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Noxious Markets

ABSTRACT MARKETS VERSUS NOXIOUS MARKETS

What is wrong with markets in everything? What is it about the nature of particular exchanges that concerns us, to the point that markets in some goods appear to be clearly undesirable? How should our social policies respond to such markets? Where and for what reasons is it appropriate to regulate a market, and when should we seek to block it? These are the difficult but important questions that this chapter attempts to answer.

Several brief clarifications about my scope and aims here. First, as is evident from the discussion thus far, my project does not involve an overall assessment of "the market system."[1] Markets allow people to accomplish many important social and individual tasks under modern conditions of interdependence and diversity. The point of my inquiry is not to raise general questions about the market system or about markets in the abstract. Rather, I am concerned here with the differing characteristics of very particular market exchanges: in human body parts, child labor, toxic waste, sex, and life-saving medicines. Markets in these goods provoke reservations even among those who are otherwise great enthusiasts about the market system.

Second, I put aside questions concerning the rationing of essentials in cases of extreme scarcity, "tragic choices," as they are referred to in the legal literature.[2] These are cases in which no amount of money or effort will produce enough of urgently needed goods. Market allocations in tragic choice cases raise distinct considerations from the examples considered here, as such cases do for all the alternative systems of allocation, including those using lottery, age, or merit.

Let me recap the discussion so far. Chapter 1 focused on the dominant framework of contemporary economics that supports market interventions only where markets fail to be efficient.[3] Proponents of this approach can be divided between those who believe that perfectly efficient markets are "moral-free zones" to which morality simply does not apply,[4] and those who believe that it is simply not the place of economists to evaluate the morality of differing markets. But when particular markets fail, this approach does not tend to support the *elimination* of those markets. Indeed economic theory is inherently imperialistic about the scope of the market; as we have seen, the solution to market failure is often taken to consist in the *enlargement* of the scope of the market. (Consider the introduction of markets in pollution to incorporate pollution's costs to third parties.) There are no theoretically set limits for the scope of the market. In addition markets and the corresponding idea of market failures are everywhere conceived of in the same terms. This stands in sharp contrast to the approach of the classical political economists that I explored in chapter 2.

Chapter 3 examined important contemporary approaches to the limits of the market. Drawing on the work of Ronald Dworkin, I critically examined the view that markets have a necessary *moral* role to play in egalitarian theory because markets make each of us responsible for the allocation of effort and resources in our own lives, while at the same time ensuring that the benefits that we derive from our choices depend on how important our effort and resources are to others. As we saw, Dworkin's theory gives us no reason *in principle* to set limits to the scope of the market with respect to goods and services, except perhaps for paternalistic considerations.

I also explored the prevalent general egalitarian approach that, although critical of the economist's exclusive focus on market efficiency and market failure, accepts the legitimacy of relying on markets in most domains. Proponents would use markets to produce efficient outcomes and then support ex post transfers of income to achieve their desired egalitarian distribution.[5] Like contemporary economics, its proponents tend to treat most markets as the same: markets in soybeans are not fundamentally different from markets in body parts. The basic default strategy employed for dealing with market problems is to redistribute income and not to block particular markets or to redistribute specific goods in kind. Many proponents of this view also appeal to antipaternalistic considerations for preferring cash to in-kind transfers.

I also examined specific egalitarian approaches, which ground a distinction in markets—between those that are acceptable and those that are not—based on the meaning *of the goods being traded*. The idea here is that distribution should track our conventional or best understandings of the nature of the goods we seek to distribute. As we saw, these authors argue that markets corrupt the nature of certain goods, trading in things that money should not buy.

The theories considered in chapter 1 and chapter 3 have important insights on which I will draw: market failures (including externalities), distributional equality, and the importance of access to specific goods are important considerations in assessing markets.[6] Yet my underlying theory about the limits of markets also differs. I argue for a more nuanced view of the idea of market failure, one that takes into account how markets shape our relationships with others in ways that goes beyond the idea of unabsorbed economic costs. A market exchange based in desperation, humiliation, or begging or whose terms of remediation involve bondage or servitude is not an exchange between equals. On my view, lurking behind many, if not all, noxious markets are problems relating to the *standing* of the parties before, during, and after the process of exchange.

I will also argue in this chapter that some markets are noxious and need to be blocked or severely constrained if the parties are to be equals in a particular sense, as citizens in a democracy. In making this argument I draw on the writings of Adam Smith and the other classical political economists discussed in chapter 2. Recall that these thinkers recognized that markets require certain background conditions—specification of and enforcement of entitlements and property rights—in order to support relations of freedom and equality. The markets of the classical political economists were populated not by the abstract individuals with given wants that tend to characterize contemporary economic theory, but by landless peasants and wasteful landlords and by impoverished workers who stood in asymmetrical power relations with their employers. Moreover agents' preferences, capacities, and relationships were understood to be shaped by the structure and nature of particular markets. Like these theorists, the approach to markets I defend recognizes market heterogeneity and stresses the need to consider other values besides efficiency and distributional equality narrowly conceived. But, as I argued in chapter 3, I think we should reject the main contemporary alternative arguments for limiting markets based on the social meaning of goods. As I see it, a major problem with noxious markets is not that they represent inferior ways of valuing goods (as those who link the limits of markets to social meanings claim) but that they undermine the conditions that people need if they are to relate as equals. At any rate, so I shall argue.

