

# A Republican Defence of the Moral Limits of the Market

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July 2021

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Word Count: 21.807

MA Philosophy

Erasmus University Rotterdam

15 ECTS

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# Introduction

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Are there some things that should not be for sale? This question has been debated for the past few decades in the face of an era of market triumphalism which has seen “the expansion of markets, and of market values, into spheres of life where they don’t belong.”<sup>1</sup> Markets in organs, votes or sex are popular examples of such ‘contested’ commodities, but the market influence has expanded far beyond this. Whether someone wishes to buy a prewritten wedding toast, hunt endangered species or upgrade their prison cells, almost anything is up for sale nowadays. In reaction to this, a group of scholars has put forth a variety of moral limits to the ever expanding influence of the market, claiming that some things *should* not be sold. Debra Satz and Michael Sandel have both put forward certain parameters to help judge whether or not a particular good belongs to such a contested status. Satz’ framework holds that if a market in a certain good results *from* weak agency or vulnerabilities, or results *in* harmful outcomes for individuals or society, such a market is ‘noxious’ and should be dealt with accordingly. She bases her theory on the idea of a society of equals in which there is “no more bowing and scraping, fawning and toadying; no more fearful trembling; no more high and mightiness; no more masters, no more slaves.”<sup>2</sup>

This idea of equal standing can also be found with Sandel who notes that the increasing influence of money and market values in society has not only widened the gap between rich and poor, but has also “sharpened the sting of inequality more by making money matter more.”<sup>3</sup> However, apart from inequality, Sandel raises an additional limit to the market: corruption. Sandel states that introducing market mechanisms to certain goods and services corrupts the intrinsic value or meaning of those goods. For instance, paying people to be friends with you changes, corrupts or perverts the meaning of what it is to be a friend; this is no longer a friend but a ‘lackey’<sup>4</sup>. This kind of *essentialist* argument is commonly put forth by anti-commodificationists, claiming that even if equal standing is ensured, there is still reason not to buy and sell certain goods.

The strength and scope of such normative claims against the market depend heavily on the theories underlining the notions of equal standing and intrinsic value, and what the relation of state and market should be in accordance with such ideas. Therefore, this thesis aims to defend the moral limits of the market as posed by Debra Satz and Michael Sandel by providing a thorough account of equal standing using a Republican view of freedom. I will align Rawls’ principles of justice with the republican idea of freedom as non-domination, which thereby can not only provide the moral limits of the market with a foundation for equal standing, but can additionally show reason to uphold certain essentialist objections as posed by Michael Sandel. To do this I will follow a framework set out by Vida Panitch, Ben Wempe and Jeff Froome who provide a helpful way to give structure to a complex discussion of virtues, spheres and allocation methods. By using these categorisations we can better analyse the value of certain virtues such as freedom and equality and appropriate them in certain spheres of life. A society without masters and slaves is a society of free and equal citizens, and these notions are central to the debate of markets. Markets have long been seen as podiums of freedom, however market critics use this same ideal to justify market limits. Therefore, any theory on the state-market relation must clearly define and defend their notions of freedom and equality. This debate on the moral limits of the market is therefore “not merely questions of costs and benefits but of how we define our society, of who we are and what we care about.”<sup>5</sup>

The goal of this thesis is firstly to defend Satz and Sandel’s moral limits of the market against criticisms. Secondly, to support the virtues behind these theories with a republican framework of freedom and equality. And lastly, to align Rawls’ conception of justice with republicanism and show what this theory can further imply about the obligations of the state and moral limits to the market. In Chapter One I will begin by setting out Satz’ theory against the backdrop of the idea of limitless markets, and show how she

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<sup>1</sup> Michael Sandel, *What Money Can't Buy* (New York: Farrar, Straus and Giroux, 2013), 9.

<sup>2</sup> Michael Walzer, *Spheres Of Justice* (New York: Basic Books, 2010), xiii.

<sup>3</sup> Sandel, *What Money Can't Buy*, 11.

<sup>4</sup> Vida Panitch, “Liberalism, Commodification, and Justice,” *Politics, Philosophy & Economics* 19, no. 1 (2019): 65.

