

# **Backwards Into the Future: Neo-Republicanism as a Post-Socialist Critique of Market Society**

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## **I. Are Capitalistic Markets Legitimate?**

### A. Two conceptions of moral legitimacy

Socialism, understood as the rejection of markets based on private property in favor of comprehensive centralized economic planning, is no longer a serious political option. If the core of capitalism is the organization of the economy primarily through market competition based on private property, then capitalism has certainly defeated socialism. Markets have been accepted—and central planning abandoned—throughout most of the “third world” and the formerly Communist states. In the advanced industrial states of the West, Labor and “democratic socialist” parties have rejected socialism, having deregulated markets and privatized industries, utilities, and transport. The United Kingdom Labour Party’s 1945 manifesto declared it to be a “Socialist Party, and proud of it. Its ultimate aim is the establishment of the Socialist Commonwealth of Great Britain.”<sup>1</sup> Today it insists that markets are a given.

So, have capitalism and markets triumphed? Are we all capitalists now insofar as we all believe that capitalistic markets are a legitimate economic arrangement? The answer depends on what we mean by “legitimate.” We can distinguish two ways—instrumental and intrinsic—in which legitimacy can be understood.<sup>2</sup>

On the instrumentalist view, markets are morally legitimate insofar as they are efficient means of producing desirable goods. Markets are morally desirable because, quite literally, they deliver the goods. It is this instrumental understanding of the legitimacy of the market that has become almost commonplace today. To many, instrumental effectiveness is

the only really important feature of any economic system. Contemporary economics offers an instrumental defense of market arrangements: they are the most efficient mode of economic organization, producing the optimal allocation of resources and maximizing growth. Or, to be more blunt, they work.

To accept the instrumental moral legitimacy of markets is consistent with seeing them as embodying essentially unfree or otherwise morally dubious forms of social relations that we grudgingly must put up with for the sake of their results. Unless one is a thoroughgoing consequentialist, according to whom the only morally relevant factor in evaluating actions and institutions is their aggregate consequences, there is no guarantee that an economic organization that yields the best results, measured in terms of the production of goods or consumer satisfaction, will be thoroughly moral. Thus we find today many insisting that, while we must rely on markets to deliver economic prosperity, they tend towards exploitation, unfreedom, debasement of tastes, etc., and so must be constantly regulated and hedged. Cass R. Sunstein, a leading scholar of the American left, expresses this view when he tell us that “markets are mere instruments to be evaluated by their effects” and that “social justice is a higher value than the protection of free markets.”<sup>3</sup>

Advocates of the instrumental view sometimes characterize their position as accepting markets but not “market society.”<sup>4</sup> Especially in Europe, the disparaging term “market society” is employed widely, often to refer to anything which is both disapproved of and American.<sup>5</sup> However, we can distill a more sophisticated usage, according to which a market society is a society legitimately permeated by market relations. Markets are not simply grudgingly employed in commercial matters to get the desired goods; they are all-pervasive, and seen as an intrinsically moral way in which people relate to each other—based on exchange.

The defender of market society upholds the moral legitimacy of market relations in ways that go far beyond pointing to their instrumental effectiveness in producing the goods; he stresses the inherent morality of free exchange as a basis for social relations. And, indeed, most of the classical liberal tradition in political economy advanced such a case. From Adam Smith (1723-1790) to F.A. Hayek (1899-1992) and Milton Friedman, classical liberal political and economic theory has defended the market not simply because it produces the goods, but because it is an inherently free and rational way for people to relate to each other. As Lionel Robbins (1898-1984), the great historian of political economy, pointed out, the ultimate value of classical liberal political economy was liberty, and this had much to do with its argument for private property and the market.<sup>6</sup> The classical liberal political economists—e.g., Smith, J.R. McCulloch, Nassau William Senior, J-B Say, David Ricardo, Robert Torrens—did not generally entertain a sharp distinction between the inherent justice of market relations and the prosperity that they brought about.<sup>7</sup> To classical liberals, markets are not simply simply a tool for delivering the goods: they are, in Hayek’s words, “perhaps the greatest discovery mankind ever made” because they allow people to freely and peacefully cooperate given their diverse ends and purposes.<sup>8</sup>

Classical liberalism embraces market relations because (but not, of course, only because) they (1) are essentially are free, (2) respect the actual choices of individuals, and (3) legitimately express different individuals’ rational decisions about the proper choice between competing ends, goods and values. It is one thing to rely on markets because they are instrumentally useful (which is consistent with all the while holding one’s nose) and quite another to uphold them because market relations are deserving of respect because they are consistent with liberty, voluntary choice and respect individuals’ decisions about what is of value. If we reject any of these three claims—and especially if we reject all of them—markets appear morally dubious even if they deliver the goods. We might use them (if there

is nothing better), but always with misgivings. And so we will do our best to hedge them about, limit and control them.

### B. Traditional socialism and neo-republicanism

Keeping firmly in mind the distinction between an instrumental and inherent defense of the moral legitimacy of the market, we see that traditional socialism rejected both. First, socialism attacked the market's instrumental effectiveness: a traditional socialist complaint was that market capitalism fails to produce prosperity and order because it is chaotic and wasteful. According to a standard Marxist view:

Under capitalism the production and distribution of goods is quite unorganized. What does this mean? It means that all the capitalist entrepreneurs (or capitalist companies) produce commodities independently of one another. Instead of society undertaking to reckon up what it needs and how much of each article, the factory owners simply produce upon the calculations of what will bring them most profit and will best enable them to defeat their rivals in the market....

The first reason, therefore, for the disharmony of capitalist society is the anarchy of production, which leads to crises...competition and wars.<sup>9</sup>

The Marxist solution, and this was often put explicitly, was to organize all of society along the lines of an "immense cooperative workshop." To quote again from a book called *The ABC of Communism*:

We must know in advance how much labour to assign to the various branches of industry; what products are required and how much of each it is necessary to produce; how and where machines must be provided. These and similar details must be thought out beforehand, with approximate accuracy at least; and the work must be guided in accordance with calculations.... Without a general plan, without a general

directive system, and without careful calculation and book-keeping, there can be no organization. But in the communist social organization, there is such a plan.<sup>10</sup>

Philosophers such Thomas Dewey (1859-1952), who sought to develop a form of “renascent liberalism” that would combine classical liberalism’s defense of personal liberty with extensive state control of the economy, were much impressed by this type of analysis.<sup>11</sup> In England, the “new liberals,” who shared Dewey’s vision of a revised liberal political economy supporting state guidance of the economy, agreed that unregulated market capitalism was so permeated by “waste and error”<sup>12</sup> as to be “a public scandal.”<sup>13</sup> In 1931 Dewey was so confident of the necessity of government planning to avoid the supposed waste and error of market chaos that he proclaimed that “we are in for some kind of socialism, call it by whatever name you please, and no matter what it will be called when it is realized.”<sup>14</sup> As late as 1971, Lord Acton (1908-1974), in his defense of the free market, took this socialist accusation of its “chaotic” nature to be “a main line of criticism.”<sup>15</sup>

It is this socialist attack on the legitimacy of the market—which persuaded Dewey, and worried Action—that is now discredited. Traditional socialism, however, also insisted that the market was inherently immoral: socialism advanced a critique asserting the inherent unfreedom of market relations. A core theme of socialist writings has been that private property constitutes the capitalists’ “power over” the working class, limiting its freedom. R. H. Tawney (1880-1962), a leading figure in British socialism, insisted that under conditions of mass production, the “rights of ownership” concentrate power in the hands of capitalists, allowing them the “control of large armies of workers.”<sup>16</sup> Capitalists have power over workers because they can direct the workers according to their plans. Thus, in the eyes of Tawney, protecting the liberty of the workers required constraining the ownership rights—power—of employers. More recently, a contemporary socialist philosopher has insisted that John D. Rockefeller’s “capitalist property rights” produced “unintended” public

consequences for the entire society, showing that he exercised great power over the rest of society.<sup>17</sup> These power relations, socialists believed, condemn the workers to unfreedom. Traditional socialists, both Marxist and non-Marxist, thus maintained that markets are not the realm of freedom; their unequal power relations constitute a repressive system of social relations. Karl Marx's (1818-1883) famous theory of alienation purported to explain how this system distorted the worker's consciousness, and alienated the worker from himself, his labor, his product and his own nature as human.<sup>18</sup> To Marx and Friedrich Engels (1820-1895), those who see market relations as all-pervasive conceive of "mutual exploitation" as the "universal mutual relation of all individuals."<sup>19</sup>

Now the utter failure of socialism's instrumental critique of the market does not in itself undermine the critique of the market as inherently unfree and based on power relations. To be sure, if socialism is a package, then its inability to provide an instrumentally effective way to organize economic life renders its case for the inherent immorality of the market irrelevant. Socialism cannot work, and so, it is at best, "utopian" in the pejorative sense. However, we can now see an agenda for a post-socialist critique of the moral legitimacy of the market: to develop a political theory that is not wedded to socialism's implausible rejection of the market on instrumental grounds, but which can nevertheless uphold the inherent unfreedom and immorality of market relations. Such a post-socialism would grudgingly accept markets when necessary to produce the goods, but reject market society.