NOXIOUS MARKETS: THE BASIC PARAMETERS

I begin with a characterization of four parameters in terms of which we can differentiate the markets that people find especially objectionable from other types of markets. Several of these parameters are *internal* to the perspective of economics in that scoring high on them will often undermine efficiency. However, there are also political and moral rationales for limiting noxious markets. That is why the addition of more markets is not always the appropriate response to a noxious market. In some cases our goal should be to curtail a particular noxious market, not to make it work better.[7]

The first two parameters characterize the *consequences* of particular markets.

1. Some markets produce extremely *harmful outcomes*. That is, the operation of some markets leads to outcomes that are deleterious, either for the participants themselves or for third parties.[8] Consider market exchanges that lead to the depletion of the natural resource base of a country or to the fueling of a genocidal civil war. Or consider a stock market transaction that wipes out a person's resources.

Of course, many markets have harmful outcomes without eliciting our revulsion; we think that the ups and downs of prices come with the territory. But some market outcomes are so negative, so extremely harmful that they almost always evoke a strong reaction. How harmful is that? Following up on a suggestion by Ravi Kanbur, we might consider as a natural starting point for answering this question a market whose operation leaves a person destitute.[9] For example, a grain market whose operation leaves some people starving because they cannot afford the price at which grain is set through supply and demand is bound to make us feel uncomfortable.

Yet markets can also be extremely harmful to individuals in ways that go beyond destitution. Amartya Sen usefully distinguishes between two types of interests that people have: *welfare interests* concern a person's overall good, and *agency interests* concern a person's ability to participate in deciding matters that bear on that good.[10] These interests are interdependent, but they are distinct. (A benign dictator, for example, could meet all my basic welfare interests.) We can define a set of *basic* interests for people, interests in minimum levels of well-being and agency, and define extremely harmful market outcomes as outcomes that leave these basic interests unsatisfied. The idea of basic interests is meant to capture the idea that there are universal features of an adequate and minimally decent human life, a "line beneath which no one is to be allowed to sink."[11]

2. In addition to leading to extreme individual harms, certain markets can also be *extremely harmful for society*. The operation of these markets can undermine the social framework needed for people to interact *as equals*, as individuals with equal standing. There are, of course, running disagreements among philosophers concerning the meaning of "interact as equals," as well as the scope of this ideal. I take the content of this ideal to be given by the preconditions necessary for individuals to make claims on one another and interact without having to beg or to push others around. Markets help enable this ideal, as the basis of market claims is reciprocal self-interest of the parties.[12] But they can also undermine it. Consider markets that operate to undermine the capacities that a person needs to claim her rights or to participate in society; this is a problem with child labor markets and bonded labor, cases I discuss in the third part of this book. Or consider that particular markets may condition people to be docile or servile, shape them into passive accepters of a status quo. Whereas contemporary economics sees the capacities and preferences of agents in a market as givens, particular markets—think of media, education, and caregiving—shape us. Moreover they may shape us in ways that are in tension with a society of equals.

A special case is a market that is harmful for the standing of the parties as equal citizens in a democracy. This case ratchets up from the more minimal notion of equal standing: it has to do with the equality of individuals as co-deliberants and co-participants in making laws that apply to themselves. This kind of equality presupposes additional constraints on markets and their scope. Recall James Tobin: "Any good second year graduate student in economics could write a short examination paper proving that voluntary transactions in votes would increase the welfare of the sellers as well as the buyers."[13] Nevertheless the legitimacy of the democratic process depends on the prohibition of such transactions. I will discuss this case later in this chapter.

The next two parameters characterize the *sources* of particular markets, the underlying condition of the market agents:

3. Some markets are characterized by *very weak or highly asymmetric knowledge and agency* on the part of market participants. The Pareto efficiency results assume that agents are fully aware of the consequences of their actions and have complete information about the goods exchanged.[14] But, as is widely noted by economists and others, in most circumstances these assumptions do not hold. Agency failures can occur because some of the direct participants lack important knowledge or because the market has serious indirect effects on people who are not involved in the market transactions.[15] If one or both of the parties to a contract are mistaken about the material facts or about the future consequences of their contract, we cannot assume that the exchange is a Pareto improvement.

All real markets, of course, involve imperfect information. But in some cases this imperfect information is apt to produce extremely harmful consequences. This may be most likely in cases where is a significant time lag between the initiation and the completion of a transaction.[16] It is hard to predict one's future preferences. Consider the case of a woman selling her ability to have a child. In this case we might suspect that a woman who has never been pregnant cannot really know the consequences of selling the right to the child she bears.