<sup>5</sup> Debra Satz, *Why Some Things Should Not Be For Sale* (Oxford: Oxford University Press, 2012), 112.

provides a framework by which to normatively judge markets. I will parallel this framework with Sandel's book to show the similar concerns of inequality and introduce the essentialist objections of corruption and semiotics, illuminating the issues that arise surrounding further limits on the market. Chapter Two will analyse the purpose of the state and the concepts of freedom and equality. I argue that freedom as non-domination is more able to establish a perpetual balance of freedom, and that one should aim to secure that each is their own master. Finally we will see that freedom and equality (and state and market) are not necessarily opposing ideals, but cooperative virtues that must assure proper relations in certain spheres of life. By doing so, we will find that apart from a relational ideal of equal standing, a republican notion can defend market influence in social, civic, necessary and physical goods. Though some goods ought to be distributed equally, some may still fall under other allocative means such as gifting or by merit, so long as it does not interfere with the independence of each and every citizen.

# The Moral Limits of the Market

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In her 2010 book *Why Some Things Should Not Be for Sale*, Debra Satz introduces a comprehensive framework for judging markets in particular goods and services on moral grounds. These moral limits to the market consist in four parameters: weak agency, vulnerabilities, harmful outcomes for individuals, and for society. If a market in certain goods scores high on any of these parameters, they are noxious and should be dealt with appropriately by either being regulated or banned.<sup>6</sup> Two years later, in *What Money Can't Buy*, Michael Sandel presents his own parameters of Inequality and Corruption. As stated earlier, Satz' framework is crucially dependent on the notion of equal standing, and once again with Sandel we can see this idea arise. However, Sandel additionally defends the idea of corruption, stating that some goods cannot be sold as that would corrupt the intrinsic value of that good. This kind of essentialist argument, in which some intrinsic property of a particular good is affected by the inclusion of market values has often been put forth alongside other consequentialist or deontic arguments. However, in their work *Markets Without Limits*, Jason Brennan and Peter M. Jaworski have placed serious doubt on these kind of arguments, claiming that the meaning of markets are culturally contingent and that in the end, any such argument should merely be judged according to a consequentialist cost-benefit analysis.

This chapter will set out the arguments put forth by Satz and Sandel and look at the criticisms against these two frameworks. First, I will set out the framework presented by Wempe and Frooman which establishes the dimensions and terminology that coordinate the MLM debate. Then I will use Satz' meticulous analysis of market virtues and flaws to illuminate the idea of the market as an allocation method in society. Satz also analyses neo-classical economics views and other egalitarian views to show where these theories fall short which will briefly be discussed before presenting her own four parameters. I will then show how Satz' foundational principle of equal standing can be paralleled with Sandel's Inequality objection to the market, before setting out the essentialist argument of intrinsic value. As we shall see however, Brennan and Jaworski present a strong argument against such intrinsic criticisms, and whether subsequent responses by 'market moralists' have been sufficient is yet to be seen.

## The Market Examined

### Framing of the Market

For this inquiry into the relation between market and the state, it is important to clearly set out the framing within which we hold the discussion if any meaningful contribution is to be made. However, as Ben Wempe and Jeff Frooman argue in their 2016 paper, those criticising the economist's boundless markets—what they call 'market moralists'—have not been able to present a "unified theory of markets and morality"<sup>7</sup>. The individual projects give a somewhat disparate approach, which is further problematised by the case-to-case basis with which it is argued. Therefore, to put this approach on proper footing, Wempe and Frooman have set out a framework to provide a "methodological reinforcement for the market moralists so as to generalize the various strategies proposed by these authors."<sup>8</sup> Wempe and Frooman introduce three structures to aid the discussion: Domains, Virtues and Allocation methods.

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<sup>6</sup> It should be noted that Satz explicitly does not purport any one way of dealing with such noxious markets. She notes the complete banning of some markets such as those in prostitution would perhaps lead to more problems than if they were regulated. In a regulated market there are options to protect the participants in those markets, whereas banning such markets could lead to black markets arising without any such protective measures and thereby leading to even more harm and unequal standing for its participants. (Satz, 104)

<sup>7</sup> Ben Wempe, and Jeff Frooman. "Reframing The Moral Limits of Markets Debate: Social Domains, Values, Allocation Methods", *Journal of Business Ethics* 153, no. 1 (2016), 2.

<sup>8</sup> Wempe and Frooman, "Reframing the Moral Limits of Markets Debate", 2.

