The Unexpected Decline of Leisure* (New York: Basic Books, 1992), 52.

⁴⁴⁰ Robert Frank, *Luxury Fever. Why Money Fails to Satisfy in an Era of Excess* (Princeton: Princeton University Press, 1999), 133. See also Jerome M. Segal, "Consumer Expenditures and the Growth of Need-Required Income," in *Ethics of Consumption. The Good Life, Justice, and Global Stewardship*, eds David A. Crocker and Toby Linden (Lanham: Rowman & Littlefield, 1998). This predicament goes back to the problem of positional competition. For a proposal to evaluate this problem in terms of recognition theory, see Rutger Claassen, "The Status Struggle. A Recognition-Based Interpretation of the Positional Economy," *Philosophy and Social Criticism* 33 (2007).

It is for this reason that David Braybrooke contemplates that a hypothetical contractarian foundation of a society made up of Grasshoppers and Ants will run into problems. Given the Ants' economic expansion, "the Ants will steadily acquire better and yet better positions for outbidding the Grasshoppers for scarce goods."⁴⁴¹ Even if Grasshoppers are unconcerned about the differences in living standard, in the end Braybrooke imagines that the accumulated wealth and power of the Ants will lead them to oppress the Grasshoppers. This point is not merely hypothetical, for Braybrooke perspicuously notes that "market societies have been extremely aggressive in opening up markets abroad and forcing trade and development upon countries that did not especially want them."⁴⁴² Grasshoppers therefore have every reason to refuse a social contract that establishes a society without restrictions on the Ants' productive activity. In our terms, leisure-preferring persons depend upon a certain restriction of labor for all to realize their preferences.

If these two reasons make sense, some regulation of working time is necessary to protect workers without bargaining power from exploitation by employers and to protect leisure-preferring persons from being marginalized by labor-preferring persons. Where such regulation would have to draw the line remains highly contentious however. The claims from both groups of persons are legitimate in their own right; a social setting expressing absolute neutrality between these competing claims is impossible, but nonetheless a decision about the boundary between labor and leisure has to be drawn.⁴⁴³ The discussion so far cannot provide us with a determinate answer as to where to draw the line. It has only given us reason to require that possible answers must conform to the leisure critique's revised moral claim defended here; that wherever the line is drawn both labor-preferring and leisure-preferring persons must have sufficient opportunities to realize their conception of the good life.

It is important to see that this requirement should be considered as additional to the requirement embodied in the pluralist position. They deal with a different aspect of the economy. The leisure critique is concerned with the boundaries between the economic and the non-economic domain (labor versus leisure), while

⁴⁴¹ David Braybrooke, "Preferences Opposed to the Market: Grasshoppers vs. Ants on Security, Inequality and Justice," *Social Philosophy and Policy* 2, no. 1 (1984). Peter Ulrich notes the same dynamic, arguing that those who restrain the size of their economic activities will be socially marginalized if they have to live in a society where others can choose to live without this restraint. Ulrich, *Integrative Wirtschaftsethik. Grundlagen Einer Lebensdienlichen Ökonomie*, 227-28.

⁴⁴² Braybrooke, "Preferences Opposed to the Market: Grasshoppers vs. Ants on Security, Inequality and Justice," 112.

⁴⁴³ With regard for neutrality the premodern preference for leisure over labor (and consumption) is just as non-neutral as the modern preference for labor. For the preference for leisure in tribal societies, see Sahlins, *Stone Age Economics*.

pluralism is concerned with the boundaries between market and non-market forms of economic organization *within* the economic domain. The leisure critique seeks space for human action which does not consist of laboring; while pluralism seeks space for a mix of modes of provision as appropriate to economic practices, where acting according to each of these modes of provision means laboring (see also the passage on labor in Section 2.5). To give a hypothetical example; if pluralism prescribes that the *ratio* of public to commercial security providers should be roughly 3:1, then this remains independent of the question of the aggregate *size* of security provision (it might be 300 police officers per 100,000 inhabitants and 100 commercial guards, or 600 and 200 respectively, or 900 and 300, etc.). The absurdity of the quantification in this example should not detract from its message: the leisure critique addresses the *size* of the economic domain, that is, the size of the activities that satisfy preferences, while pluralism addresses the composition of the economic practices created to coordinate these activities. The two perspectives are complementary. We shall now see to what extent the capitalist dynamic is a threat to both requirements.

8.3 The Empirical Challenge: The Capitalist Dynamic and the Market

The second, empirical premise of the leisure critique hypothesizes that capitalist markets will come to dominate the economy, preventing the emergence of a space for non-economic action, leisure. The process by which this comes about I will refer to as the “capitalist dynamic.” I will first briefly explain the concept of the capitalist dynamic and discuss whether the market is conceptually tied up with it. Then I will ask in how far the capitalist dynamic is an inevitable part of modern, capitalist markets. Finally I will present the predicament resulting for the defender of the ideal of leisure and the defender of pluralist practices alike.

The capitalist dynamic is a systemic drive towards profit maximization – it is a property of a system that provides strong competitive incentives for its participants to strive for the attainment of this end. The incentive is a matter of survival: failure to attain the goal leads to marginalization and even to disappearance from the system (take-over, bankruptcy). This dynamic arises when three conditions are met. (i) The first condition is the existence of markets and money. This establishes that people may trade goods on a market to facilitate the fulfillment of their household needs (the C-M-C circuit). (ii) The second condition is that some persons start exchanging goods for their exchange value rather than for their use value (the M-C-M’ circuit). (iii) The third condition is that sufficient persons engage in that kind of exchange for competition among them to ensue; so that the prospect of gaining a competitive advantage over others

on the same market induces them to increase their productivity – usually through technological innovations – and gain a (larger) share of the market.⁴⁴⁴ Due to these productivity increases, the same amount of market activity will generate an ever-higher amount of capital. If left unchecked the capitalist dynamic produces capital accumulation.

Before we proceed, let us first be clear about the conceptual connection between this capitalist dynamic and the market. I will argue that markets are *necessary but not sufficient* vehicles for generating this dynamic. The second part of this statement may already be obvious from the above. The capitalist dynamic only realizes itself whenever the market mechanism becomes generalized as the dominant mode of provision, in the way that the second and third conditions above describe. This dynamic is not a matter of all-or-nothing, but rather varies by degrees. It is stronger to the extent that more goods are drawn into the market, and especially to the extent that labor power itself becomes a commodity. Generalization of markets need not happen. Markets in premodern societies remained institutions at the edges of the economic system, appropriate to trade accidental surplus production from otherwise autarkic households or from communities in which gift exchange was the central exchange mechanism.⁴⁴⁵ Therefore the distinction between “the market” (as an ideal type) and generalized capitalist markets as a cultural-historical specific subspecies remains important.⁴⁴⁶

Although insufficient, the market remains a necessary condition for the capitalist dynamic (see the first condition). A powerful argument to the contrary is that the drive toward capital accumulation can also be observed in non-market economies, especially state-planned economies. Alan Buchanan has criticized Gerald Cohen’s “distinctive contradiction of capitalism” for precisely this reason. He points to the fact that the Soviet Union has also expanded output continuously. This happened not as the result of individuals engaged in market exchanges, but

⁴⁴⁴ Cohen calls this acting according to the “capitalist principle,” which engenders having a “capitalist mentality.” Cohen, “Labor, Leisure, and a Distinctive Contradiction of Advanced Capitalism,” 115. Postone first develops this theme in an abstract sense (similar to Cohen) and then, following Marx, tries to show how on a concrete level the ‘deepening’ of the law of value takes place in successive stages of capitalism (workers’ cooperation through division of labor, manufacture and industrial production). Postone, *Time, Labor, and Social Domination. A Reinterpretation of Marx’s Critical Theory*, 267-70 and 325ff.

⁴⁴⁵ For a classical account of the ‘disintegration of the household’ due to capitalist markets, see Weber, *Economy and Society. An Outline of Interpretative Sociology*, 375ff.

⁴⁴⁶ ‘A careful examination of the perverse consequences Marx attributes to capitalism will reveal that, in his analysis, their specific content can be traced to the pursuit of efficiency in the service of the maximization of surplus value. To be sure, that drive is enforced by the market, but is no more an eternal, transhistorical property of markets than is the creation of profit the forever ordained end of productive technology.’ Booth, *Households. On the Moral Architecture of the Economy*, 265. See for his account of the purposiveness of the capitalist dynamic, see pp. 225-226.

because Soviet planners have consciously chosen this course of action (wanting to compete militarily with the West and needing economic growth to that end). The results are the same. Buchanan is not convinced by Cohen's argument that "while the tendency toward overexpansion of output is an *inherent* feature of the market *economy*, it is only the result of defective *political arrangements* in socialist countries."⁴⁴⁷ Buchanan thinks that Cohen – in order to make his point – needs to assume that it is impossible to politically curb the tendency toward overexpansion in a market economy – an assumption difficult to justify, according to Buchanan. However, I do not see why this assumption would be necessary. For even if it is possible to curb a tendency toward expansion politically (see below), the operation of such a countertendency does not make the original tendency go away: rather it undoes its effects in practice. The fact that political measures are necessary to cancel the effect proves the existence of a cause producing that effect if no measures would be taken.⁴⁴⁸

The discussion up to this point has shown how the market is conceptually distinct from the capitalist dynamic. Granting this distinctness, one could object that it is of little practical relevance; after all, markets in our modern societies *are* capitalist markets. This is true – or so for the sake of argument I will assume. Nonetheless, it is crucial to see that the capitalist dynamic is *variable*: it can be present to a smaller or greater extent. The reason for this is that, like all other economic constellations, capitalist markets are social constructions that are always "embedded" in social structures. Their realization depends on political preconditions such as an effective system of property rights, social acceptance of their legitimacy among the population, technical conditions to facilitate exchanges, etc.⁴⁴⁹ embedment is subject to variations. The literature on 'varieties of capitalism' underscores this point: societies can embed markets in different

⁴⁴⁷ Buchanan, *Ethics, Efficiency, and the Market*, 28. Postone holds a similar view and uses this to argue that the abolition of markets, socialization of property and erection of state bureaucracies for production will not solve the problem. Postone, *Time, Labor, and Social Domination. A Reinterpretation of Marx's Critical Theory*, 268.