Where might one look for such a post-socialist critique? Interestingly, one of the main inspirations has been the past: republicanism. The idea of "republicanism" can be detected in Sparta and the Roman republic, the Italian city states of the Renaissance, the "north Atlantic" republican tradition of writers such as James Harrington (1611-1677) and, of course, in the philosophy of founders of the United States such as James Madison (1751-1836).<sup>20</sup> The republican tradition does indeed look promising as an inspiration for a post-

socialism, as it is characterized by an ambivalence about property and commercial society. On the one hand, the republicanism of the seventeenth and eighteenth centuries was not anti-commercial; unlike socialism, it was never tempted by a wholesale rejection of commercial life and private property. Indeed such republicanism insisted that private property was necessary for personal independence and freedom, a view that is also at the heart of classical liberalism. Yet, as the term itself expresses, republicanism stressed the res publica, the public. Republicanism has demanded civic virtue from citizens—a devotion to public, political life—and has often seen the withdrawal of citizens into private commercial relations as a retreat from civic virtue.<sup>21</sup> A political tradition that admits commercial relations as legitimate, while at the same time stressing the dignity of the political sphere over the economic, has obvious attractions as a basis of a post-socialist critique of market society. Given the collapse of socialism’s instrumental criticisms, it is necessary to allow markets and commerce as legitimate in their own sphere—the production of goods—while challenging the inherent morality of market relations as a exemplar of moral social interaction more generally.

My concern, however, is not with the republican tradition generally, but with the so-called “republican revival” or “neo-republicanism,” in particular the influential formulations of Philip Pettit and Cass Sunstein. Although it is widely appreciated that neo-republicanism upholds the preeminence of the public sphere, it generally has not been noticed the extent to which it constitutes a restatement of socialist criticisms of market society, though Pettit does explicitly offer it as a theory “congenial to socialists.”<sup>22</sup> And it has risen to prominence as a contemporary political theory just as socialism has dimmed—it thus is a good candidate for a post-socialist critique of market society.

My analysis of neo-republicanism is structured around its rejection of the three classical liberal claims identified above (section I.A), which constitute a defense of the inherent morality of market relations, viz. they (1) are essentially free; (2) respect the actual

choices of individuals, and (3) legitimately express different individuals' rational decisions about the proper choice between competing goods and values. Section II examines Pettit's rejection of (1): unregulated market relations, he argues, are unfree because they are infected by an inequality of power. Section III considers Sunstein's rejection of (2); section IV then examines Sunstein's rejection (3). I shall argue that on all three points, the neo-republican critique of the inherent morality of market relations is implausible.

## **II. Pettit's Neo-Republican Critique of Market Freedom**

### A. Why classical liberals stress negative liberty and see power as exercised control

The claim that markets are based on free exchange is easily misconstrued. It does not mean that markets themselves do not require any limitations on freedom. As classical liberals have recognized, the laws of property, contract law, and the criminal law are all necessary for a market order, and all are at least in some respects limitations on one's freedom.<sup>23</sup> Nor does it mean that market transactions are necessarily free: coercion, force and fraud can characterize market exchanges. Rather, the core claim is that, in the absence of force, fraud, or coercive threats, market transactions are voluntary and free.<sup>24</sup>

This view of market relations rests on two familiar fundamental classical liberal presuppositions. First, liberty must be understood as primarily negative. In particular, that "Alf is free" cannot be understood as presupposing that Alf possesses power—capacities or resources (most importantly, wealth). If market relations are to be morally praiseworthy because they respect freedom, freedom must be entirely divorced from possessing power; if freedom depends on power, one's freedom is a function of one's success in the market, and those who lose out in the market lose out in freedom. If your freedom depended on your power to accomplish your ends, the market would not be a stable realm of freedom: those who lose out would lose freedom.



The second presupposition is closely linked: just as it must be the case that your freedom does not depend on your success in accumulating wealth, it must be the case that your freedom does not necessarily turn on my success in the market. If the fact that I have accumulated wealth itself is a limitation of your freedom, then the market order again becomes a threat to your freedom. Thus classical liberals have rejected the claim that my power, understood as the things I am able to do with my resources, itself limits your freedom. My possession of the “power to” accomplish my aims, classical liberals insist, does not itself imply that I exercise “power over” others. To be sure exercising power over another—using your resources against another to coerce her—limits her liberty. If I control you, then your actions respond to my wishes; should you want to do otherwise, you could not, or could only do so at considerable costs. As Hayek says, coercion limits your liberty because it makes you “someone’s else’s tool.”<sup>25</sup> That is the right metaphor for being controlled by another: if you exercise power over me I am to some extent your tool, and so not free. But, classical liberals have insisted, one does not exercise power over others simply by having resources, however great.

#### B. Pettit’s neo-republican criticism of negative liberty

In explaining why “classical liberalism fails,” Pettit tells us that the “liberal idea of being left alone” was “an ideal for the new class of profit-seeking entrepreneurs and professionals.” He continues:

For these individuals and their champions, the notion of freedom as non-interference articulated an indispensable precondition for competitive success, and it was easy for them to think—certainly it was convenient for them to think—that the notion represented a universally attractive ideal. They could ignore the fact that freedom as

non-interference is consistent with insecurity, with lack of status, and with the need to tread a careful path in the neighborhood of the strong....<sup>26</sup>

Pettit claims that negative liberty is an inadequate conception of freedom as it deems Alf free if, as a matter of fact, he is not interfered with by Betty, though at any time Betty could interfere with Alf if she so chose, and so he only remains not interfered with by her sufferance. In such a situation, says Pettit, Betty dominates Alf. “One agent dominates another if and only if they [sic] have a certain power over that other, in particular a power of interference on an arbitrary basis.”<sup>27</sup> It is important that, to Pettit, “what constitutes domination is the fact that in some respect the power-bearer has the capacity to interfere arbitrarily, even if they [sic] are never going to do so.”<sup>28</sup>

On this view, then, whenever Betty has resources that would give her the capacity to exercise power over another and so interfere if she so chose, she dominates the other and so he is not free. And, as Pettit acknowledges, “the resources in virtue of which one person may have power over another are extraordinarily various: they range over physical strength, technical advantage, financial clout, political authority, social connections, communal standing, informational access, ideological position, cultural legitimation, and the like.”<sup>29</sup> Private property, especially when it is used to offer employment (rather than, say, personal consumption) is a hallmark of such power. Pettit agrees with socialists that unregulated capitalism is inherently a form of “wage slavery”—“however little interference workers suffered, it was still the case that they lived under permanent exposure to interference, in particular arbitrary interference.”<sup>30</sup>

To be free, Pettit argues, workers and all those who are vulnerable to others must be equipped with “antipower.” If Alf has power over Betty in one way, but she has power over Alf in another, their mutual power might nullify the power of either to interfere. Each can resist the power of the other, so each is truly free, for not only is each not interfered with, but

both are secure from having power exercised over them by the other. The law, then, does not take away some of our freedom to better protect other parts; Pettit insists that the rule of law in no way detracts from our freedom because it provides citizens with antipower. The law, says Pettit, neutralizes the power possessed by some citizens that, if left unchecked, would limit the freedom of their fellows. In particular, Pettit stresses how the state protects freedom by regulating the way in which the powerful may employ their resources. Thus, for example, legal regulation of economic decisions by corporations protects the liberty of employees and shareholders.<sup>31</sup>

### C. Why Pettit's view of freedom is profoundly anti-market

On the face of it, it may look as if Pettit's conception of liberty is not far from Hayek's (section II.A): just as Hayek identifies freedom with being one's "own master," for Pettit the paradigm of unfreedom is slavery.<sup>32</sup> Nevertheless, the way that Pettit explicates this basic idea is deeply antithetical to the market understood as a device for coordination among free people. Unless checked, differential success at accumulating resources always involves domination. The wealthy always could use their resources to interfere with others. Indeed, for Pettit all market competition is a form of interference—"I interfere with you if I destroy your custom by deliberately undercutting your prices."<sup>33</sup> Thus an entrepreneur who could destroy his rivals' custom by cutting prices appears to dominate his competition. The market is much closer to a realm of domination than of freedom. And given that Pettit's neo-republicanism "casts freedom as nondomination [in] the role of the supreme political value,"<sup>34</sup> the market is almost totally delegitimized. "From the republican point of view, then, the free contract cannot serve the role of legitimator—even prima facie legitimator—of what happens under the terms of the contract."<sup>35</sup> Nevertheless, although Pettit's republicanism rejects market relations as a model of cooperation among free agents, he insists that republicans do not have

to “oppose the free market;” not “every type of market arrangement” is precluded so long as great differences in bargaining power among participants are avoided.<sup>36</sup>

At the heart of Pettit’s neo-republicanism is an identification of freedom with security from interference: one is only free if one is not subject to interference, and is secure in that: “freedom means having security against interference, and the measure of freedom is the quality of protection provided.”<sup>37</sup> Combining freedom and security in this way conceptually forecloses the very possibility that the costs of gaining security is to lose freedom. This foreclosure, though, seem dubious. As one builds walls, either literally or figuratively, one may experience great gains in security, but the walls may also limit what you can do. If I live in a gated community my security is enhanced, but I too am constrained in some ways. Moreover, conflating the question whether I am free, with whether my freedom is protected and secured, blurs the distinction between positive and negative rights. To be sure, a negative right (to some sort of non-interference) may only be secure if I also have a positive right to protection; the police have a duty to come to my aid if someone seeks to interfere with my liberty. If, however, my freedom is equated with its security, then freedom itself involves such positive rights to enforcement, and so it makes no sense to ask whether the benefits of enforcement outweigh its costs to liberty.<sup>38</sup>

Pettit, however, insists that any interference that is in my interest—e.g., a wall to protect me—is not a limitation of republican liberty at all. He looks to the state as the source of freedom, for it is the source of guaranteed protection. So long as the state acts in the common good and somehow tracks the interests of citizens, its laws are not arbitrary interferences, and so do not in any way limit freedom.<sup>39</sup> In contrast, markets are always a clear threat to freedom. Certainly if freedom means having security, it is manifest that the market order cannot be a realm of freedom. One is not assured in the market that one’s stock of goods (or good stocks) will not decrease, and along with it one’s antipower to resist

possible encroachments. For Pettit, freedom is all about guarantees that others will not be in a position to take advantage of you.