Building on conceptions from Max Weber<sup>9</sup>, Hannah Arendt<sup>10</sup>, Michael Walzer<sup>11</sup> and Elizabeth Anderson<sup>12</sup>, they claim that we must adopt a pluralistic view of society, whereby people hold certain values dependent on the particular spheres of life they inhabit. They note ten spheres, or domains such as Education, Relationships, Politics, and Health. These domains each have their own values or virtues. Each domain can have multiple virtues and these can be of equal importance, or some can have primacy over others. For instance, in healthcare we usually expect medical attention be provided in accordance with need and equality, yet, we do expect need to trump equality. Aside from the virtues of need and equality, Wempe and Frooman also present merit, status, efficiency and freedom as virtues, though, as they state, there can very well be more. They define virtues as “reasons for action”<sup>13</sup>, and each of these virtues brings with them certain implications on what type of allocation method would be best for particular domains. For instance, we consider political endeavours such as public office to be in line with merit and equality of opportunity, not in terms of status or efficiency as these do not benefit the quality of those in office. Therefore, public office should not be given away based on ones pedigree or wealth, but with an allocation method in service of merit.

They name five allocation methods: attributional assessment, lottery, rationing, queue and the market. Certain allocation methods can support some values, but not others. The value merit is promoted by attributional assessment, but it would be difficult to see how this allocation method could help equality or freedom. We can also see how a lottery or rationing does not follow merit, yet they do promote equality. As virtues can be supported by multiple allocation methods, so too can allocation methods promote multiple virtues. For instance, as we shall see, the market can promote efficiency, freedom and status. Therefore, this framework can aid in trying to find the appropriate allocation for any type of good as one can examine the domains and virtues within which this good finds itself. This system of domains, virtues and methods can become quite complex. For instance, if a good is decided to be appropriated according to equality, we would still need to decide whether a lottery, queue or rationing is the correct form. The first may give equal opportunity, whereas the second and third concern themselves more with equal outcome. However, as Wempe and Frooman note, rationing and lotteries are also usually more appropriate for critical goods, whereas a queue is for “somewhat scarce, but not critical goods”<sup>14</sup>. Therefore, though virtues are important, they are not the sole determinant on their allocation as issue such as supply and demand nevertheless matter.

A contrasting scheme has also been offered by Karl Polanyi, and though it may not have been originally intended for this discussion, it can greatly help illuminate the merit of Wempe and Frooman’s framework. Polanyi denotes four different kinds of allocation methods, being redistributive, transactional, reciprocal and autarkical (State, Market, Gifts and Self-use, respectively). Douglass North<sup>15</sup> notes that Polanyi recognised that gifts and markets enable the possibility of complex economic operation without ‘elaborate administration’ while also recognising that whereas the market is based on acquisition, gifts, much like the state, is focused on a certain relational affiliation. Herein we can see Polanyi recognise certain virtues residing behind methods of allocation, however, he seems to be more focused on the type of distribution instead of its form and features. For instance, Polanyi characterises the state’s redistributive method by its centrality, as “a central authority collects the goods and hands them out”<sup>16</sup>. Polanyi thereby focuses on the underlying relations of allocation, and though this is an important element of allocative analysis, Wempe and Frooman’s focus on the form of allocation—for instance equal result as in rationing, or free choice in the market—is more pertinent than what ‘decree’ embodies the transaction. Therefore, though Polanyi’s contribution is certainly worthy of further inquiry, Wempe and Frooman is more appropriate and

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<sup>9</sup> Max Weber, “Religious rejections of the world and their directions.” In H. H. Gerth & C. W. Mills (Trans. & Eds.), *From Max Weber: Essays in sociology* (New York: Oxford University Press. 1915/1946), 323-362.

<sup>10</sup> Hannah Arendt, *The human condition* (Chicago: University of Chicago, 1958).

<sup>11</sup> Walzer, *Spheres of justice*.

<sup>12</sup> Elizabeth Anderson, *Value in ethics and economics* (Cambridge: Harvard University, 1993)

<sup>13</sup> Wempe and Frooman, “Reframing the Moral Limits of Markets Debate”, 6.

<sup>14</sup> Ibid. 7.

<sup>15</sup> North, Douglass C. “Markets and Other Allocation Systems in History: The Challenge of Karl Polanyi.” *The Journal of European economic history* 6 (1977), 706.

<sup>16</sup> Herzog, Lisa, “Markets”, *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.), Section 1.

explicit on the actual virtues of allocation methods, thereby making them easier to link with their appropriate domains and goods.