⁴⁴⁸ The problem might be that Buchanan does not take sufficiently serious the fact that the market is a form of spontaneous order, as theorists as diverse as Habermas and Hayek have argued. Both the element of order and its unplanned, unintended character are important in understanding why the capitalist dynamic stimulates expanding output *as a matter of course* in the market while it is a conscious choice in political arrangements. Hayek, "The Mirage of Social Justice," 107ff. and Habermas, *Theorie des kommunikativen Handelns. Band 2 Zur Kritik der funktionalistischen Vernunft*, 176.

⁴⁴⁹ Markets do not differ from other economic mechanisms in always being embedded in society. Markets cannot be "disembedded," however much free-market proponents may strive for that goal. Polanyi, who coined the concept, has been misunderstood as claiming that disembedding of markets is possible. For a discussion of this misunderstanding, see Fred Block's introduction in Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time*, xxiii.

ways, with significantly different outcomes.⁴⁵⁰ Especially pertinent to our topic is the fact that different varieties of capitalism vary as to the extent to which market participants are subject to competitive pressures or sheltered from these pressures.⁴⁵¹ The capitalist dynamic may therefore be intensified or restrained, depending on the social norms and political measures surrounding markets (captured earlier under the term “market-restraining institutions,” see Section 3.1). Put differently, these norms and measures may speed up or slow down the incentive to maximize profits on capitalist markets and to accumulate capital. They can act as a “brake” on the dynamic (actually, the first brake, see the scheme in Section 8.4). But they cannot halt it altogether.

Now we go one step further. What happens when capital has been accumulated? I think we can safely adhere to one general rule: *capital, once generated, will be invested somewhere*. With this rule, I set aside the possibility that capital will systematically be ignored by its owners (buried in the garden never to be thought of again). To be sure, this may happen now and then, but these occasions are negligible on the scale of society as a whole. Normally people will want to do something with their capital. So what are the investment options for the capital owner? Roughly, there are two basic options.

The first basic option is that capital is reinvested in the market. Then it is used to gain productivity increases at the next stage of competition and thereby increase output further: to produce more of the same products (or new variants) or create markets for new products. The second option is for the capital owner to withdraw economic capital from the market and convert it into social and political capital, that is, to invest it in a quest for social status and political power. The ancient potlatch, in which tribal chiefs competed for power and status via the destruction of their assets, is a classical example. All kinds of wars in which large assets are destroyed on both sides are also examples of this kind of “conversion.” More peacefully, giving capital away serves the same purpose. Charitable foundations and initiatives provide a potentially status-enhancing option of investing one’s capital. Contrary to destruction in potlatch and war, however, gift giving does not destroy economic capital. It will normally reenter the market by way of the beneficiary of the gift (for example, those receiving donations from

⁴⁵⁰ For an influential treatment, see Hall and Soskice, who organize their approach around the distinction between liberal market economies (their leading example: America) and coordinated market economies (example: Germany). Peter A. Hall and David Soskice, “An Introduction to Varieties of Capitalism,” in *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*, eds Peter A. Hall and David Soskice (Oxford: Oxford University Press, 2001), 8.

⁴⁵¹ Neil Fligstein, *The Architecture of Markets. An Economic Sociology of Twenty-First-Century Capitalist Societies* (Princeton: Princeton University Press, 2001).

aid organizations will spend them on market goods). This part of the second basic option, then, can largely be reduced to the first option.

What will be the mix of these two options be like? Ultimately this is an empirical question. Still, I will follow Cohen, who argued that the capitalist dynamic tends to promote output expansion over additional leisure (see Section 8.1). His main reason for this, as we saw, was that at each stage surplus capital generated in previous rounds of competition is needed at the next round of competition. Withdrawing capital from the competitive process where your opponent does not do the same, invariably weakens one's market position. Only those who are very strong or who have very weak opponents can afford to do so. To this we may now add another consideration. In a capitalist society, social and political capital themselves are predominantly gained through the possession of economic capital. It is no coincidence, then, that the economic significance of the potlatch, war and gifts has greatly diminished in capitalist society. For the social and political functions that these capital-expending activities fulfilled are now by and large taken over by the enlargement of capital itself. Winning the economic game creates social status and political power. These are positional goods for which the competition, in capitalist societies, is predominantly played with economic means.⁴⁵²

For purposes of our normative argument, we do not need to know the exact proportions of capital spent in the market versus social and political contests. We can allow that part of capital is also partly spent outside of the economic system. What is important for our purposes is that capital is reinvested in the market to such an extent that it necessitates opening up new markets. For these new markets can only come at the detriment of their non-market alternatives (given that people will treat these as alternatives from which they choose). Empirically, it is quite uncontested that this is exactly what constantly happened during the last two centuries of capitalism. Time and again new markets have been introduced where none existed before. The composition of the economy in rich countries has been transformed from one mainly consisting of agriculture and later manufacture toward an economy dominated by services. Many services that were previously off the market offered interesting opportunities for the investment of capital freed up by productivity increases in agriculture and manufacture.⁴⁵³ Nowadays the turn has come for the services of the welfare state (health care, education, and others), which are an attractive prey:

⁴⁵² For an explanation of why positional competition increases time pressure, see Hirsch, *Social Limits to Growth*, 71-77.

⁴⁵³ For an attempt to determine empirically the correctness of the commodification thesis (mainly on the basis of time use surveys), see Williams, *A Commodified World? Mapping the Limits of Capitalism*.

Some very profitable services are those of the welfare state, protected from private ownership and the market as part of the mid-century citizenship package. So long as the state survives, potential areas of profit-making are excluded from capital's reach. Post-industrial capitalism has therefore started to try to undo the deals made by its industrial predecessor.⁴⁵⁴

To recapitulate: since capitalist competition engenders technological progress, the same products can be produced with less effort. If effort remains constant, then, new activities will have to be found to become the subject of capital investment. Potentially no activity is securely sheltered from the market.

Now that we have an overview of the capitalist dynamic, we can return to our normative question at last: How does it bear upon the organization of social life demanded by the leisure critique and the pluralist position? The original leisure critique, as we saw in Section 8.1, is critical of capitalism's preference for using productivity increases for output expansion instead of added leisure. If we follow the reformulated, more cautious moral claim from Section 8.2, which requires a social organization that reconciles opportunities for both labor and leisure conceptions of the good life, things are less clear-cut. What is certain is that from this perspective a very strong diminishment of labor time is as unwelcome as a very strong expansion of labor time. Given a form of social regulation that remedies the two problems mentioned in the previous section by guarding a reasonable balance between labor and leisure, the capitalist dynamic does not pose much of a threat.

For the pluralist position, the problem with the capitalist dynamic is that it undermines the stability of those practices for which we argued that an institutionally pluralist combination of market and non-market provision is preferable. The non-market part of these pluralist practices is an attractive prey for an ever-expanding market. This seemingly means that we are confronted with a hard choice: either to have the market or not to have it at all. For Marxists, given their ideal of the non-economic realm of freedom, this is not a hard choice at all: the market should be abolished, or at least it should be embedded to such an extent that the capitalist dynamic is heavily restricted. For institutional pluralists, however, the choice is a difficult one. They will have to decide whether to give up the market-based part of their practices or the non-market part, while they have argued that both alternatives contribute something of value to the practices in question. On the one hand, allowing the market seems to entail risking an expansionary dynamic that undermines valuable options for non-

⁴⁵⁴ Colin Leys, *Market-Driven Politics. Neoliberal Democracy and the Public Interest* (London: Verso, 2001), 6-7. See also the discussion of this point in Steven Lukes, "Invasions of the Market," [draft internet].

market practices. On the other hand, the abolition of markets also is an unattractive option, because the market has something positive to offer for each of these pluralist practices and expands the range of choice for those participating in them.⁴⁵⁵ For these reasons, then, the hard choice between allowing or abolishing capitalist markets undermines the pluralists' central normative commitment to both. Are they caught between the devil and the deep blue sea?

8.4 The Market's Place and the Economy's Place

In the previous section, I argued that the dilemma for the pluralist is caused by the fact that the capitalist dynamic, to the extent that it is unleashed (i.e. not embedded in restraining social and political norms), will typically generate capital accumulation and output expansion and threaten pluralist practices. We saw that conversion into social and political capital provides only a limited solution to that problem. Are there any other possible objects of investment that might save the pluralist practices from being the target of the capitalist dynamic? In the last section, I have restricted myself to the options open to the capital owner, assuming that he can accumulate capital and choose where to invest it as he sees fit. Can we find solutions by relaxing these assumptions? (We keep adhering to the basic rule: capital, *once generated*, must be invested somewhere). I will first briefly consider two solutions that I think are ultimately unsuccessful and then present two solutions that can be successful.

One alternative strategy would be to go beyond the relevant economic system and consider that capital might be invested in other countries, where enough investment opportunities outside of pluralist practices still exist, for example, in agriculture or manufacture in developing countries.⁴⁵⁶ In present-day reality this might actually be our preferred course of action for many decades to come. Indeed, increasing investment in emerging markets (China, India and others) shows how important this solution already is. But then, at a certain point markets in other countries will also be saturated, and the problem of the invasion of pluralist practices will reemerge, this time for all countries alike.