#### D. What is freedom as non-domination?

I certainly will not seek here to resolve the debate between proponents of negative liberty and its critics; as I have argued elsewhere, this sort of conceptual dispute inevitably leads to far-flung debates, drawing on diverse political values.<sup>40</sup> Pettit's proposal, though, is especially problematic as it is unclear just what freedom as non-domination amounts to. As with most accounts of power, freedom as antipower relies on a difficult-to-specify counterfactual. Alf is dominated by Betty if and only if Betty has the power to interfere with Alf such that if she had decided to interfere, she could have. Pettit seeks to clarify this by appeal to what is known among philosophers as "possible-worlds" theory: a non-dominated person enjoys "non-interference from the powerful" not simply in the actual world, but in the range of "readily accessible worlds—a range of nearly possible worlds."<sup>41</sup> But just what determines whether a possible world is accessible? To see the complexity, consider a group of academics gathered around a seminar table with a pitcher of water in the middle. Now I could pick the pitcher up, walk over to the speaker, and proclaim that if the speaker does not shut up this instant, I will smash the pitcher over the speaker's head. I take it that would be interfering with the speaker. But suppose I do what I always do, I simply sit and listen, even if I strongly disagree with the speaker. The question is: as I sit quietly listening to the speaker, but still possessing the ability to pick up the pitcher and make the threat, is Pettit committed to saying that I am dominating the speaker, and so is she unfree? If Pettit's view commits him to saying that, it is pretty implausible as a theory of freedom. (Could the speaker sensibly interrupt her talk and complain about my domination? Would anyone know what she is talking about?)

What can he do to avoid that commitment? Four escape routes appear open to Pettit. None, I believe, are acceptable.

(1) Pettit might argue that since the speaker can also pick up the pitcher and threaten me, no domination arises because there is symmetry of power. Pettit intimates this interpretation. For example, although (as we have seen) he says undercutting one's competitor's price and taking away customers is an interference, he adds that if my competitor can do the same to me, "there is no question of permanent exposure to interference by another" and so, after all, we do not dominate each other. Thus offsetting power eliminates domination: that seems the crux of the antipower idea.

However, if we accept this interpretation of Pettit's account, Hobbes's state of nature would be a condition of non-domination, and so of republican freedom—hardly an inviting result for the republican. We are each symmetrically placed, and have equal threat advantage. No one is in a position to interfere with me who is not equally subject to interference by me. So we are all free and non-dominated. As Pettit is fond of repeating, each of us can look the other straight in the eye—a sign of non-servility—through we all tremble as we do so.<sup>42</sup>

It is hard to see how this can be right. First, recall that Pettit criticized classical liberals for not recognizing that true freedom requires security of non-interference. Hobbes's state of nature is hardly a condition of security. Because in the state of nature people would face prisoner's dilemmas, games of chicken and so on, it does not follow that those who are symmetrically placed in terms of the capacities to strike are secure against strikes. (Nuclear deterrence worked, but it was hardly guaranteed to.) So an equal distribution of power is entirely consistent with universal insecurity. Second, if we accept that we are free when there is an equal distribution of power, we arrive at the entirely counterintuitive judgment that, given such a distribution, if you actually do interfere with me, my liberty is not being interfered with. Consider: (i) As we have seen, according to Pettit, "one agent dominates

another if and only if they [sic] have a certain power over that other, in particular a power of interference on an arbitrary basis;" (ii) we are assuming that if power is distributed equally, then agents do not dominate others. So suppose that (iii) Betty, in a Hobbesian state of nature, compels Alf to move by use of physical force. It would follow that (iv) Alf's liberty is not limited, as Betty did not have a dominating power. That just cannot be right. Even T.H. Green, the leading late-nineteenth-century critic of classical liberalism's exclusive reliance on negative liberty, admitted that the basic case of liberty involves "exemption from compulsion by another."<sup>43</sup> Pettit, though drawn to the reciprocal power idea, ultimately accepts this: "to the extent that they do rely on such mutual coercion, they will continue...to interfere with each other on an arbitrary basis."<sup>44</sup> Thus, in addition to the equal distribution of power, Pettit needs to claim that in fact people are not interfered with. But the equal distribution of power claim cannot do the job Pettit wants it to do: it cannot show why we are secure.

(2) Back, then, to the example of the seminar: we still have to see why I am not dominating the speaker. A defender of Pettit might suggest that the speaker is free from domination because of my civility. As Pettit suggests, non-domination can be secured by the virtue of others:

Non-domination is not maximized in the society where each cowers behind the heaviest, highest walls that they [sic] can build or that the state can provide. To rely on such walls and on such walls only would be to cast other people in the role of enemies and to call down war upon yourself. The...best hope of furthering the republican ideal is certainly to do whatever can be done in the heavy materials of institutional protection, but also to build with other, less cumbersome fabrics. In particular, the lesson is that we must also build with materials of civic virtue and trust, even though they offer less satisfying images of solidity and security.<sup>45</sup>

It might seem, then, that it is because others can trust me to behave properly (sometimes) in seminars that I do not dominate them. Interestingly, however, Pettit does not wish to build non-domination on personal trust, which he sees as putting oneself “at the mercy of another.”<sup>46</sup> To trust another is to admit that she could injure you, but you rely on her good will not to. Although Pettit acknowledges that it is a form of security, it is nevertheless “in tension” with freedom as non-domination.<sup>47</sup> What Pettit seeks is trust that is “impersonal in character, since the source of the confidence that others will not let you down is that they are independently constrained not to do so.”<sup>48</sup>

(3) This suggests a third interpretation of the seminar example: I do not dominate the speaker because she can trust me not to attack, and that, in turn, is because I will be fired by the university if I do. As Pettit puts it, there is an authority that deprives me of the power of interfering by threatening to punish me if I do so.<sup>49</sup> The problem, however, is that the authority does not literally stop me: it threatens to increase the costs of my action by attaching penalties. So this interpretation claims that because I am a competent utility calculator I will not interfere with the speaker, and so I do not dominate her.

Pettit’s counterfactual now seems not about what one could do, but what one could reasonably do given the costs and benefits. Even though I dearly want the speaker to shut up, it is irrational for me to threaten her with the water pitcher, since, because of the university’s threat of sanctions, the expected costs of doing so outweigh the expected benefits. So now Betty dominates Alf if and only if Betty possesses the capacity to interfere with Alf in ways that advance her aims (i.e., would be rational given expected costs and benefits). Surely, though, this interpretation won’t do either. Leaving aside the complexities it introduces by tying freedom judgments to instrumental-rationality judgments, consider the interpretation of Jean Hampton, a leading Hobbes scholar, according to which the conflict of Hobbes’s state of nature is caused by short-sightedness—a failure of rationality.<sup>50</sup> Whether or not it is



reasonable to invade, people do, and when they do they limit liberty. But if we accept this third interpretation, such short-sighted people do not dominate each other.

(4) It looks as if in the end Pettit must be driven to some sort of probabilistic interpretation of domination, according to which Betty dominates Alf if there is a probability above  $n$  (where  $0 < n < 1$ ) that Betty will interfere with Alf. This would take care of the cases I have raised: I do not dominate the speaker in the seminar example because there is a zero probability that I will strike her; people in the state of nature dominate each other because, whether rationally or not, there is a greater than  $n$  probability that they will attack each other. But this would not suffice for Pettit. For his exemplar of negative-liberty-with-domination (and so not real freedom) is a case in which someone has the power to interfere but does not, say because of noblesse oblige. Here the probability of interference might be low indeed, but since the aristocrat could interfere, domination occurs. “The point is not just to make arbitrary interference improbable; the point is to make it inaccessible.”<sup>51</sup> And that brings us back to our starting point—the nature of that counterfactual. What is meant by saying that a person could not have interfered, or that one dominates because one could have interfered, but didn’t?

#### E. Pettit’s freedom barometer

Pettit insists that negative liberty is “downright counterintuitive” as it allows that a person can be free under a benevolent dictator.<sup>52</sup> It is not at all clear that this is so counterintuitive; if the King leaves his subjects alone to go about their business as they see fit, they are free in an unproblematic sense. In any event, Pettit’s view is much more counterintuitive. Consider the implications of Pettit’s analysis for when we might say a person’s freedom rises and falls—let us call this Pettit’s Freedom Barometer.

A downright counterintuitive consequence of Pettit's Freedom Barometer is that my freedom is affected by people with whom I have nothing to do, of whom I have no knowledge, and who never altered my option set. Suppose, for example, in Ukraine there was an ex-Soviet general who, during the 1990s, kept control of a battery of nuclear missiles for old-times' sake; keeping them in working order was his hobby. Certainly I was a little less secure than I thought I was in the 1990s, but to Pettit I was less free. This general had the capacity to interfere on an arbitrary basis with certain choices of mine. He never did, and because I had no knowledge of him he had no impact at all on my life. It strikes me as counterintuitive that, when the general finally gave up his missiles at the end of the decade, my freedom went up.

Pettit, as I have said, makes a great deal of the knowledge of the other's power: crucial to his account is whether we can look each other in the eye (a sign of non-servility, and so of non-domination), and that assumes common knowledge of our relative power.<sup>53</sup> So perhaps his view is more plausible if we add a further requirement for domination. Recall that according to Pettit, "one agent dominates another if and only if they [sic] have a certain power over that other, in particular a power of interference on an arbitrary basis" (see section II.B). Suppose we add that the agents must have common knowledge of each other's relative power. But now the freedom barometer would operate even more oddly: the more ignorant you are of the capacities of others, the freer you are. The fool would be free, because he knows of no one's power.

### **III. Sunstein's Neo-Republican Critique of Respecting Individuals' Preferences**

#### A. External freedom and voluntary choice

I have been arguing that at the core of Pettit's neo-republicanism is an attack on the first classical liberal claim: that the market is a realm of freedom. If Pettit is to be believed,

market relations are unfree because they give rise to domination. Some gain resources and position that allow them to dominate others. Only a state that protects the vulnerable from market forces protects freedom properly understood. Moreover, nothing such a state does constitutes a limit on such freedom. I have argued that Pettit's conception of freedom as anti-power is deeply counterintuitive, and so does not pose a real challenge to the principled legitimacy of market relations.