Of course the fact that a contract has potential risks for an agent does not mean that the contract should not bind the agent, or else most contracting would fail. Nevertheless information failures are relevant to our assessment of particular markets in the face of harmful outcomes; in particular such failures serve to block justifications of a market transaction that appeal simply to the fact that it was chosen. Thus if agency is weak in surrogacy contracts, and a surrogate is now devastated by the thought of giving up the child she has borne, we will be less likely to think that we can justify enforcement of the contract simply on the basis that there was an agreement.

Although the majority of troubling markets characterized by weak agency involve extremely harmful outcomes, it is possible to be concerned by such markets even in the absence of harms. In this category would fall product markets that target young children; markets involving the production, purchase, and dissemination of information that fail to present relevant alternative points of view about a pressing political issue; and markets whose products are based on deception, even when there is no serious harm.[17]

Agency problems also arise in markets in which one of the affected parties is not directly involved in the transaction but depends on others to transact for her. In such cases we cannot be certain that the party herself actually benefits from the transaction. In the majority of cases of child labor, for example, parents are transacting on behalf of the children whose time and labor are traded. Many forms of child labor give little or no benefit to the working child and in some cases significantly interfere with the child's ability to grow up into a healthy functioning adult.[18] Other markets in which some of the affected parties are not directly involved as participants include markets in a nation's important scarce natural resources (such as timber in a rain forest), which can affect subsequent generations and others around the globe.

4. Some markets reflect the *underlying* extreme *vulnerabilities* of one of the transacting parties. Rousseau wrote that no citizen should "be wealthy enough to buy another, and none poor enough to be forced to sell himself."[19] When people come to the market with widely varying resources or widely different capacities to understand the terms of their transactions, they are unequally vulnerable to one another. In such circumstances the weaker party is at risk of being exploited. For example, when a desperately poor person agrees to part with an asset at a fire sale price, even if the exchange improves his well-being we are rightly concerned with the fact that his circumstances made him willing to accept an offer for his asset that no one with a decent alternative would ever accept. When a person enters a contract from a position of extreme vulnerability he is likely to agree to almost any terms that are offered. Other examples of markets that exploit the vulnerability of transacting agents include markets in urgently needed goods where there is only a small set of suppliers and markets where the participants have highly unequal needs for the goods being exchanged.[20]

Some markets not only *reflect* the different and unequal underlying positions of market agents but may also *exacerbate* them by the way they operate. For example, in Bangladesh a recent famine arose when the price of the main food, rice, rose very rapidly and became too expensive for the poor to purchase. By contrast, rich households were insulated from the risks of rising prices because they generally receive rice from their tenants as payment for the use of land so that they have rice for their own needs and surplus to sell.[21]

So we have two dimensions regarding the source of a market and two dimensions regarding the consequences of a market that can be used to think about the acceptability of particular markets (see Table 1).

High scores along one of these dimensions, or several of them together, can make any market appear "noxious" to us. Consider the market in diamonds, whose sale is used to fund brutal civil wars. Many people find such a market abhorrent. On the analysis offered here, the best way to understand our negative reaction to this market has to do with its *extremely harmful* outcome—prolonging a bloody civil war in which thousands or tens of thousands die, hence the term "*blood* diamonds"—and with the *weak agency* of so many who are affected by the markets that fuel that war.[22] Our discomfort with such markets doesn't seem to have anything to do with the social meaning of diamonds and little to do with the underlying income inequality of buyers and sellers.

TABLE 1. What Makes a Market Noxious?

Source: Weak Agency	*Source: Vulnerability*
Inadequate information about the nature of and/or consequences of a market; others enter the market on one's behalf	Markets in a desperately needed good with limited suppliers; markets with origins in poverty and destitution; markets whose participants have very unequal needs for goods being exchanged
Outcome: Extreme Harms for Individual	*Outcome: Extreme Harms for Society*
Produces destitution; produces harm to the basic welfare and/or agency interests of the individual	Promotes servility and dependence; undermines democratic governance; undermines other regarding motivations

At the same time, although in theory markets in any good can become noxious, markets in some goods are much more likely to score higher than others on these parameters. Consider the case of markets in goods that no one but the desperate would ever exchange. Some people think that desperation is a characteristic feature of kidney markets, a case I discuss in chapter 9.

A number of these parameters are easily incorporated within the approaches of contemporary economics; for example, concerns with harmful outcomes and information failures can be captured in the perspectives of welfare and neoclassical economics. Several authors, notably Ravi Kanbur and Michael Treblicock, have done this, showing that economic theory itself has available resources for dealing with many problematic markets. Nevertheless markets raise questions of political philosophy as well as of economics. Markets can damage important relationships people have with one another by allowing people to segment and opt out of a common condition. A central feature of most noxious markets on my approach has to do with their effects on the relationships between people, particularly the horizontal relationship of equal status. For two people to have equal status they need to see each other as legitimate sources of independent claims and they need to each have the capacity to press their claims without needing the other's permission to do so. This requires that each have rights and liberties of certain kinds as well as very specific resources, such as a level of education.