Wempe and Frooman conclude that in this discussion, the ‘market moralists’ must address two problems. Firstly, they must address which “goods are suitable for market distribution and which are not”<sup>17</sup> and if they are unsuited, how should they be allocated?<sup>18</sup> Therefore, the aim is to establish and defend the values of particular domains, and show that the intrusion of markets conflicts with other values as they “crowd out non-market mechanisms”<sup>19</sup>, and diminish or prevent other more prominently valued virtues in those domains. Wempe and Frooman rightly state that it is in the area of domains and virtues where this discussion should take place. They note that if we can track and defend the appropriate virtues of a certain domain, then we can decide which goods can be treated as market commodities and where the market values and allocation methods conflict with others pertaining to that goods domain. A popular example is the issue of votes. Though the market can promote free choice and efficiency, these are not virtues that we usually align with the democratic process of voting (the political domain). For instance, though one may be ‘more free’ to sell one’s vote, we commonly believe that each should have an equal share in the voting process, and that this balance of democratic voice should not be disrupted, and that the allocation of this political good should therefore be distributed in accordance with equal shares. Therefore, to support such claims, and to show where the market may, and may not involve itself, we must show that there is justificatory reason to value a virtue such as equality above freedom or efficiency within the political domain. This thesis will try to follow this framework of domains, virtues and allocation methods as an aid to clarify and align the objections to the market as posed by Satz and Sandel, additionally using this framework to present a foundation for their theories.

### Defining State and Market

Another crucial problem that Wempe and Frooman note is that “the current MLM debate is too much framed in terms of a market/non-market dichotomy”<sup>20</sup>. This stark duality misidentifies the issue at hand as a more pluralistic and diffusing view could aid the discussion. Satz argues for this too, claiming markets are ‘socially sustained’ in that they “depend for their operation on background property rules and a complex of social, cultural and legal institutions.”<sup>21</sup> To show how the market relies on certain social preconditions, she first looks at what we actually mean when we talk about markets. She begins by clarifying the markets of discussion here, as she notes the distinction of the market as an institution of exchange of a particular good such as land, labour or shoes, as compared to what she calls the market system, being “the abstraction that is supposed to link the set of all such markets.”<sup>22</sup> Satz states that for a proper judgement about markets, “we need to focus on the specific nature of *particular* markets and not on the *market system*.”<sup>23</sup>

From this she follows Ravi Kanbur’s rejection of a market as a singular transaction and quotes that “[m]arkets are institutions in which exchanges [...] take place between consenting parties”<sup>24</sup> of which “both buyer and seller are entitled to the resources with which they transact.”<sup>25</sup> Satz also crucially notes that both parties must “have the freedom to accept or refuse an offer of exchange, and can attempt to make another offer or strike a better deal with someone else.”<sup>26</sup> Satz rightly points out that there is a thriving debate on the issue of what constitutes voluntary or coercive participation, but for now we will assume that the idea of possible alternatives is necessary to help ensure free choice.

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<sup>17</sup> Wempe and Frooman, “Reframing the Moral Limits of Markets Debate”, 3.

<sup>18</sup> Ibid. 3.

<sup>19</sup> Ibid. 5.

<sup>20</sup> Ibid. 1.

<sup>21</sup> Satz, *Why some things should not be for sale*, 16.

<sup>22</sup> Ibid. 16.

<sup>23</sup> Ibid. 17 (my emphasis).

<sup>24</sup> Ravi Kanbur, “On Obnoxious Markets” (2001), 42.

<sup>25</sup> Satz, *Why some things should not be for sale*, 15.

<sup>26</sup> Ibid. 15.

With the idea of the market sketched out as allocation method, she then turns to the virtues the market can promote. As mentioned by Wempe and Frooman, efficiency and freedom are virtues commonly associated with the market, and Satz intricately discusses these virtues. However, we should note that Wempe and Frooman have also subscribed the virtue of *status* to the free market allocation method, defined as “wealth, and to a much lesser degree pedigree.”<sup>27</sup> Status is represented in the market as wealth that can—as pedigree once did—give access to certain exclusive goods and services. Though this issue will return and especially with regard to how it can conflict with the virtue of equality, it should be noted that though status through wealth is being realised by the market, efficiency and freedom are more central as they are usually used as normative justifications for the market, whereas status does not (unless when in relation to equality).

### Virtues of the Market

Satz set outs the two most prominent virtues of the market, efficiency and freedom, and she shows how these virtues are dependent on certain rules and assurances to actually result from any market. Both these virtues are at the heart of any discussion of the market or the market system and must therefore be discussed to give a proper analysis of such concepts.