Even if, however, market relations respect liberty, if consumer choices are somehow flawed or manipulated, then it does not say much for the morality of the market that it respects the freedom to make these choices. Neo-republicanism insists that to qualify as "free" a choice must be of a certain quality. Richard Dagger, who makes the right to autonomy fundamental to his neo-republicanism, tells us that freedom involves not simply absence of restraint, but self-governance, and this, in turn, supposes "the ability to control our lives through reasoned choice."<sup>54</sup> To understand freedom in terms of choices of a certain rational quality, or of a sort of self-authenticating or autonomous nature, provides a crucial wedge between free choice understood simply in terms of non-coerced choice, and free choice as a choice of a certain quality, reflectiveness or authenticity. It is a wedge that has been driven especially hard by Cass Sunstein, who insists that a republican government ought to promote citizen's autonomy, and this may well require shaping, rather than respecting, their preferences. Let us, then, turn to his neo-republican critique of the classical liberal claim that people's actual choices ought to be respected.

#### B. How is it possible to respect a preference?

Sunstein, explicitly drawing on the republican tradition, adamantly rejects what he calls "subjective welfarism," according to which "the government, even or perhaps especially in a democracy," should attend only "to conceptions of welfare as subjectively held by its

citizens, and these conceptions of welfare are best found in the market domain.”<sup>55</sup> As Sunstein points out, “subjective welfarism” characterizes a person’s welfare in terms of the satisfaction of her preferences; governments are supposed to respect these preferences. But what are these preferences, which, according to classical liberals, governments—“even” democratic ones—must respect? Sunstein makes a good deal of the ambiguity of the very idea of a preference. As he rightly points out, the idea of a “preference”—and, especially, of “satisfying a preference”—is ambiguous between preference understood as (1) a consideration laying behind, explaining, or justifying a choice or decision D or (2) equivalent to D. Thus, to say that a consumer’s decision D satisfies his preferences, might mean (1) that he has some mental state M that his purchase satisfies or expresses or (2) it might be simply a way of saying that has made decision D. Sunstein suggests that no matter which interpretation we adopt, the idea that government should respect the preferences of consumers is puzzling.

Preference as a mental state. Sunstein seems to think the first view, preference as a mental state, is simply implausible:

If we think of a preference as something that lies behind a choice, what is it exactly? How can it be identified or described? Internal mental states are extraordinarily complex, and the constellation of motivations that lies behind a choice in one setting may be quite different from the constellation that produces choice in a different time and place. People’s decisions are based on whims, second-order preferences, aspirations, judgments, drives of various kinds, and so forth, each potentially coming to the fore depending on the context.<sup>56</sup>

All this is too complicated, Sunstein believes: it leads to all the “difficulties that the ‘revealed preference’ idea was supposed to overcome.”<sup>57</sup> If we cannot get a handle on what preferences are, the dictum that government is to respect market preferences looks implausible.

Sunstein makes far too much of these problems. To depict preferences as mental states that underlie choice in no way requires ignoring that decisions are based on aspirations, judgments, drives, and so on. We need not displace these by an appeal to preferences. Any deliberative consideration that can serve to select one option over another can qualify as a preference in this sense.<sup>58</sup> One way of understanding preference is as a reason to choose; to prefer X to Y in this sense is to have an all things considered deliberative consideration (a reason) to select X over Y.

Of course this still involves mental entities, but there is no getting away from that. Behaviorist attempts to rid the metal from social science are doomed to failure. Choice is an intentional concept: any effort to explain Alf's choice of X over Y will necessarily involve an intentional description—a description of his understanding of what he is doing, and the nature of the choices confronting him.<sup>59</sup> “Voting,” for example, is not a piece of behavior qua movement of a body. A description of an act as a “vote” necessarily turns on the intentions of actors involved. The behavior of “raising an arm” may be the act of asking a question or casting a vote (or innumerable other acts); only reference to the intentions of the agents can distinguish the two. So we can hardly purge the mental from our explanations. Once we do admit the mental, some idea along the lines of “preference” is necessary. Call it what you will—preference, disposition to choose, reason to choose, ordering of options—we need a term that allows us to talk about the way diverse deliberative considerations result in an overall consideration to choose one option over others.

Revealed preference. Now as Sunstein rightly points out, economists often employ another understanding of preference, according to which Alf has a preference for X over Y if and only if Alf chooses X over Y. On this view it is logically impossible to prefer X to Y and not choose X or to choose X and not prefer it.<sup>60</sup> Preference so understood is equivalent to actual choice.

Are we dealing here, though, with simply two unrelated senses of “preference”? Perhaps that is the view of some economists in their more behavioristic moments: they see their technical concept (revealed preference) as entirely distinct from mentalistic deliberative preferences. But clearly much of economic writing, and almost all accounts of rational action, suppose an intimate connection: preference qua actual choice is taken to reveal (or advance) preference qua deliberative ranking.<sup>61</sup> When classical liberals tell us that in the market individuals have the “freedom to pursue their own objectives” this cannot mean merely the freedom to make the choices they do make.<sup>62</sup> As Sunstein suggests, respecting a person’s preferences understood simply as actual choices is consistent with government shaping, indeed coercing, her choices. Writes Sunstein:

The...objection to the view that government should take preferences, thus understood, “as they are,” or as a basis for political outcomes, is one of impossibility. Whether people have a preference for a commodity, a right, or anything else is in part a function of whether government has allocated it to them....when preferences are a function of legal rules, the government cannot take preferences as given and work from them.<sup>63</sup>

The rules shape choice, and if preference is mere choice, the rules determine preference. Consider: if (1) the government coerces you into choosing X over Y, or somehow structured your environment that you choose X over Y, and (2) if you then do choose X over Y, and if (3) your preferences are just what you do in fact choose, then (4) since you did choose X over Y, (5) you preferred X over Y and so (6) the government “respected” your preference.<sup>64</sup>

This is clearly not what a classical liberal—or, indeed, anyone—has in mind by the freedom to act on one’s preferences. What they do have in mind is that in the market we are free to pursue our deliberative preferences by acting on them, i.e., performing actions that further our objectives. Thus, if I employ coercion to get you to choose X over Y, and you

deliberated such that absent my coercion, you deliberately preferred Y to X, then I do not respect your deliberative preference, for the action that I coerced does not in fact further your deliberative preference. We can, then, make sense of the idea of respecting deliberative preferences by drawing the connection between deliberative preference and revealed preference (i.e., choice).

### C. A classical liberal master principle, and two openings for a critique of the market

A master principle of classical liberalism is that, under conditions of market freedom, overwhelmingly people's preferences qua choice reveal (or, are a means to satisfying) their deliberative preferences. The moral legitimacy of markets hinges on this. If people do not overwhelmingly act on their deliberative preferences, then the choices protected by market freedoms are bogus: people do not really prefer the things they are choosing. That under conditions of market freedom deliberative preferences reveal themselves in action does not mean that one's actions are always successful in promoting one's goals. Confronted by a choice between equities and bonds, I am apt to deliberate on reasons for choosing one or the other. Some of the reasons will involve predictions about the future, anticipation of the decisions of others, and so on. Suppose I decide to buy bonds, and do so. I have been successful at translating my deliberative preference into action. But, even if my reasoning was impeccable, the equity market may surprise everyone and rally, and I may not achieve my goal of maximizing my wealth.

This, though, suggests two openings for a critique of markets choices, both of which are exploited by Sunstein. First, and most obviously, it can be pointed out that people do not always act on their deliberative preferences:

While addiction is the most obvious case, it is part of a far broader category.

Consider, for example, myopic behavior, defined as a refusal, because the short-term

costs exceed the short-term benefits, to engage in activity having long-term benefits that dwarf long-term costs. Another kind of intrapersonal collective action problem is produced by habits, in which people engage in behavior because of the subjectively high costs of changing their behavior, regardless of the fact that the long-term benefits exceed the long-term costs. Akrasia, or weakness of the will, has a related structure....<sup>65</sup>

Sunstein adds that, though “for the most part” these sorts of problems are “best addressed at the individual level or through private associations, which minimize coercion,” “social regulation is a possible response.”<sup>66</sup>

The second opening for a critique of the market, and for Sunstein more important, is that once we allow that action is supposed to advance a person’s deliberative preferences, we can inspect the quality and origin of those preferences. Are they really her own preferences? Were they formed under the correct conditions? And, crucially, if a person’s deliberative preferences are not for the things that are really good for her—her welfare, her happiness, or whatever—what is so morally important about respecting such preferences? What if people have been conditioned or otherwise induced to have preferences that aren’t good for them? “Freedom consists,” Sunstein tells us, “not simply in preference satisfaction but also in the chance to have one’s preferences and beliefs formed under decent conditions—in the ability to have preferences formed after exposure to a sufficient amount of information, and also to an appropriately wide and diverse range of options.”<sup>67</sup> Thus, in his critical analysis of the political implications of the internet, Sunstein seeks to dispel the error, held by “many people,” that “a system of communication should be evaluated by asking whether it respects individual choice.”<sup>68</sup> If these choices end up frustrating an individual’s true goals—say a healthy republican democracy—then respect for them is not a moral imperative, and freedom cannot be identified with respecting such choices.



#### D. Endogenous preferences, autonomy, and welfare

Republican autonomy. Let us explore further this second opening for criticizing the market: that it satisfies preferences, but not the right or correct preferences. Sunstein’s case for not respecting many actual preferences puts great weight on the “central point...that preferences are shifting and endogenous rather than exogenous, and as a result are a function of current information, consumption patterns, social norms, legal rules, and general social pressure.”<sup>69</sup> What, then, is the implication for respect for preferences if we accept their “endogeneity”—the way in which they are a function of current information, consumption patterns, social norms, legal rules, and general social pressure?