⁴⁵⁵ Moreover – and not relating to any specific local practice – the pluralist may recognize that capitalist markets have served to bring societies out of the poverty that characterized the premodern economies such as the ancient Greek economy, where freedom in the sense of independence from others and from poverty was available only to the happy few. The powerful incentives of capitalist markets to create the wealth necessary to make it possible for all to lead the good life (however conceived) have not been mimicked by any alternative mechanism that produced the same wealth-creating effects.

⁴⁵⁶ I thank Joel Anderson for this suggestion.

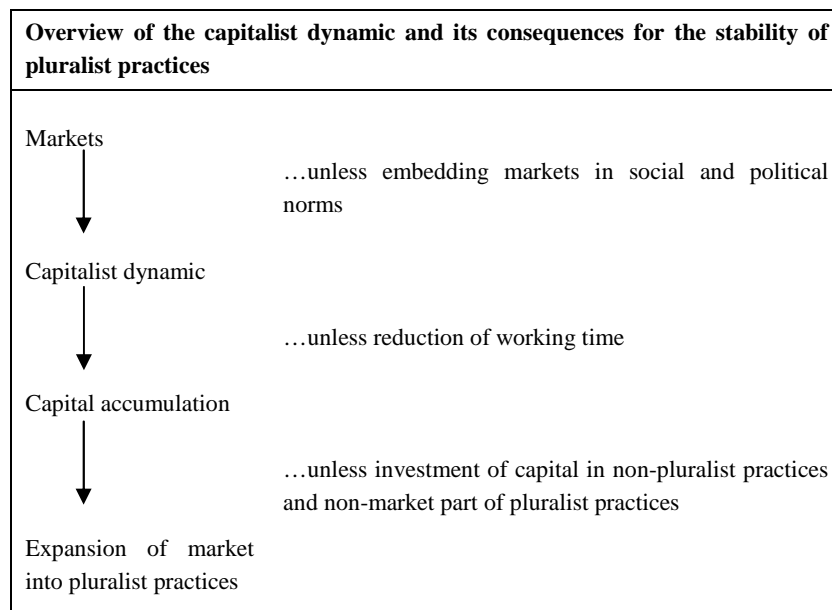
Another option would be to invest in market-based practices here and now.⁴⁵⁷ For example, we might invest endlessly in ever-more complicated financial products, or ever-more fanciful houses and other consumer goods, not to forget the development of goods that today do not yet exist (like cellular phones did not fifteen years ago). These investment strategies might shelter the pluralist services of security, media, care and others. However, it seems to me that this, too, can be a partial solution at best. Such investment strategy will increase the capital-intensiveness of market-based practices compared to pluralist practices. Given the importance of these pluralist practices to most people's lives (consider that many morally required capabilities are realized here), this will lead to a painful discrepancy between "market affluence" and "pluralist squalor."⁴⁵⁸ Ultimately, dissatisfaction with this discrepancy will lead to strong pressures for redressing the balance and investing in pluralist practices. I take it, then, that investment in non-pluralist practices cannot fence off the dangers for pluralism either.

The discussion of this solution does bring us on the path of a first workable solution. Pressures to invest in pluralist practices could be channeled in two ways. One is investment in the market part of these pluralist practices – this leads to the pluralist nightmare encountered in the previous section. A lobby will emerge on political decision-making bodies to open up these markets or further facilitate access to them and weaken the conditions for non-market alternatives to flourish. The other way of channeling investment to pluralist practices is to invest in the non-market-based part. The main way to do this is to tax market-generated capital and use it to support a variety of non-market modes of provision (see the seventh conclusion in the conclusions preceding this chapter, about public funds supporting a variety of non-market modes of provision).⁴⁵⁹ This solution redresses the balance between market and non-market provision by using part of market-generated capital to support non-market provision, so that both continue to relate to each other in the same proportions, albeit on ever-higher levels of capital-intensiveness. This solution is promising, but its realization is vulnerable to defects in the political process. The latter must be sufficiently free from commercial interests so as to privilege taxation in support of the non-market alternative over the creation of new markets. As we know, not all political systems have been able to meet this condition. The public investment solution requires winning continuous political struggles about decisions pertaining to the fate of pluralist practices.

⁴⁵⁷ I thank Christian Neuhäuser for this suggestion.

⁴⁵⁸ An allusion to "private affluence" and "public squalor," one of the central themes of John Kenneth Galbraith, *The Affluent Society* (London: Penguin Books, 1998 [1958]).

⁴⁵⁹ This solution is preferred by writers like Frank, *Luxury Fever. Why Money Fails to Satisfy in an Era of Excess*, and Galbraith, *The Affluent Society*.



Another solution is available, which would economize on the need for such political struggles. This solution requires going back to a fact that I have stressed several times, namely, that capital only generates pressure for investment in pluralist practices *once it is generated*. The trick of this solution is to make sure that after a certain point no capital is accumulated. Call that point the threshold. The solution is that *after* the market has reached this threshold, a general restriction on the size of market-based activity is realized, so that there is no further capital accumulation which necessitates opening up new activities for market expansion or conquering the non-market part of pluralist practices. “After” may sound mysterious, for the market activity taking place under this threshold will have to take place every day anew (every day, food will have to be grown, houses built, etc.). And as long as it does take place, it generates freely available capital, given the fact that competition creates (incentives for) technological progress, which increases productivity for these activities and creates a surplus of capital. If however the productivity gain is used to reduce labor hours and increase leisure, no surplus capital will come into existence.

Of course, this is precisely what the leisure critique proposed in the first place. The trick is that it does not require abolishing the market for the economic part of human activity. It does require a volume of “idleness” which increases in size as technological progress reduces the time needed to produce the goods

corresponding to the market's legitimate place in society (its threshold). This solution, then, retains the capitalist dynamic on modern markets as the instrument to generate a legitimate wealth of ordinary consumer goods and an equally legitimate market part of institutionally pluralist practices. At that point, it cuts off the creation of further capital. In order to safeguard institutionally pluralist arrangements *within* the economy, this solution puts restrictions on the size of the economy *as a whole* in terms of the hours spent on economic activity.

To be workable, this solution would require the identification of three indicators. First, an exhaustive list of pluralist practices would have to be made, that is, we would have to decide for which practices the market is partly inappropriate (in addition, of course, we add completely non-market practices on the list, Michael Walzer's "blocked exchanges"). Second, for these practices agreement would have to be reached on the extent to which we want them to be governed by market exchange and the extent to which we judge other mechanisms appropriate. The previous three chapters on the cases of security, media and care have served as examples of the kinds of considerations that may play a role. This defines the threshold, above which working time reduction would have to be applied. This also involves the identification of the moment at which the threshold would be reached (for example, would one say that Western societies already crossed it five decades ago, or rather just now, or somewhere in the distant or far future?). Thirdly, from that point on productivity increases would have to be offset by working time reduction. To fix our minds, one could imagine that each year anew the level of productivity increases would have to be determined and converted into an analogous working time reduction for next year (of course this reduction would have to be effectively implemented).⁴⁶⁰ For each of these practical problems, political disputes would be likely to arise: debate is possible over the desirability of having pluralist arrangements for many goods and services, about the estimations of the appropriate threshold, and about the conversion of productivity increases into working time reduction. On the other hand, determination of these matters would require only one-time political decisions, not a continuous struggle.⁴⁶¹

⁴⁶⁰ Such a scheme would resemble current schemes in some European countries where each year the age of retirement – at which one has a right to public pension – is extended with one month, to compensate for rising life expectancy and relieve the pressure on public pension funds (except that the effect of our scheme would be diametrically opposed, since these pension schemes extend working time instead of shrinking it).

⁴⁶¹ I am very well aware of the fact that this may give the impression of a hopelessly utopian and abstract proposal. Nonetheless, we cannot deny the fact that trade-offs between leisure and income are already being made, and different countries make different choices in this regard. For example, the general difference between the US and the EU of roughly 30% in GDP per capita can largely be explained by lower numbers of working hours in the EU (while productivity per hour is roughly the same). These choices are not

It would bring about John Stuart Mill's "stationary state," where each would have "sufficient leisure, both physical and mental, from mechanical details, to cultivate freely the graces of life."⁴⁶² This prospect is different from what we encountered earlier as being advocated by Aristotle and Marx. In the Aristotelian vision, some people are doing the hunting, fishing and cattle-raising so that others can spend their time in criticizing. It is a vision that has been realized at some times and places but is grossly non-egalitarian. In the Marxian vision all of us can do all of these activities whenever we want: fish in the morning, hunt in the afternoon, etc. without being governed by an economic system of constraints. The working time reduction vision is more stringent. Each of us will have to contribute to the economy – "fishing" some in the morning and "hunt" in the afternoon – as we do now. But we will also have to take our leisure in the evening – and ever earlier than that, as the market makes us reach ever-higher stages of productivity in the morning.

In conclusion, we have two workable solutions: public investment in non-market (parts of) practices and working time reduction. I will make no attempt here to argue for choosing one over the other (or for choosing a mix of them). Anyhow, the value of the current reflection, as I see it, is not in its direct applicability. Rather, it has been a thought experiment about the kinds of social choices necessary if we take the capitalist threat to the stability of pluralist practices seriously. Moreover, our choice between the two solutions will be influenced by considerations other than the interest in institutional pluralism, which I am unable to discuss here. For example, choosing working time reduction after a certain point might fail to satisfy a labor/leisure balance that gives labor-preferring persons adequate opportunities for self-realization in labor (see Section

always transparent, since the actually achieved income–leisure balance often is the outcome of the combined effects a complicated set of institutions. Still, to the extent that we gain insight in the relative contributions of different factors toward this balance, it can be influenced. For countries with collective labor agreements specifying a standard working week, this is all the more simple, but even for countries where working time is at the discretion of individual companies, this should not prove impossible.