Equal status stands opposed to the ideas of caste, hereditary privilege, and unequal birthright. It insists that all individuals have an equal moral worth. Although it is perhaps possible to interpret this idea of equal status in economic terms, it is not easy to see how this would be done. Equal income and wealth by themselves do not entail equal status, as I stressed in my discussion of people with disabilities who have been marginalized from social positions and from public spaces.

Why not let people enter into labor contracts that involve bondage or contracts that grant labor bondage as remediation in the case of default? These were once common practices; later I will show that such practices are compatible with both libertarian choice theory and welfare economics.[23] But those who think that the problem with a market in bonded labor is its incompatibility with a conception of equal human status have reason to prohibit such contractual arrangements.

EQUAL STATUS IN A DEMOCRACY

Social rights in their modern form imply an invasion of contract by status, the subordination of market price to social justice, the replacement of the free bargain by the declaration of rights.[24]

The preconditions for equal status as citizens in a democracy are more demanding than those needed for people to interact in horizontal relationships based on their reciprocal self-interest and equal moral worth. According to the conception of citizenship developed by the British social theorist T. H. Marshall, citizenship not only includes formal legal freedoms, but also a set of social rights with respect to health care, education, housing, and a decent minimum of income. These latter rights, he claimed, are needed to make one a full member of one's society. I think Marshall is correct: an equal right to vote has little effective meaning if some voters are too badly educated to read a ballot; citizenship means little for the destitute if society is so structured that they have no opportunity to share in society's benefits.

According to Marshall's view, the status of equal citizenship requires that all have (1) equal basic political rights and freedoms, including rights to speech and participation in the political process; (2) equal rights and freedoms within civil society, including rights to own property; and (3) equal rights to a threshold of economic welfare and to "share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society."[25]

Marshall viewed citizenship as a given status, not a privilege that depends on individual virtue or achievement. Citizenship gives to all within its ambit a single set of rights, irrespective of their wealth or family origin. While markets can be supportive of equal citizenship understood in this sense, whether or not they are so depends on the background circumstances, property rights, and regulations within which they operate. Someone who is desperately poor might agree to an exchange that requires her to function as an around-the-clock domestic servant or to bond her labor to obtain a loan at usurious rates that she can never hope to repay. The fate of such a person may be little different from that of a serf under feudalism.

In thinking about the preconditions of equal citizenship, it is important to think in terms of general social practices and not acts. For example, there may seem to be no problem with allowing a single person to work for whatever wages and hours she chooses, yet the existence of minimum wages and maximum hours laws may be necessary to preserve a threshold of economic welfare "according to the standards prevailing in the society,"[26] and to enhance the bargaining power of the poorest people in society to protect them from exploitation and abuse. Or consider another example: even if it makes sense in an individual instance for a poor family to put its children to work, when child labor is adopted as a widespread social practice it drives down adult wages, making it virtually impossible for poor parents to refrain from sending their children to work. Rather than seeing a person's market choices as exogenous variables, the choices we actually have open to us may depend on other market choices being blocked.[27]

The transfer of income and wealth will not always be sufficient to maintain the conditions for citizen's equality; here the insights of specific egalitarians like Michael Walzer, Elizabeth Anderson, and Michael Sandel are important. Consider the case of distributing primary and secondary school education through a market. Lack of education is an extremely harmful outcome in terms of democratic citizenship: a very poorly educated person will be incompetent as a juror and a voter and have little or no access to the basic opportunities and liberties associated with full membership in her society. But giving money, even a great deal of money, to a child who has not been educated will not compensate for her lack of education, even if cash is what she (as an adult) now herself prefers. Not only does it not replace the personal and social development that education might have enabled for her, but it does not turn her into a citizen who can participate competently and meaningfully in democratic self-governance. (Nor can we be sure that if money were transferred to a parent he would choose to use that money to keep his children in school. While some data suggest that many parents do keep their children in school when they have enough money to feed their families, some parents are selfish or shortsighted, perhaps lacking information about education's true costs and benefits because they had little formal education themselves.)

These are all reasons for *not* distributing primary and secondary education solely through a market system, but enforcing it as a mandatory requirement. If our concern is with avoiding outcomes that undermine the conditions for citizens to interact as equals, then there is a powerful argument for guaranteeing access to a certain level of goods—education, health care, opportunities, rights, liberties, and physical security—even if some citizens would prefer to trade and sell these goods, or the opportunity to access these goods, to the highest bidder. While markets can supplement the supply of these goods in many cases, my point is that access to these goods should not depend only on individual preferences or income. The conditions for equal citizenship cannot be cashed out in terms of a generic good like money or utilitarian welfare; in addition to some level of income, they require that some goods be distributed in kind and that, in some cases, the distribution be more or less equal.