Sunstein invokes two types of arguments based on endogeneity to undermine the standing of people’s actual preferences: autonomy-based and welfare-based. Autonomy-based arguments, he tells us, stress the conditions that give rise to preferences. To fix the analysis, let us consider the following formulation of autonomy-based arguments:

Autonomy Principle: There is no good liberty-based ground for the state to respect Alf’s preference P if (1) P is not good for Alf (e.g., it is bad for his health) and (2) P arose by non-autonomous process E.

I have formulated the Autonomy Principle to avoid reference to the technical term “endogeneity.” The basic idea of the endogeneity of P relative to E is that, in relation to some process or set of factors E, the existence (or behavior) of P is to be explained by E rather than as an outside (non-E) factor. I have focused here on the most obvious way in which E can explain P—it causes it. My formulation of the Autonomy Principle also avoids reference to the mathematical notion of a function: while in a system of equations one variable may be a function of another, the sort of influence that Sunstein has in mind is manifestly causal.

According to the Autonomy Principle if a preference that is bad for you—and “bad” can mean something as controversial as not having an interest in art and literature—has been generated by social forces rather than by “full and vivid awareness of the available opportunities, with reference to relevant information, and without illegitimate or excessive constraints on the process of preference formation”<sup>70</sup> then considerations of autonomy can justify a government ignoring this preference. This seems an especially implausible idea of autonomy. Whatever autonomy is, it is implausible to see it as a way in which desires are originally formed. Many of our desires, including desires concerning love of parents, morality, love of learning, art, and so on, often first arose by anything but a fully critical process. We may have adopted moral preferences to be approved of by our parents, adopted literary ones to impress a girlfriend, and launched a career in philosophy as a way to avoid getting up early. We are socialized into a large array of our most basic aims and goals; their origins cannot be the criterion of whether they are consistent with a notion of autonomy as self-rule.<sup>71</sup> If autonomy requires that a preference or aim has a clean history, we all constantly non-autonomously deliberate and act.

It is obvious how such a neo-republican conception of liberty leads to disrespecting market choices. If people’s preferences are not of the right sort—they have not arisen by a properly rational process, or are not now held in the properly rational way—they are not worthy of respect, because they are not truly autonomous or free. People in the market think that they prefer punk to classical, or a woman might think she prefers a traditional gender role, or a biker might think he wants to ride without a helmet,<sup>72</sup> but “the interest in liberty or autonomy” does not call for the government to respect them and refrain from interference.<sup>73</sup> Consumer “wants” (Sunstein puts “want” in quotation marks here when referring to consumers)<sup>74</sup> are thus often false wants, or based on a false consciousness of true interests, and often are the result of exploitative norms and culture. It is no real interference with true

liberty for the government to regulate such wants. “Indeed,” Sunstein writes, “in many or perhaps all these cases, regulation removes a kind of coercion.”<sup>75</sup> Again, we find the neo-republican theory of freedom expressing traditional socialist themes.

Republican welfarism. If the Autonomy Principle underwrites a theory of false consciousness, the Welfare Principle justifies governmental social engineering. Again, to make the discussion a little more precise, Sunstein seems to have in mind something like:

Welfare Principle: There is no good ground for to the state to respect Alf’s preference P if (1) P is not good for Alf (e.g., it is bad for his health) and (2) the state controls F (the process by which P is formed), and by employing F it can replace P with a preference P' that is better for Alf.

According to the Welfare Principle, the fact that a person has a preference that is somehow not good for him, conjoined with the state’s possession of the causal power to change it, removes any reason to respect the bad preference. To be sure, for various reasons the government still may not intervene—perhaps the costs of exercising causal control are simply too high. But there is no reason to respect P.

This is a deeply anti-liberal principle. It explicitly violates what has been called the “blocking principle”—that a person has chosen to X (has a revealed preference) blocks the legitimacy of intervening in her life to stop her from X-ing, even to make her life go better.<sup>76</sup> We can imagine a range of “blocking” principles—from those that provide an unbridgeable barrier to intervention on this basis to ones that hinder it but can be overcome by a sufficiently strong case (more of a hurdle than a block). What is striking about the Welfare Principle is that all of these blocking principles are rejected, from the very weakest to the strongest. Even the weakest version of the blocking principle holds that the fact that a person’s action X reveals her preference P in itself provides some reason to refrain from

interfering with her life. The Welfare Principle denies this: the state has no reason to respect bad preferences it can change, and so gives full sway to social engineering.

Indeed, it is really malleability, not endogeneity, that is crucial to Sunstein. It is not really important where a preference comes from, but whether government can change it to make it better. As far as I can tell, Sunstein seems to think that no actual preferences that are bad for you merit respect. He does not, as it might sometimes appear, believe we should respect exogenous preferences (e.g. fixed or natural ones) but not endogenous ones (those that are a result of “current information, consumption patterns, social norms, legal rules, and general social pressures”).<sup>77</sup> Rather, we shouldn’t try to fiddle with exogenous (e.g. fixed or natural) preferences simply because we cannot successfully do so. If, as a matter of fact, it is just about impossible to change a preference, then we shouldn’t try: “democratic efforts to reflect on, change, or select [such] preferences would only breed frustration.”<sup>78</sup> However, “because preferences are shifting and endogenous, and because the satisfaction of existing preferences might lead to unhappy or deprived lives, a democracy that treats all preferences as fixed will lose important opportunities for welfare gains.”<sup>79</sup> Although Sunstein spends a great deal of time on the endogeneity of preferences, and showing how they are generated by social rules, conventions and so on, it is not the endogeneity that is doing the work in the argument. Endogeneity just allows us to fiddle, but the reason why we (qua the government) should fiddle is that people want what is not good for them. “With respect to welfare, then, the problem posed by the endogeneity of preferences is not the origin of desires but their (more than occasional) malleability.”<sup>80</sup>

#### **IV. Sunstein's Critique of the Rationality of Trade-Offs**

##### A. Resurrecting the critique of commodification

We have thus far considered two ways in which contemporary republicanism seeks to undermine the moral legitimacy of market relations. Pettit seeks to show that market relations are not free, while Sunstein seeks to establish that actual preferences of real people are often not worthy of respect, so even if the market does respect them, that does not count in favor of the market. Resurrecting long-standing socialist themes in neo-republican language, market relations are said to be thoroughly infected by power relations, false consciousness, and, so unfreedom. Indeed, not only does Sunstein think that market preferences do not merit respect, he thinks the dictum to respect preferences is often unintelligible (the government shapes choices and so it cannot take revealed preferences “as they are”— in fact it apparently cannot disrespect a revealed preference) or impractical (what sort of a mental state is a preference anyway?).

I now turn to the neo-republican critique of the third classical liberal claim: that market relations merit respect because they express people's different rational choices between competing values. Because neo-republicans accept the permissibility of some market relations, they acknowledge that people sometimes can rationally choose among competing values and goods, and when this can be done a (constrained) market is often an appropriate mechanism. As a form of post-socialism, which jettisons socialism's instrumental critique of the market, republicanism seeks to use the market to secure commercial well-being but rejects market society. It is thus important that the realm of the legitimate use of the market—the commercial—is clearly circumscribed. Thus neo-republicanism reiterates another long-standing socialist complaint against the morality of the market: it commodifies all values, and so everything gets a price, and is traded in the market. Indeed, to many critics this may be the most important feature of “market society”—market relations invade all

spheres of life, and everything is treated as a commodity. Thus to put a price on pollution, health, life, or sex is to engage in an illicit commodification of values that should not be for sale in the market. Markets may be used in their proper place, but they must be contained.

### B. Sunstein's incommensurability claim

“The market,” Sunstein tells us, “is typically the sphere for use.”<sup>81</sup> The things bought and sold on the market are typically commodities. But humans also have a wide range of non-use values such as friendship, life, health, enlightenment. They are not only different goods, they are valued in different ways: friends—true ones, at any rate—do not value each other because of their use to each other. Can non-commodities rationally be treated as commodities, and so enter into market exchanges? Sometimes. Students pay tuition and sometimes gain enlightenment. But, Sunstein says, because values are both plural and incommensurable, all values cannot be rationally given market prices.

To say that values are incommensurable, says Sunstein, means “that they cannot be aligned along a single metric without doing violence to our considered judgments about how these goods are best characterized.” He adds:

the notion of a “single metric” should be understood quite literally. By this I mean a standard of valuation that (1) operates at a workable level of specificity; (2) involves no qualitative distinctions; and (3) allows comparison of different goods along the same dimension.<sup>82</sup>

Importantly, Sunstein does not equate incommensurability with incomparability: that X and Y are incommensurable does not mean that one cannot compare them, choose between them or rank them.<sup>83</sup> Indeed, he believes that we often compare incommensurable values: we choose between them. However, if they are incommensurable we cannot put a price on them: for to price them is to align them along a metric (e.g., dollars).<sup>84</sup> Thus, friendship and success

in one's career are incommensurable because one cannot give a price to them; it "does violence" to our considered judgments to say that being your friend is worth \$15,000 to me while being appointed to a chair of philosophy is worth \$25,000 to me, so the chair is more valuable. To the extent goods are incommensurable in this way, Sunstein argues, market transactions will be inherently inappropriate, and so are rightfully blocked.

### C. Valuing and pricing

Let us look more carefully at the idea of incommensurability, and the claim that we cannot align two values along a single metric without doing violence to our judgments. The claim is even more complicated than it looks. Let us take two goods that clearly are in some way incommensurable: a baby and a Dali painting. Now it is simply not true, without qualification, that they cannot be aligned along any single metric without doing violence to our judgments: they can be aligned, for example, along the metric "inches tall." I can say that the baby is twenty inches tall and the Dali is fifty inches tall. No one is likely to feel outraged at that. Of course that is because the metric "inches tall" does not try in some way to sum up their value. The problem, then, is not assigning a place on a metric scale, but claiming that the place on the scale adequately captures the total values.