⁴⁶² John Stuart Mill, *Principles of Political Economy and Chapters on Socialism*, ed. Jonathan Riley (Oxford: Oxford University Press, 1994 [1848]), 128. See also Rawls, who proposes that each generation should save for the next one "to make possible the conditions needed to establish and to preserve a just basic structure over time. Once these conditions are reached and just institutions established, net real saving may fall to zero." In the passage following this quotation, he explicitly says that "we certainly do not want to rule out Mill's idea of a society in a just stationary state where (real) capital accumulation may cease." John Rawls, *Justice as Fairness. A Restatement*, ed. Erin Kelly (Cambridge, Massachusetts: Harvard University Press, 2001), 159. Similarly, in *A Theory of Justice* Rawls proclaimed about "great wealth" that "beyond some point it is more likely to be a positive hindrance, a meaningless distraction at best if not a temptation to indulgence and emptiness." John Rawls, *A Theory of Justice*, revised ed. (Oxford: Oxford University Press, 1999[1971]), 258.

8.2). But failing to choose some working time reduction might not satisfy the interest in such a reduction from the perspective of balancing work and care in a gender-neutral way (see section 7.4). Choosing to allow capitalist accumulation combined with taxation for public investment might ultimately raise the amount of capital to a level that is environmentally unsustainable, and so on. These and many other considerations complicate the choice between the two strategies. For now, let us rest content with the conclusion that both satisfy the interest in protecting institutionally pluralist practices advanced in this study

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Any effort in philosophy to make the obscure obvious is likely to be unappealing, for the penalty of failure is confusion while the reward of success is banality. An answer, once found, is dull; and the only remaining interest lies in a further effort to render equally dull what is still obscure enough to be intriguing. In this recognition that my book may be more stimulating for its failures than for its successes, I find some consolation for its shortcomings.⁴⁶³

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⁴⁶³ Nelson Goodman, *The Structure of Appearance* (3rd ed.), D. Reidel Publishing Company, Dordrecht, Holland, 1977, (from the original introduction). I thank Thomas Schmidt for pointing me at this quotation.

CURRICULUM VITAE

Rutger Claassen werd geboren op 21 juli 1978 in Amsterdam. Hij volgde het Ignatius gymnasium te Amsterdam, waar hij in 1996 eindexamen deed. Vanaf 1996 studeerde hij rechten en filosofie aan de Universiteit Utrecht.

Voor zijn rechtenstudie studeerde hij een jaar internationaal recht aan de Université de Toulouse in Frankrijk en in 2002 liep hij stage bij het Europees Parlement in Brussel. Hij studeerde af op een onderzoek naar institutionele hervorming van de Wereldhandelsorganisatie. In 2003 studeerde hij af in filosofie op een onderzoek naar het denken over schaarste in economie, filosofie en sociale wetenschappen. Een bewerkte versie van deze scriptie verscheen in 2004 als boek onder de titel *Het eeuwig tekort. Een filosofie van de schaarste* (Ambo Amsterdam). Nadien werkte hij dit onderwerp verder uit in lezingen en artikelen.

Vanaf 2003 werkte Rutger Claassen als promovendus en junior docent aan de disciplinegroep Praktische Filosofie van het Departement Wijsbegeerte van de Universiteit Utrecht. Hij was coördinator van de masteropleiding Filosofie in Bedrijf en gaf les in de filosofie van management en organisatie, economische ethiek, bedrijfsethiek, en de politieke filosofie van organisaties. Zijn promotieonderzoek deed hij naar het debat over de ‘grenzen van de markt’, waarin de vraag centraal staat welke goederen en diensten wel, en welke niet aan marktwerking onderhevig zouden mogen zijn. Het onderzoek stond onder begeleiding van professor Marcus Düwell en professor Elizabeth Anderson. Voor dit onderzoek verbleef hij in 2005 een semester aan de University of Michigan (Ann Arbor, US).

Vanaf augustus 2008 zal hij werkzaam zijn als universitair docent politieke filosofie aan het Departement Politieke Wetenschappen van de Universiteit Leiden.

SAMENVATTING (DUTCH SUMMARY)

De dissertatie neemt als vertrekpunt de kernvraag in het wijsgerige debat over de ‘morele grenzen aan de markt’ (*moral limits of the market*): welke goederen en diensten zouden ‘vermarkt’ moeten worden en welke niet? Teneinde deze vraag te beantwoorden verdedigt de dissertatie allereerst de contextuele benadering die in deze vraag besloten ligt (hoofdstuk 1), ontwerpt een theoretisch kader om deze vraag te beantwoorden (hoofdstukken 2 tot en met 4) en past dit kader vervolgens toe op drie concrete praktijken: de voorziening van veiligheid, media en zorg (hoofdstukken 5 tot en met 7). Ten slotte biedt het een afsluitende reflectie op de stabiliteit van het naast elkaar bestaan van markt en niet-markt arrangementen in een kapitalistische context (hoofdstuk 8).

Hoofdstuk 1. Debatteren over de markt

Het eerste hoofdstuk verdedigt de contextuele benadering tegenover een ‘algemene benadering’, waarin wordt beargumenteerd dat één voorzieningswijze (bijv. de markt, maar het kan ook een alternatief voor de markt zijn) in het algemeen superieur is aan andere voorzieningswijzen, zodat die superieure voorzieningswijze in principe altijd gekozen dient te worden voor de voorziening van concrete goederen, tenzij aangetoond kan worden dat een afwijking gerechtvaardigd is. Bij de contextuele benadering daarentegen is niet één voorzieningswijze *a priori* superieur aan andere, zodat het debat over de beste voorzieningswijze volledig in de context van concrete goederen gevoerd moet worden. Dit hoofdstuk probeert voor drie varianten van superioriteit ten aanzien van de markt te laten zien dat de algemene benadering faalt, zodat een contextuele benadering de voorkeur verdient.

1.1. In de eerste variant wordt economische prioriteit aan de markt toegeschreven: de markt is superieur aan haar alternatieven in termen van het brengen van welvaart. Deze vorm van prioriteit berust op bepaalde eigenschappen van het economische model van perfecte concurrentie. Dit model kent stringente assumpties; indien die niet opgaan is sprake van marktfalen. Ik bespreek een kernassumptie van het model, namelijk de afwezigheid van transactiekosten. Zijn transactiekosten toch aanwezig, dan ontstaan niet-marktinstituties. Volgens de

economische theorie zullen actoren trachten transactiekosten te verlagen teneinde het model van de perfecte markt zo dicht mogelijk te benaderen en daarmee hun welvaart te optimaliseren; en in de normatieve variant van de economische analyse wordt dit tevens voorgeschreven. Ik bespreek enkele auteurs die hier vraagtekens bij zetten en probeer zo te laten zien dat transactiekosten en niet-marktinstituties niet altijd als barrières voor de markt kunnen worden geïnterpreteerd; ze kunnen ook tot doel hebben niet-marktvormen van interactie mogelijk te maken waarvoor actoren preferenties hebben, en daarmee welvaartsverhogend werken. Het economische argument voor marktprioriteit veronderstelt ten onrechte dat markten a priori meer welvaart brengen dan alternatieve instituties; het hangt er maar net van af wat actoren met betrekking tot een concreet goed als ‘welvaartsverhogend’ beschouwen.

1.2. In een tweede variant wordt de markt geacht morele prioriteit te hebben, in termen van de vrijheid die zij brengt. Aan de hand van David Gauthier’s versie van dit argument probeer ik te laten zien dat ook dit argument niet slaagt. De markt bevat niet alleen een beperking (*constraint*) van ieders handelingsvrijheid in het gebod dat marktactoren moeten afzien van bedrog en geweld (zoals Gauthier erkent); zij bevat ook een beperking voor individuen die voorkeuren hebben voor handelingen die alleen buiten de markt om tot stand kunnen komen (zoals Gauthier niet erkent). Een soortgelijke conclusie wordt bereikt als we vrijheid opvatten als vrijwilligheid in ruil (*voluntariness in exchange*); markttransacties zijn niet per definitie vrijwillig; of ze dat zijn hangt af van de aanwezigheid van alternatieven voor de markt.

1.3. Een derde variant is de politieke prioriteit die de markt zou hebben in de zin dat zij vrede en stabiliteit brengt aan de samenlevingen waarin zij een hoofdrol speelt. Friedrich Hayek’s werk biedt een versie van dit argument. Aan de hand van Albert Hirschmann’s studie over de opkomst van het kapitalisme probeer ik te laten zien dat ook in deze zin de waarde van de markt ambigu is. Er zijn evenzeer destabiliserende tendensen in de geschiedenis van het kapitalisme aanwijsbaar. Bovendien is Hayek’s karakterisering van niet-marktvormen van sociale orde als inherent gewelddadig of totalitair veel te kort door de bocht.

1.4 Op grond van de discussie in dit hoofdstuk blijkt dat er drie eisen gesteld worden aan een uitwerking van de contextuele benadering. Ten eerste moet een nadere definitie van de markt en haar voornaamste alternatieven opgesteld worden (zie hoofdstuk 2). Vervolgens moet besloten worden hoe de markt (of een alternatief) kan worden geïmplementeerd (dit noem ik de voorhanden ‘institutionele strategieën’) en welke criteria daartoe benut kunnen worden (dit noem ik de ‘criteria voor institutionele keuze’). Beide komen aan de orde in hoofdstuk 3. Ten slotte moeten morele criteria geformuleerd worden om de vraag te beantwoorden door welke doelstellingen een bepaalde praktijk zich moet laten

leiden; alleen met die doelstellingen in de hand kan bepaald worden welke institutie als middel tot dat doel het meest geëigend is. (zie hoofdstuk 4).