At the same time I would not defend the distribution of education or health care in terms of the idea that these goods are corrupted through sale. A public right to education is in theory compatible with the existence of a complementary or supplementary private education system.[28] Instead my argument draws on Marshall's suggestion that some goods function as prerequisites for *full inclusion* in society, for counting as an equal member. A person who lacks a certain level of education or access to medical care or physical security is not only ill-equipped to navigate her own life and values, but also faces substantial impediments to participation in the economy and to participating in public debates about social choices. Such a person is vulnerable to exploitation and manipulation by others and dependent on luck or the will of benefactors to meet her basic needs.

In addition to supplementing market distributions in goods such as education and health care, we may have reason to *block certain market exchanges altogether* if citizens are to be equals. Consider votes in a democracy. No one defends the outright sale of voting, even though it can be argued that such sale is consistent with efficiency and freedom.[29] The interesting question is why. I think there are two main answers to this question, associated with two different ideals of democratic citizenship.

The first answer points out that the regulative idea of democracy is that citizens are equals engaged in a common cooperative project of governing themselves together. Thus citizens participate with others on an equal footing in deciding on the laws and policies that will govern them. A market in votes would have the predictable consequence of giving the rich disproportionate power over others since the poor would be far more likely than the rich to sell their political power. Indeed one rationale for secret ballots is to make contracts about votes unenforceable, thus protecting the poor and vulnerable from pressure to sell. If political, regulatory, judicial, and legal decision mechanisms were literally up for sale, this would concentrate political power in the hands of a few.

A second answer pushes in a more republican direction, interpreting democracy not merely as government among equals but as a means of determining the common good.[30] On this view of democracy, *votes are acts of political co-deliberation*. Even if a vote market were not monopolized by the rich, we would still have a reason to proscribe vote trading on the grounds that voting is not about the aggregation of private interests; it is an act undertaken only after collectively deliberating about what is in the common good. Distributing votes according to preferences views citizens as consumers, not co-deliberators.

Both conceptions of democracy require that some markets be blocked and others be highly regulated. Both conceptions would block markets in votes, judicial offices, legislative offices, and voluntary slavery. Moreover, both conceptions would regulate markets governing the production and distribution of political information and markets governing access to legislative office and the opportunities associated with political influence, although to varying degrees.[31] But these two conceptions might well differ on the treatment of military service as a market good. On the republican conception of democracy, there is something deeply troubling about the ways in which today's volunteer army shares some attributes with a mercenary army. Rather than seeing military service as an obligation of citizenship, today's soldiers are drawn from a small segment of the population that is largely working class.

Just as democracies made up of equal citizens require blocks on markets in votes or people, a related argument might be made that some markets need to be blocked or highly regulated if people are to develop the *capacities* that they need to participate effectively in civil and political society. Human beings are malleable in a way that goods such as apples are not.[32] We do not usually need to worry about the noneconomic effects of a market on the apples exchanged,[33] but we do need to worry about whether a particular kind of market produces or supports passivity, alienation, or a ruthless egoism. Labor markets may be structured so as to accustom people to being pushed around and managed by others. Widespread markets in women's reproductive or sexual capacities (including quid pro quo sexual harassment contracts) might amplify gender inequalities by entrenching and deepening negative stereotypes about women.[34] Unregulated education markets are compatible with children being treated as and raised as servile dependents. We need to pay special attention to cases like these, for they pose potential threats to the stable reproduction of democratic citizenship over time. Indeed the democratic state has an interest in withholding its support from institutions that cultivate subordination and servitude, even if those institutions are not strictly illegal.

REGULATING MARKETS, BLOCKING MARKETS

How should we decide what approach to take to a noxious market? Obviously which policies it makes sense to adopt depends on the source of the market's noxiousness, which of the four parameters is in play. We need to tailor our response to the particular problems with that market. For example, if weak agency is the problem with a particular market, then we may want to undertake measures that increase information. If underlying vulnerability is a problem, we may want to redistribute income or create supplementary alternatives to market provision. Regulating a market is often the best way to address a market's noxiousness. At the same time, some problems with a market may be best addressed by closing off the ability of agents to trade in that market at all. Some markets undermine the social context in which people are able to interact on terms of equality.

In such cases we need to address not merely distributions, but also the underlying property rights of the transacting agents. To illustrate this, let's look briefly at child labor, a case I take up in more detail later in this book. In our world child labor often arises on the basis of destitution. But even in a world without destitution child labor would be problematic. Although many libertarian economists often view freedom as the freedom to participate in the market, they are often blind to the fact that individuals are not born with all the required capacities for exercising agency and making choices (including market choices) already developed. The achievement of even a minimal threshold level of decision-making powers requires support from a variety of sources, including parents and the state: nurturing, help in developing the capacities for understanding and weighing alternatives, help in developing the ability to see oneself as an agent worthy of having choices, and attaining an adequate level of education. Child labor fails to promote and often blocks the development of these capacities.