Now move to price. If price is meant to sum up the total values of the baby and the Dali, then it does violence to our considered judgments. There is indeed more to the values than that. But it is—or should be—no claim of classical liberals that market price fully captures the values of two "commodities." Ideally, the market price of X indicates the amount of resources the marginal buyer is willing to allocate to secure X. At [www.daliworks.com](http://www.daliworks.com) one can purchase a signed lithograph (of a numbered series) of "Enigma Of The Rose" by Salvador Dali for \$1,800. Or, for \$3,500, one can purchase on ebay a cute little Hummel Picture Perfect Twenty-fifth Anniversary statute. Now only an exceptional

philistine would think that this sums up the total values of the Dali lithograph and the Hummel figurine. They can be scaled on the price metric, just as the baby and the Dali can be scaled on the inches high metric, without any claim whatsoever that it sums up all their value. I can (and do) say that the Dali is more valuable, and in so saying I do not claim that there has been a market failure. We do not all place the same value on each commodity (that is why trades take place); it makes no sense to say that the market price is the value of anything. Such a view is at the heart of the Marxist delusion that commodities with the same price must have “the same value” within them.<sup>85</sup>

Of course, people do, often vehemently, resist placing a price on a life. As one social scientist observes, the “willingness to fix a number,” “any number, on the value of a life” seems extraordinary.<sup>86</sup> Why should this be so? Three reasons stand out. I consider them in subsections D – E below.

#### D. Price and the illusion of summation

As with this social scientist, it is often supposed that this figure would be the value of a life. And the use of cost-benefit analysis, with its attempt to capture all the social costs and benefits of an activity, does encourage the fallacy—and often commits it—of supposing that a proper market price is a sum total of a thing’s value. If we assume that the market price sums up the entire value of a thing, then of course we will be amazed by assigning a price to a life, for we do not really feel confident in placing a total value on a life, much less a highly specific value expressed in units of currency. And, most importantly, we do not all agree on the value of a life anymore than we all agree on the value of the Dali or the Hummel figurine: the market price is not the agreed on total value of a thing.

Moreover, if a person is asked to do something for a price, it is often supposed that the price paid gives the person the full value of her contribution. If, then, she is contributing



out of benevolence, public spirit or whatever, she is apt to see cash payment as devaluing what she is doing. For example, a Swiss empirical economist, Bruno Frey, has shown people who have out of public spirit accepted a waste facility in their neighborhood become less, not more likely, to accept it if they are also offered cash. Once the proposal was understood as a monetary transaction many citizens felt it was not worth accepting at any of the prices offered. Consequently, by raising the price (from zero) to be paid for accepting the facility, the supply of acceptors was drastically reduced.<sup>87</sup> Again, we witness what might be called the illusion of summation: if the money price is thought of as summing up the total value of one's sacrifice, then modest cash payments will detract from one's readiness to sacrifice for the public good.

#### E. Taboo trade-offs

People resist putting a price on a life because, once a price is given, a trade-off rate is established between life and all other goods, including cases of beer. But people believe that some trade-offs are taboo: there should be no trade-off between lives and beer. This is clearly one of Sunstein's concerns: he insists that a true friend would not even contemplate a trade-off rate between her friend and money. Indeed, Sunstein is suspicious of the very idea of indifference curves, which sum up a person's trade-off rates. Why might we be unable to trade-off the value of X and Y?

Infinite value. One reason why we might not be able to establish a trade-off rate between X and Y is that the value of X is so great that no amount of Y could possibly be equal, much less better. Thus we hear about the "infinite" value of life. Leaving aside the problems with infinite valuation, it is hard to see how this account can serve as a general explanation for not

having a system of trade-off rates. How many things can one value infinitely? If one values something infinitely, there is no limit to the amount of resources that one will devote to securing and protecting it. Thus understood, it is doubtful that we put infinite value on anything.

Incomparability. Another possibility that has been at the forefront of the incommensurability literature is that a stronger notion of incommensurability may be involved: not simply incommensurability strictly understood, but incomparability. We need to distinguish:

(A) Values X and Y are incommensurable if they cannot be measured on the same scale in terms of units of value.<sup>88</sup>

(B) Values X and Y are incommensurable if there is no ordering of them according to which one (and only one) of the following holds: (a) X is better than Y, (b) Y is better than X, (c) X is equal to Y.<sup>89</sup>

Sunstein's concern is (A), whereas Joseph Raz and others interpret incommensurability as (B). Now (B) is indeed a barrier to the development of trade-off rates and indifference curves. If (B) holds, our preference ordering is incomplete, and so faced with a choice between X and Y we have no reason to choose.<sup>90</sup> Sunstein does not wish to take this route, for it leaves us dependent on reasonless choice. As Raz says, "if of the options available in typical situations of choice and decision, several are incommensurable, then reason can neither determine nor completely explain their choices or actions."<sup>91</sup> As Sunstein stresses, "incommensurability, as I have defined it, does entail incomparability."<sup>92</sup>

Trade-off as betrayal. Sunstein points to another possibility:

Someone may, for example, value loyalty to a lover or a spouse in a way that absolutely precludes the acceptance of favors, or cash, as a reason for infidelity. The

nature of the valuation rules out a set of reasons that would be perfectly legitimate bases for action in other contexts.<sup>93</sup>

Thus to contemplate a trade-off rate between one's lover and cash undermines the love; the love excludes considerations of trade-offs. This is very similar to a contemporary philosopher's distinction between simple "failing to promote a value or principle" and the more dire "acting against it" or "betraying it."<sup>94</sup> The idea here is that to simply act on one value rather than another is rational, but to act on one value and so against the other—to somehow reject the one through your endorsing of the other—is problematic. Normally, to rank X (e.g., my job) higher than Y (e.g., my friend is to give my job priority but is not to betray my friend. "Betrayal" is at home in discussions of loyalty, such as Sunstein's, in which you renounce that which has a claim on you (or one gives up another "treacherously").

However, we still can choose in these situations; the costs, though, tremendously increase. In situations in which to rank Y lower than X is to betray Y, the costs of choosing X are much higher than simply forgoing the opportunity to secure, advance or enjoy Y: it is to lose Y. Suppose, for example, that I work for the CIA, and find that my best friend is a Chinese spy. Now in this case to rank one's commitment to the CIA higher than friendship—to turn your friend in— is not just to forgo the opportunity of being with your friend; it is to lose one's friend. But that is not say that one cannot trade commitment to the CIA and friendship: it points out that the costs of engaging in such a trade in terms of friendship are extraordinarily high.

Implicit trade-offs and prices. Of course, a la Sunstein, one may insist that one will not even contemplate such a trade. To say that one cannot contemplate trading X against Y is typically of matter of being lucky enough not to have to choose, or more likely the result of refusing to see that choices are being made. Philip Tetlock, a psychologist who has surveyed empirical studies about how people actually do trade values, observes that people are slow to realize

that their values clash. In cases of apparent conflict, they seek to avoid the problem by bolstering one value or another so that it seems to clearly outweigh the others, “they will resort to decision-evasion tactics, such as buck-passing, procrastination, and obfuscation, to escape responsibility for making choices.”<sup>95</sup>

We can, of course, say that we refuse to ever contemplate a trade-off rate between the lives of babies and any amount of recreational goods or art, but this surely is a delusion. Money is spent on golf clubs that could be spent on children’s hospitals; we have had art for centuries, when the resources supporting art could have been spent on keeping children alive. All these involve various trade-off rates of different people. That we refuse to contemplate trade-offs is much more of a psychological illusion than a moral truth. However, putting explicit prices on something publicizes the trades constantly being made—it eliminates an obfuscation that we find comforting—and so offends our scruples. Sunstein, though, objects: “When the trade-off is made only ‘implicitly,’ it is not well described as an ordinary trade-off at all.”<sup>96</sup> To be sure, it is not ordinary: it is implicit. But the idea of an implicit trade-off is hardly an oxymoron.

Once it is allowed that people construct trade-off rates between various values, exchange rates can arise. Commensurability, as Sunstein defines it, is not a precondition for a system of exchange. We need not have some single metric to develop a market: a foreign exchange market can develop without adopting a gold standard.<sup>97</sup> Price, expressed in a common unit, is a theoretical construct designed to simplify the exchange rate among values; it is not itself a determiner of those values. To see this, imagine that instead of monetary price we had a powerful computer that, for any good X listed equivalent amounts of all other goods for which a certain quantity of X could be exchanged. At this point there is no price, simply a tremendous table that gives the exchange ratio of every quantity of every good to every

quantity of every other good. In Sunstein's terms, we do not seem to have commensurability but simply a summary of all comparisons. But from this a monetary price can readily be computed. Indeed, if there is single divisible good Y that is listed as a possible exchange against every other quantity of every other good in our master table, then we do have commensuration: exchange rates of all goods in terms of quantity of Y. Once we have a system of full comparisons, price is generated.

#### F. Blocked trades

Often, the claim that we should not have trade-off rates between X and Y is blurred into a quite distinct claim: that we should not trade X and Y. Even if we reject the thesis that rational moral people generally cannot, or should not, develop trade off rates or transformation functions between X and Y,<sup>98</sup> we still may believe that it is “wrong in itself”<sup>99</sup> to make some actual trades—for example those envisaged by Richard Posner's proposal for a market in babies.<sup>100</sup> And there is indeed evidence that people agree that some choices should be blocked; auctioning of unwanted babies, markets in transplant organs, and buying votes are widely seen as wrong.<sup>101</sup> On the other hand, outside of this basic consensus we find considerable “ideological” disagreement. While, not surprisingly, libertarians believe that few transactions should be blocked, Tetlock finds that “Marxist respondents were prototypical ‘censorious busybodies.’ Even routine market transactions...provoke a measure of moral condemnation.”<sup>102</sup> So we should be very wary of saying that a certain trade offends “our” moral sensibilities, for “we” have very different attitudes to 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 we should respect people's preferences.