Hoofdstuk 2. De markt en haar alternatieven

Dit hoofdstuk introduceert de sociaaltheoretische basisconcepten die in de rest van de studie gebruikt worden.

2.1. Als eerste wordt het begrip van een praktijk geïntroduceerd: een min of meer coherent en stabiel cluster van handelingen, gekenmerkt door doelen, instituties, deelnemers, materiele objecten en technologieën. De instituties zijn de (formele en informele) regels en normen die het handelen van de deelnemers in een praktijk sturen. Eén bijzondere subcategorie instituties zijn de voorzieningswijzen (*modes of provision*). Deze bepalen de economische organisatie van een praktijk: hoe productie, ruil en consumptie met elkaar geïntegreerd worden. In het vervolg onderscheid ik aan de hand van drie raamwerken (*frames*) vijf ideaaltypische voorzieningswijzen: zelfvoorziening, informele voorziening, marktvoorziening, professionele voorziening en publieke voorziening.

2.2. Het eerste raamwerk is de constitutie van goederen. Goederen kunnen geconstitueerd worden als uitwisselbaar (*exchangeable*) of niet; en als vergelijkbaar op een kwantitatieve schaal (*commensurable*) of niet. De kwantitatieve schaal die meestal gebruikt wordt is een financiële; goederen worden gewaardeerd door middel van de bepaling van een prijs. Met deze twee kenmerken kunnen de eerste verschillen tussen de vijf ideaaltypische voorzieningswijzen worden blootgelegd. Bij zelfvoorziening worden goederen geproduceerd en geconsumeerd door dezelfde partij. Hier zijn goederen dus niet uitwisselbaar. Bij informele voorziening worden goederen wel uitgewisseld, maar niet op basis van een kwantitatieve waardebeoordeling. Bij de overige drie voorzieningswijzen worden goederen zowel uitgewisseld als op een prijs gewaardeerd. De wijze van uitwisseling kan direct plaatsvinden tussen een product en een consument (zoals op de markt), of indirect waarbij eerst geld door alle deelnemers wordt afgestaan aan een centrale instantie, die vervolgens een goed levert aan de deelnemers (zoals bij publieke goederen).

2.3. Het tweede raamwerk wordt gevormd door de manier waarop voorzieningsregels (*rules of provision*) tot stand komen. Bij publieke voorziening komen voorzieningsregels tot stand via een proces van politieke besluitvorming, bij informele voorziening gaat het om een proces waarin sociale normen worden geformuleerd, terwijl bij professionele voorziening de expertkennis bepaalt welke voorzieningsregels het meest geschikt zijn. In alle gevallen is een grote variatie

aan mogelijke voorzieningsregels denkbaar. Voor zelfvoorziening is dat niet zo en is er maar één voorzieningsregel mogelijk: goederen worden immers niet uitgewisseld maar geleverd aan de producent zelf. Ook voor de markt is er een unieke voorzieningsregel: het prijsmechanisme, gebaseerd op de talenten (*endowments*) en voorkeuren (*preferences*) van de deelnemers.

2.4. Het derde raamwerk gaat over de houdingen van de deelnemers (*subjective dispositions*) die per voorzieningswijze vereist zijn met betrekking tot de sociale relaties met andere deelnemers. Voor zelfvoorziening zijn geen sociale relaties vereist; onafhankelijkheid van anderen is vaak zelfs het doel. Bij informele voorziening is de sociale relatie vaak dominant. De economische transactie wordt uitgevoerd omwille van het creëren of bestendigen van een bepaalde persoonlijke relatie met anderen (bijv. bij een verjaardagscadeau). Bij de overige drie voorzieningswijzen zijn persoonlijke relaties onpersoonlijk, d.i. instrumenteel ten opzichte van de economische transactie. Dit geldt dus ook voor de markt. Markttransacties vinden plaats omwille van het behalen van economisch succes. Natuurlijk kan men wel persoonlijke relaties aangaan op de markt, maar die staan dan ten dienste van het welslagen van de transacties.

2.5. De vraag is of de vijf ideaaltypen voorzieningswijzen een volledig beeld van alle mogelijkheden geven. Een niet opgenomen alternatief is de eenzijdige onvrijwillige ruil, d.w.z. diefstal en roof in al haar varianten. Dit is in descriptief opzicht altijd een belangrijk alternatief geweest, maar normatief niet erg aantrekkelijk gegeven het gebrekkige draagvlak bij één van beide 'ruilpartners' (de bestolene). Een ander alternatief is het niet bevredigen van bepaalde voorkeuren, al dan niet vrijwillig. Elke voorzieningswijze maakt hiervan gebruik in die zin dat er altijd grenzen zijn aan wat wel en wat niet geleverd zal worden. Ook bespreek ik het ideaaltypische karakter van de voorzieningswijzen en concludeer dat meer complexe institutionele vormen die op deze ideaaltypen gebaseerd zijn, in werkelijkheid nodig zijn. Dit noodzaakt een analyse van institutionele strategieën.

Hoofdstuk 3. Institutionele keuze en de waarde van institutioneel pluralisme

Dit hoofdstuk heeft ten doel de ideaaltypen uit het voorgaande hoofdstuk te verwerken in meer op de sociale realiteit toegespitste institutionele strategieën en criteria op te stellen teneinde tussen die institutionele strategieën keuzes te kunnen maken.

3.1. Als we de markt als voorbeeld nemen van een ideaaltypische voorzieningswijze, zijn er vier institutionele strategieën om met de markt om te

gaan. Ten eerste kunnen we een pure markt implementeren. In dat geval komen er slechts additionele instituties bij die de markt mogelijk maken (zoals bescherming van eigendomsrechten)(*full commodification*). Ten tweede kunnen we een gemengde markt implementeren. In dat geval wordt de markt beperkt door de toepassing van een of meer restrictieve instituties (*incomplete commodification*). Ten derde kunnen we een markt implementeren en tegelijkertijd daarnaast een of meerdere niet-markt alternatieven (*institutional pluralism*). Ten slotte kunnen we de markt verbieden, door een of meer markt-incompatibele instituties te implementeren (*blocked exchange*). Alle vier deze strategieën zijn basaal: in de werkelijkheid moeten zij verdere worden toegespitst op specifieke casus.

3.2. Teneinde keuzes te maken tussen deze institutionele strategieën presenteer ik drie criteria voor institutionele keuzes. Het eerste criterium is de waarde van de uitkomsten, d.w.z. van het allocatiepatroon van goederen dat het resultaat is van een bepaalde voorzieningswijze (*outcome value*). Het tweede criterium is de waarde van het proces van het deelnemen aan een bepaalde voorzieningswijze (*process value*). Het verschil is bijvoorbeeld duidelijk bij het produceren en nuttigen van voedsel. Men kan een maaltijd zelf bereiden (zelfvoorziening) of nuttigen in een restaurant (markt voorziening). In beide gevallen kan de uitkomst exact gelijk zijn – d.w.z. dezelfde maaltijd in fysieke zin. De ervaring kan echter anders gewaardeerd worden omdat de voorzieningswijze verschilt: in het ene geval is men zelf de trotse bereider van het eindresultaat, in het andere geval waardeert men de gelegenheid nu eens niet zelf achter de pannen te staan maar van de atmosfeer van het uitje te genieten. Een derde criterium is de stabiliteit van institutionele strategieën (*stability*). Niet alle strategieën zijn stabiel, d.w.z. kunnen op de (middel)lange termijn blijven voortbestaan. Instabiele strategieën zijn geen reële opties op het institutionele keuzemenu: dit criterium biedt als het ware een voorselectie van reële strategieën waarna volgens de eerste twee criteria de waarde van die strategieën kan worden bepaald.

3.3. In tegenstelling tot de open beoordeling van institutionele strategieën met behulp van deze drie criteria, zouden sommigen kunnen beweren dat institutioneel pluralisme in principe altijd de voorkeur verdient (in ieder geval tot het tegendeel bewezen is). Immers, in zo'n pluralisme worden zoveel mogelijk voorkeuren van mensen voor verschillende voorzieningswijzen gehonoreerd. Liberale neutraliteit ten aanzien van die variëteit aan individuele voorkeuren vereist daarom institutioneel pluralisme. Dit argument verwerp ik echter. Institutioneel pluralisme legt in veel gevallen een grote belasting op sociale hulpbronnen en samenwerking. Vaak is het daarom niet mogelijk ieders voorkeuren te realiseren. In zulke conflictgevallen moeten redenen worden aangevoerd die onafhankelijk zijn van die voorkeuren, zeker daar die voorkeuren

ook deels gevormd zullen zijn door de institutionele arrangementen die toevallig op een bepaald tijdstip bestaan.

3.4. Gegeven de weerlegging van het neutraliteitsargument, moet de waarde van de strategie van institutioneel pluralisme bepaald worden aan de hand van de drie eerder gepresenteerde criteria. Niettemin is het onvoldoende om de waarden van elke voorzieningswijze die in zo'n pluralisme is opgenomen simpelweg bij elkaar op te tellen. Twee additionele modificaties ten opzichte van zo'n optelling zijn vereist. Ten eerste is in institutioneel pluralisme de mogelijkheid voor individuen om tussen verschillende voorzieningswijzen te kiezen op zichzelf waardevol. Dit doet de waarde van institutioneel pluralisme toenemen boven de genoemde optelling (*effect of choice*). Ten tweede kan er echter ook een overlap zijn tussen de verschillende voorzieningswijzen; dat noodzaakt een overeenkomstige neerwaartse correctie van de waarde van institutioneel pluralisme (*effect of overlap*).

Hoofdstuk 4. Marktwerking beoordeeld. Een 'capability theory' voor praktijken

In dit hoofdstuk staat de vraag centraal welke moraal-filosofische theorie gebruikt moet worden om de vraag naar de toepassing van de markt te beoordelen. Gegeven de voorafgaande reflectie moet het antwoord op deze vraag leiden tot het opstellen van 'locale normatieve theorieën', voor elke praktijk een, waarin de doelstelling van die praktijk worden vervat.