CASES: THE *TITANIC* AND TOXIC WASTE

With my framework in mind, I'd like to return to two examples invoked earlier in this book: the *Titanic*'s market in safety and Larry Summers' memo advocating a market in toxic waste.

Beginning with the *Titanic*, recall that individuals booking passage were allowed to buy tickets with or without the guarantee of access to a lifeboat in the event of an emergency. Their market choices can be understood as a function of their preferences given their resources and their information. In the case of the actual *Titanic*, there was weak agency (based on faulty information about the ship's "unsinkability") and extremely harmful individual outcomes (drowning when the ship went down). These considerations give us good grounds for treating the distribution of safety according to ticket price aboard the *Titanic* as an instance of a noxious market.

But suppose that we increased agency and redistributed income so that all could easily afford the price of a first-class ticket on the boat. Is there any reason why it might make sense to prefer a more constrained system for the distribution of safety, whereby all are prevented from making choices that they would take as individuals if those options were available? As I argued in chapter 3, I don't think that paternalism gives us a strong reason to forbid people from making decisions to forgo access to lifeboats on the *Titanic*.

A commitment to equal citizenship, however, does presuppose that there are some rights that individuals cannot contract away. This is because, if these rights were contracted away, some individuals would be subject to servitude and subordination. Employers, for example, could demand that their employees travel in the cheapest possible manner, even if that means forgoing a lifeboat. And other individuals would find themselves placed in situations where they would have to treat people as less than equal, pushing them out of the lifeboat, for example.

Note, however, that protecting people from humiliating subordination and servitude can be secured in this example by providing a floor of provision, a (literal?) safety net, compatible with large (market-generated) inequalities above the floor. As I mentioned, in his discussion of the *Titanic* example Thomas Schelling concludes that it is the *inequality* aboard the ship that is problematic, not the inadequate safety floor: "Those who risk their lives at sea and cannot afford a safe ship should perhaps not be denied the opportunity to entrust themselves to a cheaper ship without lifeboats; but if some people cannot afford the price of passage with lifeboats, and some people can, they should not travel on the same ship."[35]

Schelling seems to be suggesting that if we allow a market to distribute safety, then we must ensure that it gives the same safety to everyone, or at least to everyone within the community. We have already seen that there is an argument that connects equal provision of votes and basic political rights to democratic citizenship. But it seems puzzling to conclude that we need to equalize specific goods such as safety for the sake of such citizenship.

I can think of two basic reasons that democratic societies might want to secure the equal provision of certain specific goods. The first reason is that inequalities in some goods, such as education or political influence, sit too uneasily with the idea that we are each other's equals. For example, it may be hard to maintain that conviction if excesses of privileged schooling impose great differences on children's future lives. Education is simply too important to participation and inclusion in society's institutions, and relative inequalities can confine the worst off to occupy lowly positions. Significant educational inequalities in the quality of K–12 education do not seem fair, because they suggest that some children matter a great deal less to society than others. Of course, there are disagreements about such cases and about how much educational inequality is compatible with a democratic society. But my point is that there are instances in which inequalities in some goods affront the idea that people are the equals of their neighbors: they reek of caste like privileges. Sometimes the goods that affront equality may be conventionally determined, as Michael Walzer argued. For example, many Americans would look with great distaste on the idea of a market in positions on ticket lines at movie theaters, even if the introduction of such a market did not change their own relative position on the line.

The fact that everyone irrespective of income has to wait his or her own turn on the line for a movie is a convention that has come to symbolize our equality. (If you doubt this, just try to buy your way into the line.)

The second reason concerns the effects of markets on the aggregation of interests, an effect that we saw invoked by the republican conception of democratic citizenship. Markets enable people to opt out of relationships with particular producers and to take up new relationships, to find new ways of satisfying their preferences. Albert Hirschman used the term "exit" to describe this function that markets provide, and it is an important mechanism for enhancing freedom as well as economic improvement (because exit signals dissatisfaction, at least relative to available alternatives).[36] Hirschman counterposed "exit" with "voice," by which he had in mind trying to change another person's behavior by directly alerting him to a problem. But we might think of another function of voice; as in the case of voting, voice can play an important role in shaping and forming common interests.[37] Exit via a market might sometimes enhance common interests (as when consumers withdraw their support for a shoddy product), but it might also diminish the possibility of forming or satisfying those common interests.

Recent research by Susanna Loeb on school financing provides a good illustration of this phenomenon.[38] Among the funding models for education that she considers is one in which school districts receive a uniform per pupil funding grant from the state and then are allowed to raise unlimited additional funds. Although this system looks attractive because it allows voters to pursue their preferred spending levels while maintaining a minimum funding level for all students, Loeb argues that it may not be sustainable because the high-wealth districts may lose their incentive to support state funding. People in these districts might be rationally motivated to vote for politicians who support lower levels of state provision since much of their aid is based on their own fund-raising and local taxes. In that case the ability of those who are left to provide for public education on the basis of state provision would decline.