So it is possible to sustain a moral objection to some specific trade involving Alf's X and Betty's Y between Alf and Betty without relying on the controversial claim that there is no way for Alf or Betty as rational agents to trade-off the value of X and Y. One can just invoke the moral claim that this trade is wrong, as the United States government does with current trades in many drugs. We can see, though, why Sunstein and other critics of market society would try to block trades on the rationality-incommensurability ground. If it is not rationally possible to make comparisons, then blocking the trade does not express the judgments of mere "censorious busybodies," but is a demand of reason properly understood. Deprived of its reliance on incommensurability and incomparability claims, blocking voluntary trades that harm no third parties leaves us with simple illiberalism.

## **V. Conclusion**

Markets have been widely embraced as a necessity, but the great majority of the intelligentsia continue to abhor market society, and for many of the reasons that socialists since Marx have advanced. In the wake of socialism's collapse, there has been a rush to find a new way to present the critique of market society. These reformulated critiques must allow for contained markets, given the dismal record of socialist economies to deliver the goods, but they remain adamant that markets are morally dubious ways for people to relate. Neo-republicanism, as expressed in the writings of Pettit and Sunstein, aims to show that, despite their instrumental benefits, markets are not an intrinsically moral way for people to relate to each other—neo-republicanism denies that markets are worthy of moral esteem on the grounds that that they are based on free exchange among people whose choices merit respect, and who are capable of rationally trading diverse values. The market, we are told, is characterized by an imbalance of power, and so it is a realm of unfreedom; it takes for granted people's preferences, but these are often non-autonomous, and run contrary to the agent's own best-interest; and the market

allows trades that ought not—indeed, rationally cannot—be made. These criticisms add up to a rejection of the market as general model of worthy social intercourse. In contrast, classical liberals insist that the market is not simply a great economic invention that delivers the goods, but the basis for free lives.

Does it really matter whether we accept the classical liberal view, so long as there is near-universal consensus that markets are needed to deliver the goods? An economist friend of mine confessed he had never even thought of whether market relations were morally legitimate: what is important is that markets works. Perhaps it is just an obsession of philosophers to seek inherent moral legitimacy when instrumental effectiveness is enough. I think, though, that liberals should be wary about selling the market simply on the grounds that it delivers the goods and allowing it to go unchallenged that, except for this delivery of the goods, it is a morally pretty dubious way for people to interact. We recently have seen in Latin America that the goods may not be delivered, at least over the medium term, for a host of reasons. Governments such as Argentina have introduced market reforms, but in the view of much of the population, the goods that were supposed to compensate for introducing market relations have not been forthcoming. In Argentina, at least, popular sentiment seems to have turned against market capitalism. A recent survey of Latin Americans has found disillusionment with privatization and decreased support for democracy.<sup>103</sup> As Rawls recognized in A Theory of Justice, an inherently “just scheme of cooperation” is not necessarily stable; stability is additional required virtue.<sup>104</sup> If the stability of market relations depends simply on appeal to self-interest, those who not do as well as they expected—and this might be the large majority in some countries—will be tempted to abandon a free society for one that promises that it will deliver the goods. If, on the other hand, people come to see market relations as morally legitimate in their own right, they will be committed to respecting free choice even when and where it does not pay-off for them. Moreover, if we think that

market choices are only to be taken seriously when they generate the obvious good stuff, we leave ourselves open to Sunstein's recurring paternalism: if people choose what is not good for them, why should such preferences be respected—what payoff is there in respecting that choice? A purely instrumental defense of the market cuts it off from a general commitment to liberal freedom: it encourages innumerable hedges, blockings, and overriding of mere “commercial” market transactions by superior “moral” considerations of justice as expressed by the state.

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## Notes

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<sup>1</sup> See Vernon Bogdanor, “Socialism’s Last Stand,” Financial Times, May 7, 2001.

<sup>2</sup> Henceforth, I shall use “markets” or “the market” rather than the more cumbersome phrase “capitalist markets.” Some have argued that markets may be conjoined with socialism; hence the cumbersome phrase is more accurate, as “market socialism” is not my concern here.

<sup>3</sup> Cass R. Sunstein, Free Markets and Social Justice (Oxford: Oxford University Press, 1997), p. 9.

<sup>4</sup> Ibid.

<sup>5</sup> Michael Prowse, a columnist for the Financial Times, presents a caricature (drawn from Lionel Jospin, the French prime minister), according to which market society is basically America at its worst—say, reliance on the death penalty. Prowse writes: “The contrast [Lionel] Jospin is implicitly drawing, of course, is between the European and American socio-political models. He is arguing not just that they are fundamentally different—for instance in their conception of social justice—but that the European model is superior. Criticizing the American reliance on the death penalty, Jospin notes that Europe ‘is the land where respect for the human person has reached its pinnacle.’” [Michael Prowse, “Time to Learn the European Language of Love,” Financial Times, June 9, 2001.] To “New Labour” “market society” is characterized by deprivation, exclusion, and social dislocation. See Bogdanor, “Socialism’s Last Stand.”

<sup>6</sup> Lord Robbins, The Theory of Economic Policy in Classical English Political Economy (London: Macmillan, 1961), p. 104; Lord Robbins, Political Economy: Past and Present (London: Macmillan 1977), p. 124.

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<sup>7</sup> See further my “Public and Private Interests in Liberal Political Economy, Old and New” in S. I. Benn and G. F. Gaus, eds. Public and Private in Social Life (New York: St. Martin’s Press, 1983), pp. 183-221 at p. 186.

<sup>8</sup> F.A. Hayek, Law, Legislation and Liberty, vol. 2: The Mirage of Social Justice (London: Routledge and Kegan Paul, 1976), p. 136.

<sup>9</sup> N.I. Bukharin and Preborazhensky, The ABC of Communism, quoted in Michael Ellman, Socialist Planning (Cambridge: Cambridge University Press, 1979), pp. 8-9.

<sup>10</sup> Quoted in *ibid.* p. 9.

<sup>11</sup> John Dewey, Liberalism and Social Action (New York: G. P. Putnam’s Sons, 1980 [1935]), p. 91.

<sup>12</sup> J. A. Hobson, The Science of Wealth, 4th ed. revised by R. F. Harrod (London: Oxford University Press, 1956), p. 40.

<sup>13</sup> John Maynard Keynes, The General Theory of Employment, Interest, and Money (London and Cambridge: Macmillan and Cambridge University Press, 1973), p. 381. See further my “Public and Private Interests in Liberal Political Economy, Old and New,” pp. 199-203.

<sup>14</sup> John Dewey, Individualism, Old and New (London: George Allen and Unwin, 1931), pp. 111-12.

<sup>15</sup> H. B. Acton, The Morals of the Market and Related Essays, David Gordon and Jeremy Shearmur, eds. (Indianapolis: Liberty Press, 1993), pp. 34, 67ff.

<sup>16</sup> R. H. Tawney, Equality (New York: Harcourt, Brace, and Co., 1931), p. 214.

<sup>17</sup> Kai Nielsen, Equality and Liberty: A Defense of Radical Egalitarianism (Totowa, NJ: Rowman & Allenheld, 1985), pp. 234-235.

<sup>18</sup> See Karl Marx, Economic and Philosophic Manuscripts of 1844, Martin Milligan, trans. (New York: International Publishers, 1964). For an analysis of Marx’s theory of alienation,

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see Bertil Ollman, Alienation: Marx's Conception of Man in Capitalist Society (Cambridge: Cambridge University Press, 1971).

<sup>19</sup> Karl Marx and Frederick Engels, The German Ideology, C. J. Arthur, ed. (London: Lawrence and Wishart, 1970), p.111.

<sup>20</sup> For overviews, see Richard Dagger, "Communitarianism and Republicanism" in Gerald F. Gaus and Chandran Kutathas, eds. Handbook of Political Theory (London: Sage Publications, forthcoming); Knud Haakonssen, "Republicanism" in Robert E. Goodin and Philip Pettit, eds., A Companion to Contemporary Political Philosophy (Oxford: Blackwell, 1995), pp. 568-574. The classic study of republicanism is J. G. A. Pocock, The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton: Princeton University Press, 1975).

<sup>21</sup> See e.g., Pocock, The Machiavellian Moment, pp. 551-52.

<sup>22</sup> Philip Pettit, Republicanism: A Theory of Freedom and Government (Oxford: Oxford University Press, 1997), p. 142. The relation between republicanism and liberalism is a matter of debate in the republican "movement." Republicanism and liberalism are seen as alternatives by Pettit and by Michael Sandel, Democracy's Discontent (Cambridge, MA: Harvard University Press, 1996), pp. 25-28. Republicanism is seen as a type of, or at least consistent with, liberalism by Richard Dagger, Civic Virtues: Rights, Citizenship and Republican Liberalism (Oxford: Oxford University Press, 1997); Nicholas Buttle, "Liberal Republicanism," Politics, vol. 17 (1997): 147-152; and by Sunstein, Free Markets and Social Justice, p. 95. Note that a similar debate occurred in the early twentieth century concerning the relation of liberalism and socialism. L. T. Hobhouse advocated a "liberal-socialism." See his Liberalism (London: Oxford University Press, 1911), p. 226.

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<sup>23</sup> I have considered the relation of property and freedom in “Property, Rights and Freedom.” Social Philosophy & Policy, vol. 11 (Summer 1994): 209-40.

<sup>24</sup> There are a host of issues concerning voluntariness that I must pass over here. See my Social Philosophy (Armonk, NY: M.E. Sharpe, 1999), pp. 202ff.

<sup>25</sup> F. A. Hayek, The Constitution of Liberty (London: Routledge, 1960), p. 133.

<sup>26</sup> Pettit, Republicanism, p. 132.