4.1. Een invloedrijke gedachte is dat praktijken gericht moeten zijn op het verwezenlijken van aan die praktijk 'interne goederen'. Alasdair MacIntyre heeft in zijn deugdethiek deze gedachte uitgewerkt. Het streven naar interne goederen doet de deelnemers aan de praktijk excelleren in hun handelen. Het criterium van interne goederen is echter problematisch. In elke praktijk zijn er naast interne goederen ook altijd mogelijke sociale doelen die als eisen aan die praktijk kunnen worden gesteld. Voor de medische praktijk is het doel bijvoorbeeld niet alleen het excelleren in complexe operatie voor zeldzame ziekten, maar ook het genezen van velen met medisch eenvoudige toepassingen die niet veel excellentie van de artsen vergen. Het feit dat interne en externe doelen bemiddeld moeten worden, maakt dat een praktijkoverstijgend criterium nodig is om afwegingen tussen beide te maken. Ten aanzien van de markt neemt MacIntyre een vijandige houding aan. Hij verkettert de markt omdat zij in haar eindeloze streven naar externe goederen (geld) het streven naar interne goederen in praktijken zou corrumperen. Echter, elke vorm van economische voorziening brengt een streven naar externe goederen met zich mee. Of een gezonde balans tussen interne en externe goederen op de

markt moeilijker is te handhaven dan in alternatieve voorzieningswijzen, kan niet in zijn algemeenheid worden uitgemaakt.

4.2. Margaret Radin heeft het praktijk-overstijgende criterium van persoon-zijn (*personhood*) uitgewerkt voor het beantwoorden van de vraag naar de grenzen van de markt. Zij maakt een onderscheid tussen ‘persoonlijk eigendom’ en ‘fungibel eigendom’. Objecten van persoonlijk eigendom zijn nauw met het persoon-zijn verbonden en zouden daarom van de markt afgehouden moeten worden. Bijvoorbeeld, bepaalde onderdelen van het menselijk lichaam zijn zo nauw met de mens verbonden dat zij niet zouden mogen worden verhandeld. De scheidslijn tussen persoonlijk en fungibel eigendom blijkt echter moeilijk te trekken; Radin’s uitwerking daarvandaan niet bevredigen. Bovendien, zelfs bij een bevredigende uitwerking blijkt het criterium van persoonlijk eigendom slechts één mogelijk criterium naast andere. De bescherming van persoon-zijn moet daarom niet exclusief aan een bepaalde categorie eigendom gekoppeld worden, maar als een morele waarde gezien worden op basis waarvan meerdere morele criteria kunnen worden opgesteld.

4.3. Mijn voorstel is om persoon-zijn als meest fundamenteel moreel criterium op te vatten en dit uit te werken in drie constitutieve voorwaarden. Elk van deze drie voorwaarden vereist de bescherming van een categorie persoonlijke vermogens (*capabilities*). Ten eerste moet de handelingsbekwaamheid (*capacity for agency*) tot ontwikkeling gebracht worden, bijvoorbeeld in basisonderwijs en basale verzorging. Dit vereist de realisering van moreel vereiste vermogens. Ten tweede moeten personen met deze handelingsbekwaamheid in staat gesteld worden te handelen in praktijken waaraan zij zelf vrijwillig deelnemen. Dit vereist de realisering van moreel toegestane vermogens. Ten slotte moeten personen beschermd worden tegen inbreuken op hun handelingsbekwaamheid. Dit vereist bescherming tegen immorele vermogens. Deze drie voorwaarden vormen de basis van drie corresponderende criteria voor de formulering van lokale normatieve theorieën voor praktijken, waarin telkens zowel de verplichting om vermogens te realiseren als om die vermogens om te zetten in handelen (*functionings*) aan de orde komt.

4.4. Deze *capability*-theorie behoeft nadere uitwerking. Ten eerste beargumenteer ik dat de scheidslijn tussen de verschillende categorieën van vermogens getrokken moet worden op basis van een interpretatie die recht doet aan de socio-historische context. Het vermogen te lezen en schrijven kan bijvoorbeeld in de ene maatschappij wel en in de andere niet als moreel vereist gelden. Daarnaast stel ik dat ook de sociale en politieke voorwaarden om als gelijke te worden behandeld in een samenleving vereist zijn om te kunnen functioneren als een persoon. Ten slotte beargumenteer ik dat in geval van conflict de criteria gericht op de bescherming en ontwikkeling van

handelingsbekwaamheid voorrang dienen te genieten op het criterium van het realiseren van moreel toegestane vermogens (prioriteitsregel). Tussen beide eerstgenoemde criteria moeten we echter geen hiërarchische verhouding aannemen; deze kunnen in gegeven situaties tegen elkaar afgewogen moeten worden. De prioriteitsregel zal in de toepassingen in deel twee een belangrijke rol blijken te spelen.

Hoofdstuk 5. Veiligheid - de markt voor bescherming

Het vijfde hoofdstuk behandelt de vermarkting van veiligheidsvoorzieningen. ‘Veiligheid’ is voor dit hoofdstuk beperkt tot de bescherming tegen bedreigingen gericht op leven en eigendommen; het omvat de preventieve en repressieve activiteiten die normaal gesproken worden geassocieerd met het werk van de politie. De opkomst van commerciële veiligheidsbedrijven die ten dele hetzelfde type activiteiten uitvoert, vraagt echter om een principiële beoordeling van de vraag in hoeverre veiligheid een marktgoed zou kunnen en moeten zijn.

5.1. De eerste stap in de beantwoording van die vraag is een onderzoek naar de mogelijkheid dat veiligheid als een puur marktgoed wordt geleverd (dus in de afwezigheid van een staat die hetzelfde doet). Robert Nozick stelt de natuuroestand voor als een situatie waarin individuen hun veiligheid zullen inkopen bij beschermingsorganisaties (*protective agencies*) en beargumenteert dat zo’n markt noodzakelijkerwijs zal leiden tot een monopolisering van de markt door één organisatie, die vervolgens zich tot een staat zal ontwikkelen. Een veiligheidsmarkt is volgens hem dus geen levensvatbare optie. Aan de hand van een onderzoek door socioloog Diego Gambetta naar de Siciliaanse mafia als een veiligheidsmarkt beargumenteer ik dat Nozick ongelijk heeft. Het is wel degelijk mogelijk dat een veiligheidsmarkt in stand blijft. Historisch gezien heeft in het geval van de mafia de marktstructuur steeds gefluctueerd tussen een oligopolie (waarbij mafia organisaties territoria en cliënten onderling verdelen) en concurrentie (wanneer mafia organisaties ‘marktaandeel’ van elkaar proberen af te pakken), zonder dat een monopolie tot stand kwam. Als een pure veiligheidsmarkt een levensvatbare optie is, wordt de normatieve vraag acuut of zo’n markt wenselijk is.

5.2. Ik beargumenteer dat een pure veiligheidsmarkt onwenselijk is om een tweetal redenen. Ten eerste zal zij stelselmatig tot ongerechtvaardigde vormen van geweld leiden, zowel tegen mogelijke consumenten (afpersing) als tegen criminelen tegen wie een veiligheidsbedrijf zijn klanten moet beschermen (beide zijn een schending van de morele eis dat een praktijk geen immorele capaciteiten mag toestaan of aanmoedigen). Ten tweede zal een pure veiligheidsmarkt

gevoelens van onveiligheid bij mogelijke consumenten aanmoedigen teneinde haar producten aan te prijzen. Aangezien deze gevoelens van veiligheid een integraal onderdeel uitmaken van veiligheid zelf (subjectieve component van veiligheid), zijn zij moreel problematisch; althans, voorzover zij uitstijgen boven het objectieve niveau van onveiligheid. In een pure veiligheidsmarkt hebben aanbieders er echter geen belang bij dat gevoelens van onveiligheid tot dit niveau beperkt blijven (schending van de tweede morele eis, dat veiligheidsvoorziening tot doel heeft individuen optimale mogelijkheden tot veiligheid te garanderen). Beide bezwaren kunnen in een additionele veiligheidsmarkt (d.w.z. naast staatsvoorziening) tot op grote hoogte worden ondervangen door adequate regulering en controle door de staat. Daarmee is echter de vraag naar de legitimiteit van zo'n additionele markt nog niet beantwoord.

5.3. Twee argumenten kunnen worden ingebracht om te betogen dat een additionele markt niet legitiem is, maar dat veiligheid een staatsmonopolie zou moeten zijn. Het eerste argument is dat veiligheid constitutief is voor de identiteit van de (nationale) gemeenschap. Net zoals taal en een gemeenschappelijk grondgebied is het een goed dat bijdraagt aan de binding aan de gemeenschap en haar representant, de staat. Dit argument laat echter de mogelijkheid open dat meer locale gemeenschappen eigen veiligheidsvoorzieningen claimen als een voor hun gemeenschap constitutieve activiteit (vgl. de 'gated communities'). Het tweede argument betoogt dat veiligheid altijd uit preventieve en repressieve activiteiten bestaat; echter de commerciële beveiliging heeft geen belang bij repressieve activiteiten en handelt overtredingen vaak intern af; dit zou ten koste gaan van de handhaving van gemeenschappelijke normen (zoals de strafwetten). Hoewel dit op zichzelf juist is, kan hieruit niet de conclusie volgen dat commerciële beveiliging illegitiem is. Het alternatief, dat de staat volledig zorgdraagt voor veiligheid, is namelijk onwerkbaar. Historisch gesproken is de staat voor de opsporing van overtredingen en misdrijven altijd afhankelijk geweest van samenwerking met andere, niet-statelijke actoren. Normatief gesproken zou het een quasi-totalitaire indringing van de staat in het dagelijks leven vergen om dat anders te maken.