As this example shows, the stratification and sorting inevitably produced by a market can be especially problematic in cases where one person's prospects for attaining some important good is closely connected to another person's decisions. This is especially true in a representative form of government. For example, we may suspect that when officials can insulate their own children from the effects of poor public schooling or unsafe neighborhoods they may find it easier to support cuts to state budgets in those areas than they would if their own families were directly affected by such cuts.

In a recent paper on risk and safety and the "*Titanic* puzzle" I am concerned with here, Jonathan Wolff cites work by John Adams showing that the initial effect of mandating seatbelts for car drivers but not for passengers was an *increase* in the number of passenger deaths.[39] Because the drivers were now safer, they took more risks, which fell on others for whom the risks had not changed. Wolff points out that this analysis also applies to the case of safety aboard ships:

> If the Captain was assured of a place in the lifeboat, or even that the people he most cared about were assured of their place, then he may well have steered a riskier course than otherwise. This is an analogue to the familiar problem of "moral hazard" in insurance, reducing people's incentives to take care. This may well be why the Captain is supposed to go down with the ship, or, at least, be the last one off.[40]

When decision makers can buy private solutions for themselves in education, police protection, and even garbage collection, this may have problematic consequences for the public provision of these goods. To the extent that this is true, it may be that the best way to ensure that the public's interests are taken into account is to give both the public and the decision maker the same interests. At any rate, as this example shows, we need to be attentive to the effects of markets on motivations that affect actions. Sometimes allowing people to sort and segment into diverse groups will undermine the solidarity that is needed to provide for a public good.

Mandating the equal provision of goods is at least theoretically compatible with having those goods supplied to a large extent through regulated markets. Moreover banning a market will sometimes have costs in terms of other values people care about; there will be trade-offs. As I have repeatedly stressed, markets are engines of growth and have important roles to play with respect to our equality and freedom. In some cases the requirements of equal citizenship will push us to a floor of provision, not strict equality in the distribution of the good. In other cases that may not be so; we may care about the ceiling as well as the floor because we want to constrain the amount of inequality to maintain a healthy democracy. Often empirical considerations will be paramount, such as the effects of the inequality on the prospects of those worst off. Some markets trade in things that no democratic society can countenance; others need to be regulated, constrained, or supplemented with other mechanisms if the preconditions for a democratic society are to be maintained.

Return to the toxic waste market proposed in Larry Summers' memo that I discussed in chapter 3. Summers argued that trade in toxic waste would benefit the poor countries and indeed make both the less developed countries and the developed countries better off. The exchange appears to be a Pareto improvement. Why, then, did the public release of the memo occasion such uproar? Why did so many people view the proposed market as clearly noxious? How does the framework in this chapter throw light on the public response? There are three reasons for thinking that a toxic waste market is noxious.

In the first place, there is the unequal *vulnerability* of the bargaining positions of the rich and poor countries. Trade in toxic waste holds up a mirror to global inequality. Because of that disparity the rich countries are able to exploit the vulnerabilities of the less developed countries (LDCs). Critics might suspect that, were they not so poor, the LDCs would not consent to the transfer of toxic waste to their lands, or perhaps they would hold out for better terms.[41]

In the second place, there is likely to be *weak agency*. Many poor countries are run by corrupt governments that do not represent the interests of their citizens. When accepting toxic waste in exchange for money, the interests of these citizens, or at the least the poorest and most vulnerable citizens, might well be neglected. As Daniel Hausman and Michael McPherson note in their discussion of it, Summers' memo implicitly applies the Pareto criterion to the rich and poor nations as a whole.[42] This is, as they write, a "cheat": if we apply the Pareto criterion to individuals, some individuals, very poor individuals within the LDCs into whose neighborhoods the waste is likely to be dumped, might be made very much worse off by the trade.[43] In addition to the weak agency of the poor, the leaders of these countries (as well as the leaders of the rich countries) may not have adequate knowledge about the long-term effects of storing toxic waste.

Vulnerability and weak agency concern the *sources* of an international market in toxic waste. But we may also worry about the *consequences* of such a market. So in the third place there is the possibility for extremely *harmful outcomes to individuals*. Shipping and storing toxic waste, at least some forms of it, are likely to have very bad consequences.[44] Many people might die or suffer in terms of their health. For other forms of toxic waste there may be a risk of serious future harm. If this is so, then future generations, who are not themselves parties to the agreement, might bear the costs of extremely harmful outcomes. Additionally, if toxic waste is exported to poor countries that have less capacity to monitor and regulate pollution, this may lead to more pollution, and even more harm, overall than would be the case if the waste stayed in the developed world.