<sup>27</sup> *Ibid.*, p. 52.

<sup>28</sup> *Ibid.*, p. 63

<sup>29</sup> *Ibid.*, p. 59.

<sup>30</sup> *Ibid.*, p. 141.

<sup>31</sup> See Philip Pettit, “Freedom as Antipower,” Ethics, vol. 106 (April 1996): 576-604.

<sup>32</sup> Cf. Pettit, Republicanism, pp. 31ff; Hayek, The Constitution of Liberty, pp. 17-18. See also Ian Carter, “A Critique of Freedom as Non-Domination,” The Good Society, vol. 9 (no. 3): 43-46 at p. 44.

<sup>33</sup> Pettit, Republicanism, p. 54.

<sup>34</sup> *Ibid.*, p. 80. Indeed, Pettit (p. 81) suggests that it is the only goal with which political institutions should be concerned.

<sup>35</sup> *Ibid.*, p. 164.

<sup>36</sup> *Ibid.*, p. 203. Cf. Richard Dagger, “Republicanism Refashioned: Comments on Pettit’s Theory of Freedom and Government,” The Good Society, vol. 9 (no. 3): 50-53 at p. 52.

<sup>37</sup> Philip Pettit, The Common Mind: An Essay on Psychology, Society and Politics, paperback edn. (Oxford: Oxford University Press, 1996), p. 310.

<sup>38</sup> This blurring is pursued by Stephen Holmes and Cass Sunstein, The Costs of Rights: Why Liberty Depends on Taxes (New York: W.W. Norton, 1999), esp. ch. 1.

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<sup>39</sup> Pettit, Republicanism, pp. 55, 84, 184, 198. On the importance of, and problems with interpreting, the idea of “tracking” see C. A. J. Coady, “Critical Notice of Republicanism by Philip Pettit,” Australasian Journal of Philosophy, vol. 79 (March 2001): 119-124, p. 120; John Christman, “Review of Republicanism,” The Good Society, vol. 9 (no. 3): 47-49 at p. 48.

<sup>40</sup> See my Political Concepts and Political Theories (Boulder, CO: Westview, 2000), esp. chs. 4 and 5.

<sup>41</sup> Pettit, Republicanism, p. 24.

<sup>42</sup> Coady points out the importance of this to Pettit in his “Critical Notice of Republicanism.”

<sup>43</sup> T. H. Green, “On the Different Senses of ‘Freedom’ as applied to the Will and the Moral Progress of Man,” in Paul Harris and John Morrow, eds., Green’s Lectures on the Principles of Political Obligation (Cambridge: Cambridge University Press, 1986), p. 229.

<sup>44</sup> Pettit, Republicanism, p. 94.

<sup>45</sup> *Ibid.*, p. 266.

<sup>46</sup> *Ibid.*, p. 267.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.* This does not really seem about trust at all—it concerns confidence about what the other will do, but not because one trust him, but because he is constrained.

<sup>49</sup> *Ibid.*, p. 68.

<sup>50</sup> Jean Hampton, Hobbes and the Social Contract Tradition (Cambridge: Cambridge University Press, 1986), ch. 3.

<sup>51</sup> Pettit, Republicanism, p. 74.

<sup>52</sup> Pettit, The Common Mind, p. 318.

<sup>53</sup> Pettit, Republicanism, pp. 70ff.

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<sup>54</sup> Dagger, Civic Virtues, p. 38. See also pp. 28-29.

<sup>55</sup> Sunstein, Free Markets and Social Justice, p. 15.

<sup>56</sup> *Ibid.*, p. 16.

<sup>57</sup> *Ibid.*

<sup>58</sup> See S.I. Benn and G. W. Mortimore, “Technical Models of Rational Choice” in S.I. Benn and G. W. Mortimore, eds., Rationality and the Social Sciences (London: Routledge, 1976), p. 160. I have distinguished preferential reasons for action from principled ones, but that does not affect the argument here. See my “Why All Welfare States (including Laissez-Faire Ones) are Unreasonable.” Social Philosophy & Policy, vol. 15 (June 1998): 1-33.

<sup>59</sup> See Alexander Rosenberg, Philosophy of Social Science, 2nd edn (Boulder, CO: Westview, 1995), ch. 3.

<sup>60</sup> See Benn and Mortimore, “Technical Models of Rational Choice,” p. 161.

<sup>61</sup> I have argued that the revealed preference understood simply as choice does not help explain why a person acted. See my “The Limits of Homo Economicus” in Gerald F. Gaus, Julian Lamont and Christi Favor, eds., Values, Justice, and Economics (Amsterdam: Rodopi, forthcoming). See also Rosenberg, The Philosophy of Social Science, p. 80.

<sup>62</sup> Milton and Rose Friedman, Free to Choose (London: Secker and Warburg, 1980), p. 1.

<sup>63</sup> See Sunstein, Free Markets and Social Justice, p. 17.

<sup>64</sup> Although some remarks of Sunstein suggest this argument—and his account of revealed preferences certainly grounds it—what he says here can also be interpreted as another statement of his argument about the endogeneity of preferences which I consider below (section III.D).

<sup>65</sup> Sunstein, Free Markets and Social Justice, p. 30.

<sup>66</sup> *Ibid.*

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- <sup>67</sup> Cass Sunstein, Republic.com (Princeton: Princeton University Press, 2001), p. 50.
- <sup>68</sup> *Ibid.*, p. 195.
- <sup>69</sup> Sunstein, Free Markets and Social Justice, p. 18.
- <sup>70</sup> *Ibid.*, p. 19.
- <sup>71</sup> See S. I. Benn, A Theory of Freedom (Cambridge: Cambridge University Press, 1988), p. 179.
- <sup>72</sup> These examples are drawn from Sunstein, Free Markets and Social Justice, p. 19.
- <sup>73</sup> *Ibid.*, p. 20.
- <sup>74</sup> *Ibid.*, p. 20.
- <sup>75</sup> *Ibid.*
- <sup>76</sup> S. I. Benn, “Benevolent Interference and Respect for Persons.” Bulletin of the Australian Society of Legal Philosophy, vol. 21 (Dec. 1981): 99-112.
- <sup>77</sup> Sunstein, Free Markets and Social Justice, p. 18.
- <sup>78</sup> *Ibid.*, p. 18.
- <sup>79</sup> *Ibid.*
- <sup>80</sup> *Ibid.*
- <sup>81</sup> *Ibid.*, p. 94.
- <sup>82</sup> *Ibid.*, p. 80.
- <sup>83</sup> On this distinction see Ruth Chang, “Introduction” to her edited collection, Incommensurability, Incomparability, and Practical Reason (Cambridge: Harvard University Press, 1997).
- <sup>84</sup> Sunstein, Free Markets and Social Justice, p. 81.
- <sup>85</sup> Karl Max, Capital in Robert C. Tucker, ed., The Marx-Engels Reader, 2nd edn (New York: W.W. Norton, 1978), p. 306.

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<sup>86</sup> Peter Dorman, Markets and Mortality (Cambridge: Cambridge University Press, 1996), p. 51.

<sup>87</sup> Bruno S. Frey, Not Just for the Money: An Economic Theory of Personal Motivation (Cheltenham, UK, Edward Elger, 1997).

<sup>88</sup> See, e.g., Ruth Chang, “Introduction,” p. 1; Bernard Williams, “Conflicts of Value,” in his Moral Luck (Cambridge: Cambridge University Press, 1981), p. 77; Fred D’Agostino, “Incommensurability and Commensuration: Lessons from (and to) Ethico-Political Theory,” Studies in the History and Philosophy of Science, vol. 31 (2000): 429-447.

<sup>89</sup> See D’Agostino, “Incommensurability and Commensuration;” Joseph Raz, “Value Incommensurability: Some Preliminaries,” Proceedings of the Aristotelian Society, vol. 86 (1985-86): 117-34.

<sup>90</sup> This supposes that we are talking about deliberative preferences as I have depicted them in section III.B.

<sup>91</sup> Joseph Raz, “Incommensurability and Agency” in Chang, ed., Incommensurability, Incomparability and Practical Reason, p. 112.

<sup>92</sup> Sunstein, Free Markets and Social Justice, p. 83.

<sup>93</sup> *Ibid.*

<sup>94</sup> Michael Stocker, Plural and Conflicting Values (Oxford: Clarendon Press, 1990), p. 27.

<sup>95</sup> Philip Tetlock, “Coping with Trade-Offs: Psychological Constraints and Political Implications,” in Arthur Lupia, Matthew D. McCubbins, and Samuel L. Popkin, eds. Elements of Reason: Cognition, Choice and the Bounds of Rationality (Cambridge: Cambridge University Press, 2000), p. 240. My thanks to Fred D’Agostino for pointing out to me the importance of Tetlock’s work. See D’Agostino’s “Liberalism and Pluralism” in Gaus and Kukathas, eds. Handbook of Political Theory.



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<sup>96</sup> Sunstein, Free Markets and Social Justice, p. 89.

<sup>97</sup> See S.I. Benn and G.F. Gaus, “Practical Rationality and Commitment,” American Philosophical Quarterly, vol. 23 (1986): 255-266.

<sup>98</sup> Kenneth E. Boulding, “Prices and Values: Infinite Worth in a Finite World,” in Edward A. Maziarz, ed., Value and Values in Education (London: Gordon and Breach, 1979).

<sup>99</sup> Sunstein, Free Markets and Social Justice, p. 97.

<sup>100</sup> Richard A. Posner. “Forum: Adoption And Market Theory: The Regulation of The Market in Adoptions,” Boston University Law Review, vol. 67 (January, 1987): 59-72.

<sup>101</sup> Tetlock, “Coping with Trade-Offs,” p. 251.

<sup>102</sup> *Ibid.*

<sup>103</sup> See the Latinbarometro poll in The Economist July 28, 2001, pp. 37-39.

<sup>104</sup> John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971), p. 496.