5.4. Beide argumenten tonen daarom dat het moet worden toegestaan dat naast de staat ook andere actoren, waaronder commerciële, in de voorziening van veiligheid een rol spelen (institutioneel pluralisme). Twee condities zijn vereist om zo'n gemengde structuur stabiel te laten zijn. Ten eerste moeten private en publieke actoren adequaat samenwerken. Ten tweede moet de additionele veiligheidsmarkt niet het minimumniveau aan veiligheid dat door de staat geleverd wordt aan alle burgers ondergraven. Dat laatste zou kunnen gebeuren als burgers die zelf veiligheid inkopen weigeren nog aan de publieke voorziening bij te dragen, of als de ongelijkheid in veiligheid tussen privaat en publiek

beschermde gebieden zo groot wordt dat de laatste onder het minimumniveau van bescherming vallen.

Hoofdstuk 6. De media – communicatie als marktgoed

Het zesde hoofdstuk behandelt de plaats van de markt met betrekking tot de media. De media levert producten met verschillende typen inhoud (nieuws, entertainment, cultuur e.a.) via een verscheidenheid aan technologische middelen (televisie, radio, gedrukte media als krant en tijdschrift, internet). Kenmerkend is dat er sprake is van massacommunicatie, d.w.z. communicatie van één aanbieder naar een groot publiek aan potentiële ontvangers.

6.1. De eerste vraag is of mediamarkten naar bevrediging functioneren. Twee redenen tot zorg worden vaak genoemd: afhankelijkheid van adverteerders en concentratie van eigendom in enkele handen. In mediamarkten die (deels) via advertenties gefinancierd worden, is de directe relatie tussen producent en consument verbroken. De belangen van een derde partij, de adverteerder, bepalen nu mede welk media-aanbod tot stand komt. Dit leidt er bijvoorbeeld toe dat de adverteerder onwelgevallige inhoud niet of minder frequent zal worden aangeboden. De vraag of dat bezwaarlijk is. Aan de ene kant staan de preferenties van de adverteerder die advertentieruimte vraagt en van de consument die gratis inhoud vraagt. Aan de andere kant staat het belang dat bepaalde media-inhoud toch beschikbaar komt; bijvoorbeeld inhoud die corruptie binnen het (adverterende) bedrijfsleven aan de kaak stelt. De afweging tussen deze beide kanten van de zaak vereist een normatief criterium dat onafhankelijk opereert van de in de markt geuite voorkeuren. Hetzelfde geldt voor eigendomsconcentraties. Vanuit economisch perspectief blijkt geen algemene conclusie te kunnen worden getrokken met betrekking tot het effect van concentratie op de diversiteit van standpunten die in de media belicht worden. Concentratie is vooral bezwaarlijk vanuit het perspectief van een democratische theorie waarin de bijdrage van een diversiteit aan bronnen aan de openbare meningsvorming wordt gewaardeerd. Dat vraagt om een democratische theorie waarin dit belang kan worden afgewogen tegen dat van een republikeins democratie-ideaal waarin concentratie juist voor een breed gedeelde publieke sfeer kan zorgen waarin het publiek zich op slechts enkele aanbieders richt.

6.2. De uitwerking van een normatieve theorie voor de media geschiedt tegen de achtergrond van de nodige scepsis: kunnen media consumenten niet via de markt al hun voorkeuren voor mediaproducten uiten? Is elke correctie van of aanvulling op die voorkeuren niet automatisch paternalistisch of elitair? Veel auteurs hanteren een vast sjabloon in hun antwoord aan deze scepsis. Hun

‘standaardargument’ luidt dat de markt niet in staat is om vanuit democratisch oogpunt gewenste mediaproducten te leveren. De eerste stap in dit argument is de normatieve claim. Die neem ik grotendeels over, zij het geformuleerd in termen van ‘capabilities’. De normatieve claim luidt dat de media aan alle burgers de mogelijkheid moet bieden democratische mediaproducten te verkrijgen (*capability to acquire democratic content*). Democratische inhoud heeft tot doel een publieke sfeer van debat en argumentatie te ondersteunen. Deze claim staat naast de claim dat de media ook de mogelijkheid moet bieden tot het verkrijgen van niet-democratische, voornamelijk ter ontspanning bedoelde mediaproducten moet aanbieden. De laatste claim is hiërarchisch ondergeschikt aan de eerste.

6.3. De volgende stap is te laten zien dat de markt genoemde democratische mediaproducten niet of in onvoldoende mate kan leveren. Het standaardargument betoogt dat dat het geval is omdat democratische mediaproducten beogen de voorkeuren van mensen te vormen of transformeren; dat maakt het onmogelijk dat mensen reeds van tevoren een vraag naar die producten hebben. Ik betoog dat dit argument voorkeuren voor bepaalde mediagenres verwacht met voorkeuren ten aanzien van bepaalde overtuigingen die door de media kunnen worden beïnvloed. Het is wel degelijk mogelijk een effectieve vraag naar democratische programma’s via de markt uit te oefenen. Het gebrek aan marktvraag naar deze producten moet dan ook veeleer worden verklaard door een afwachtende houding die ontstaat omdat burgers alleen bereid zijn deze producten te consumeren als anderen dat ook doen. De consumptie van democratische programma’s is een burgerplicht die net als andere – zoals stemmen – kwetsbaar is voor ontduiking. Dit geeft een rechtvaardiging voor levering van democratische programma’s in aanvulling op de markt, maar slechts voorzover zij effectief is in het doorbreken van die patstelling. Dat vereist ook actie buiten de media om (bijvoorbeeld in het onderwijs) om burgers van de waarde van de betreffende mediaconsumptie te overtuigen.

6.4. In het vervolg ga ik nader in op de rol van de media in de constructie van de publieke sfeer. Aan de hand van het werk van Jürgen Habermas laat ik zien dat niet alleen marktmedia de publieke sfeer kunnen ondergraven. De logica van de media zelf (ook in niet-markt gedaanten) is zodanig dat altijd een kunstmatige (re)constructie van het debat in de publieke sfeer plaatsvindt. De rol van de media is dan ook om de publieke sfeer te ondersteunen (met name door de deelnemers van informatie te voorzien), niet om deze zelf vorm te geven. De media is daarmee een doorgeefluik tussen de *civil society* en de formele politieke organen. Tenslotte laat ik zien hoe deze rol het gebruik van de professionele voorzieningwijze (*professional mode of provision*) impliceert. Professionals zijn echter in de media grotendeels afhankelijk van financiering hetzij via de markt hetzij via de staat. Een publiek gefinancierd professioneel systeem heeft dan een

lichte voorkeur. Zo'n systeem zal alleen op stabiele basis naast de markt voor overige (niet-democratische) mediaproducten kunnen bestaan indien zij voldoende financiering en voldoende aandeel van de aandacht van het publiek weet te garanderen.

Hoofdstuk 7. Zorg – een dienst aan de kwetsbaren

Het zevende hoofdstuk behandelt de plaats van de markt voor zorg. 'Zorg' wordt in dit verband gedefinieerd als het verlenen van zorgende diensten op structurele basis aan personen die voor langere tijd afhankelijk zijn van die zorg (kinderen, afhankelijke ouderen, gehandicapten). Zou dit type zorg op de markt moeten?

7.1. Als eerste bespreek ik verschillende manieren waarop zorg kan worden verleend. Zorg kan worden verleend als informele dienst, d.w.z. op basis van een persoonlijke relatie tussen zorgverlener en zorgontvanger die voortvloeit uit de zorgrelatie (bijv. een familierelatie). Daarbinnen zijn twee varianten: betaalde en onbetaalde informele zorg. Een alternatief is dat zorg op contractuele basis wordt verleend. Daarbinnen zijn drie varianten: publieke voorziening (bijv. in een staatsgefinancierde instelling), markt of quasi-markt. In het laatste geval krijgen zorgbehoevende een budget (voucher) toegewezen uit publieke middelen waarmee zij op de markt zorg kunnen inkopen. In dit hoofdstuk concentreer ik me op de overgang van zorg vanuit de informele sfeer naar zorg op contractuele basis, waarbij dan meestal de zorg op een (quasi-) markt belandt, gegeven de veel voorkomende privatisering van publieke voorzieningen. Hoe deze overgang te waarderen?

7.2. Met betrekking tot zorg zijn twee normatieve claims van centraal belang. De ontvanger van zorg heeft een claim dat voor hem gezorgd wordt; zorg is noodzakelijk voor hem om op een basaal niveau als persoon te kunnen (over)leven. Aan de andere kant kan de verlener van zorg in de meeste gevallen niet gedwongen worden om te zorgen. Zij heeft de mogelijkheid (*capability*) maar meestal niet de plicht om te zorgen. Hoe verhoudt de markt zich tot deze morele claims? Ik bespreek twee bezwaren die vaak worden ingebracht tegen zorg die via de markt geleverd wordt. Het eerste bezwaar is dat de oneindige aard van zorg niet goed te vatten is in de beperkte contractuele specificatie waarin zorg geperst moet worden op de markt. Het tweede bezwaar is dat betaling voor zorg incompatibel is met de intrinsieke motivatie om te zorgen die aan goede zorg ten grondslag ligt. Ik verwerp beide bezwaren in deze vorm. Goede zorg kan via de markt geleverd worden. Wel moeten contracten dan zorgvuldig gespecificeerd zijn en moet de zorgontvanger beschermd zijn tegen de macht van derde partijen om kostenminimalisatie in plaats van zorgkwaliteit voorop te stellen.