On the other hand, it is hard to *directly* connect such markets to the idea of harmful social outcomes, that is, to the undermining of equal status. At the same time, we might wonder if the readiness of country A to transfer toxic waste to country B fails to show equal concern and respect for the citizens of country B. Would citizens be as likely to transfer toxic waste to those in their own backyard, that is, to themselves? (Similar concerns, of course, can be raised about the location of toxic waste facilities in wealthy countries, which tends to be in very poor neighborhoods.)

THE LIMITS OF MY APPROACH

My account analyzes noxious market in terms of extremely harmful outcomes for individuals and for society (including the special case of equal status in a democratic society), weak agency (including incomplete information), and vulnerabilities that give some people significant power over others. It grounds a moral distinction between types of markets, but one that is not primarily based on the special nature of certain goods, but on considerations that cut across goods. (Thus on my account credit or housing markets may become more objectionable than sex markets.) But my account is also limited in certain crucial respects.

First, as I have emphasized, we cannot immediately conclude from the fact that a market is noxious that we ought legally to ban it. Even if a market interfered with or failed to promote certain values, banning it might be worse overall from the point of view of those same values. Our policy response must depend on what the alternative to a market is likely to be, as well as on the particular problematic parameters in play. Some markets are simply incompatible with securing the equality of status of individuals and should be prohibited; some are incompatible with equality of status in a democracy of equal citizens; others require regulation, including redistribution of income and property. Many markets are noxious only in a given context; instead of changing the market we might try to change the context. Even in cases where there do not seem to be good reasons in favor of allowing a particular market, it may be impractical to ban it. For example, in the case of drug markets such as for heroin and cocaine, where the transaction costs are low and the market exchange is easy to enforce,[45] a rich black market can and does exist even in the presence of state attempts to block such markets. Thus, although there will be cases in which we will want to ban the particular noxious market, in other cases it will make sense to respond to a noxious market by legislating a safety net, or by educational policies designed to increase information, or by mechanisms aimed at increasing accountability, or by tax-and-transfer schemes to reduce inequality. And sometimes we will simply want to ensure that nonmarket mechanisms for providing a good exist side by side with market mechanisms.

Second, some of the parameters I have appealed to can conflict with each other or with other values. People will have different views of the appropriate trade-offs between the different parameters, as well as between these parameters and other values. For example, people will disagree about whether to prioritize increasing agency or decreasing vulnerability.

Third, I have not settled on exactly how to operationalize these values; for example, I have not here specified a numerically precise interpretation of how much underlying vulnerability market agents must have for a market to become noxious. The characterizing parameters plainly admit of degrees, and there is room for reasonable disagreement as to when a particular market is no longer acceptable. Further, context matters a great deal for the noxiousness of any particular market. Consider large inequalities of wealth produced by a labor market. These inequalities might be blocked from translating into extremely harmful outcomes for equal citizenship in a democratic society by laws regulating the financing of political campaigns, by ensuring a fair distribution of educational resources so that wealth does not translate into a fixed intergenerational caste, and by regulations aimed at securing a high enough minimum income so that no one is impoverished.

Fourth, it should be evident that my account is sensitive to changing circumstances so that markets that are currently noxious may emerge under other conditions as perfectly acceptable (or the reverse).

Fifth, it must be admitted that other accounts of noxious markets are possible; I surveyed some of them in earlier chapters. Some may wish to question placing so much moral weight on our intuitive reactions to particular markets as I have done, pointing out that people were once horrified by the idea of life insurance. Perhaps many of our reactions are little more than an irrational repugnance at that which we dislike. Still others may find particular markets objectionable that do not seem to run afoul of any of the criteria that I have proposed, for example, a market in supermodel eggs or Nobel Prize–winner's sperm or a market in a good whose sale violates their deeply held religious values.[46] By contrast, my account focuses on widely shared values—preventing extreme harm and vulnerability—as well as considerations that democratic citizens, with differing moral frameworks and conceptions of life, have reason to find especially problematic.

My analysis in this chapter has implications for the role of markets in theories of equality. Egalitarians should focus on more than the distribution of things, but also attend to the people who have those things and their relationships with one other. Many markets are rightly celebrated as mechanisms of freedom and efficiency, yet some markets traffic in things that no decent society should allow its members to be without, some deepen objectionable hierarchies of class and privilege, and some undermine democratic values. In thinking about the scope of markets we need to pay attention not only to the distributive outcomes of different markets but also to the relationships between people that these markets enable and support.[47] Ultimately, these questions about the limits of markets are not merely questions of costs and benefits but of how we define our society, of who we are and what we care about.

Unfortunately, many proponents and critics of markets have operated on a high level of abstraction in which all markets function in more or less the same way. But different markets have particular features and raise different moral concerns. The second part of this book uses this framework to examine in more detail particular markets—in reproduction and sex, in child labor and bonded labor, and in human body parts—that many people find problematic.