7.3. De volgende stap is om te erkennen dat de organisatie van zorg ook afhangt van een aan de zorg zelf externe eis; namelijk dat potentiële zorgverleners de mogelijkheid hebben in betaalde arbeid te participeren. Dit leidt tot de bekende werk-zorg-dilemma's, met name voor vrouwen. De emancipatie van vrouwen vereist de mogelijkheid tot werken, maar dat laat zich niet gemakkelijk verzoenen met de wens tot het zorgen voor afhankelijke personen. Ik bespreek vier modellen die daarvoor een oplossing aandragen: een model waarbij zowel mannen als vrouwen volledig werken en zorgtaken aan de markt overlaten (*universal breadwinner*), een model waarbij vrouwen slechts deels werken en verder zorgen waarvoor zij financieel gecompenseerd worden (*caregiver parity*), een model waarbij zowel mannen als vrouwen beide werken - zij het minder lang - en zorgtaken verrichten (*universal caregiver*), en een model waarbij zij een budget krijgen voor zorgtaken die zij zowel kunnen gebruiken om zorg in te kopen als ter compensatie van gederfde arbeid als zij ervoor kiezen zelf te zorgen (*caregiver choice*).

7.4. Ik concludeer dat het derde model het meest geschikt is voor die gevallen waarin een verplichting om in persoon te zorgen voor de zorgbehoevende bestaat. In moderne samenleving geldt die verplichting voornamelijk voor ouders ten opzichte van hun kinderen. Als ouderlijke zorg een verplichting is én de reële mogelijkheid moet bestaan voor beide ouders om in betaalde arbeid te participeren, is het derde model de enige echte oplossing. Voor de overige gevallen is zorg geen plicht, en moet het de potentiële zorgverlener toegestaan zijn te kiezen de zorg aan de markt over te laten of zelf ter hand te nemen.

Conclusie

De conclusie bevat een reflectie op de resultaten van de afzonderlijke hoofdstukken van deel II in het licht van de theorie zoals ontwikkeld in deel I. Ten aanzien van de *capability*-theorie presenteer ik vier conclusies. Ten eerste bleek het criterium van de bescherming van handelingsbekwaamheid in de cases een relatief ondergeschikte rol te spelen. Ten tweede bleek de scheidslijn tussen wat moreel vereist is en wat moreel is toegestaan soms binnen één *capability* te liggen en soms tussen meerdere *capabilities*; er is voor de toepassing van dit cruciale onderscheid dus geen eenduidige structuur aan te geven. Ten derde bleek het omzetten van *capabilities* in handelingen (zgn. *functionings*) voor alle onderzochte goederen van moreel belang, in tegenstelling tot de nadruk in de *capability*-literatuur op uitsluitend de *capabilities* zelf als moreel relevant. Een vierde conclusie is dat de onderlinge afhankelijkheid van praktijken in alle gevallen van groot gewicht is in het formuleren van de relevante morele eisen.

De tweede verzameling conclusies gaat over de instituties die de doelstellingen zoals gegeven in de *capability*-theorie moeten realiseren. De vijfde conclusie is dat zowel de waarde van de uitkomsten als die van het proces onmisbaar bleken in het beoordelen van de waarde van institutionele strategieën. De zesde conclusie is dat de markt in een institutioneel pluralistische strategie soms gebruikt wordt voor het realiseren van moreel vereiste *capabilities* en soms voor het realiseren van moreel toegestane (maar niet vereiste) *capabilities*. Dit weerspreekt de vaak gebezigde opvatting dat de markt slechts voor de voorziening van relatief triviale zaken zou moeten worden gebruikt terwijl bijvoorbeeld de staat in basisbehoeften zou moeten voorzien. De zevende conclusie is dat – ook voor niet statelijke voorzieningswijzen, en zelfs voor de markt – de financiering middels publieke fondsen echter in veel gevallen van cruciaal belang blijft.

Hoofdstuk 8. Kapitalisme en de stabiliteit van pluralisme

Als de conclusie dat voor veiligheid, media en zorg institutioneel pluralistische arrangementen gewenst zijn (zie hoofdstukken 5, 6 en 7) generaliseerbaar is naar een behoorlijk aantal andere praktijken, ontstaat het beeld van een ‘pluralistische economische orde’. In dit hoofdstuk komt de vraag aan de orde in hoeverre zo’n pluralistische orde stabiel is. Deze vraag wordt beantwoord via een omweg; namelijk via een bespreking van een kritiek op de kapitalistische economie, waarin een dergelijke stabiliteit betwist wordt. Deze kritiek, die ik de ‘vrijtijdskritiek’ (*leisure critique*) noem, bestaat uit een morele en een empirische claim.

8.1 De morele claim is dat de economie (d.w.z. het geheel van economische activiteiten) ondergeschikt moet worden gemaakt aan de mogelijkheden om een goed leven te realiseren in niet-economische activiteiten, d.w.z. in vrije tijd. De basis van deze stellingname is te vinden in (een bepaalde interpretatie van) Aristoteles en Marx. Beiden maakten een onderscheid tussen economische en niet-economische activiteit en pleitten voor een bevrijding van economische activiteit. De empirische claim is dat zodra in de economie de marktgerichte voorzieningswijze dominant wordt, deze bevrijding mislukt. Aristoteles formuleert dit gevaar in termen van een bepaalde, onnatuurlijke vorm van economie bedrijven (*chrematistike*), waarin mensen eindeloos naar meer rijkdom streven. Marx neemt dit over in zijn schema waarin geld louter wordt ingezet in ruilhandel omwille van het maken van meer geld (en zo transformeert tot kapitaal). Zowel in hun visie op wat het goede leven buiten de economie precies inhoudt, als in hun analyse van de bedreiging die deze eindeloze vorm van

economie bedrijven vormt, zijn er echter ook verschillen tussen beide. Beide claims moeten nader worden onderzocht.

8.2. De voornaamste kritiek op de morele claim is dat economische activiteit, d.w.z. werk, zelf ook bevredigend kan zijn. Een bevrijding uit de economie is niet nodig, want die bevrijding kan ook gestalte krijgen door werk te hervormen zodat het 'zelf-realiserend' is (deze gedachtegang heeft eveneens een basis in het werk van Marx). Hier kan tegenin gebracht worden dat de realisering van bepaalde concepties van het goede leven per definitie geen gestalte kan krijgen via economische activiteit (zoals op meditatie of gemeenschap gerichte levensvormen); en er daarnaast het probleem blijft dat de organisatie van arbeid vaak coördinatie tussen individuen vereist, waarbij in veel gevallen elk afzonderlijk individu (deel van) zijn eigen idealen van zelf-realisatie ter zijde zal moeten schuiven. Vanwege deze bezwaren is het toch prudent een domein van vrije tijd beschikbaar te hebben. Idealiter vereist dit een sociale ordening waarbij individuen die zichzelf in hun arbeid willen realiseren daartoe de mogelijkheid hebben, en individuen die daartoe vrije tijd prefereren idem dito. Vanwege problemen die ontstaan door de onvermijdelijke interactie tussen deze beide groepen in een samenleving is zo'n ideaal scenario echter niet mogelijk. Een compromis is noodzakelijk waarbij een bepaalde balans tussen werk en vrije tijd als norm voor de samenleving wordt vastgesteld.

8.3. De empirische claim houdt in dat een 'kapitalistische dynamiek' de mogelijkheden voor niet-economische activiteit (vrije tijd) ondermijnt. Door concurrentie ontstaat een proces van voortdurende kapitaalaccumulatie. De markt als economische organisatievorm is een noodzakelijk maar niet voldoende voorwaarde voor het optreden van een kapitalistische dynamiek; daarvoor is ook nodig dat markten de dominante voorzieningswijze zijn in een gegeven economie. Deze dynamiek is wel variabel; haar intensiteit varieert met de mate waarin sociale en politieke instituties haar afremmen of juist aanwakkeren. Het kapitaal dat door deze dynamiek geaccumuleerd wordt, moet vervolgens ergens geïnvesteerd worden; hetzij opnieuw in de markt, hetzij buiten de markt. In het algemeen zal een zo groot deel opnieuw in de markt geïnvesteerd worden, dat het openbreken van nieuwe markten noodzakelijk is om voldoende investeringsmogelijkheden te garanderen. Dit bergt het gevaar in zich dat het niet-marktdeel van institutioneel pluralistische praktijken wordt vervangen door marktgewijze voorziening en zo de pluralistische voorziening tenietdoet.

8.4. Dat laatste gevolg zal slechts dan niet optreden, indien ofwel andere investeringsmogelijkheden voor het kapitaal worden gevonden, ofwel de link tussen de kapitalistische dynamiek en kapitaalaccumulatie wordt verbroken. De meest belovende variant van de eerste oplossing is die waarbij geaccumuleerd kapitaal wordt geïnvesteerd in zowel het marktdeel als het niet-marktdeel van

pluralistische praktijken (zodat het oorspronkelijke evenwicht gehandhaafd blijft). De investering in het niet-marktdeel komt daarbij tot stand door het belasten van kapitaal. De tweede oplossing houdt in dat de productiviteitsstijging over een bepaalde periode (bijv. een jaar) die als gevolg van de kapitalistische dynamiek tot stand komt, wordt gecompenseerd met een algemene werktijd reductie van een zodanige omvang dat de hoeveelheid gegenereerd kapitaal constant blijft. Dit doet de 'stationaire staat' (*stationary state*) intreden waar John Stuart Mill reeds een voorstander van was. Beide oplossingen beschermen pluralistische praktijken van de beschreven investeringsdruk en zorgen voor de in dit hoofdstuk gezochte 'stabiliteit van pluralisme'; welk van beide oplossingen geprefereerd moet worden hangt vervolgens af van een reeks andere, buiten de bescherming van pluralisme gelegen factoren.