Starting with the virtue of efficiency, Satz notes that with the use of pricing, “markets signal what millions of goods are worth to the sellers and buyers and intermediaries who will never meet”<sup>28</sup>. This signalling of monetary worth simplifies and clarifies the value people bring to the market and makes goods easily comparable and prospective bargains more predictable. Markets are also institutions based on preferences, and as people engage in market behaviour, they do so directly for their own gain. As Satz states, this “will purge the economy of less desirable goods and move the trading parties to their most preferred positions, given their resources.”<sup>29</sup> <sup>30</sup> Additionally, there are two theorems that connect the market to efficiency, connected to the Pareto principle. The first fundamental theorem comes down to the idea that due to the market being a pursuit of preferences, a ‘finished’ state can be achieved at which no one’s position can be made better without making another worse off, thereby becoming Pareto optimal. The second theorem holds that there are multiple Pareto equilibria per economy and that the market can ensure a ‘Pareto optimal state’ from any initial distribution.

Though, as Satz notes, these theorems have an ‘intuitive ethical appeal’, they have not been without critique. Bringing in Amartya Sen, she notes that the first theorem—to make others better off without making others worse off—can still present a Pareto optimal state “with some people in extreme misery and others rolling in luxury, so long as the miserable cannot be made better off without cutting into the luxury of the rich.”<sup>31</sup> As Satz points out, the second theorem can help with this issue as one concerned about the fairness of the resource distribution could simply redistribute property and let the market find another Pareto optimal state. Nevertheless, economists usually no longer follow these Pareto principles, and instead look at efficiency through a cost-benefit analysis known as Kaldor-Hicks efficiency. Since it is quite improbable to find policies that do not lessen the position of anyone, it is more useful to compare these deficits with the potential benefits. However, as the utilitarian would notice, this cost-benefit analysis could actually be worse for those disadvantaged, making Satz to conclude that “both concepts are still normatively narrow ways of

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<sup>27</sup> Wempe and Frooman, “Reframing the Moral Limits of Markets Debate,” 8.

<sup>28</sup> Satz, *Why some things should not be for sale*, 17.

<sup>29</sup> Ibid. 18.

<sup>30</sup> Though the purging of less desirable goods may be a strong argument for efficiency in the ideal sense, in the actual world this is not always the case. As Yogi Hendlin has rightly commented, the influence of large informational and distributional platforms can greatly affect this issue. For instance, Amazon’s use of analysing the consumer wants does not only limit the greater informational availability for market agents, but more importantly gives this distribution platform the ability to provide cheap and ‘lesser quality’ products which are presented to consumers with greater prominence, and thereby do not in fact diminish the ‘market’ in less desirable goods. This is especially effective due to the monopolistic position of such platforms, whereby the ‘host’ can control the way in which agents can pursue their preferences, and which goods are in fact even graced with presentation. The issue of monopoly will return, but it is important to remember that the idea of an actual market has long forgone and that the international and I online market brings with it many more issues concerning informational and qualitative efficiency.

<sup>31</sup> Amartya Sen, *On Ethics and Economics* (Malden, Mass.: Blackwell Publishing, 2013), 32.



assessing economic achievements.”<sup>32</sup> It should also be noted, in line with John Rawls, that an increase in utility for one may be worth more than another. The increase of utility of someone ‘most-advantaged’ is diminished in value compared to that same increase of value with one of the least-advantaged. This aims to show that a cost-benefit analysis of utility is much more complex, and not necessarily as straightforward. Regardless, Satz is right to remind us that markets, ideally, can aid efficiency by transforming individual wants into a ‘mutually advantageous’ enterprise that “limits waste and uses human and nonhuman resources efficiently.”<sup>33</sup>

Before we move on to the notion of freedom, we should note a crucial element of market analysis, being the issue of the ‘Ideal in the market’. Economists often use two idealised forms within the market discussion that are not justified and can lead to incorrect assumptions and a schism between theory and reality (though this too is present with ‘market moralists’). The first is the idea of the ‘ideal market’. In this regard, issues such as flow of information and trust are crucial elements for the efficiency of the market. Yet in reality, these elements are not always perfectly present and it would be erroneous to ignore this.

Secondly, the economist’s view of market participants as ideally rational agents only “actuated by self-interest”<sup>34</sup>, is an equally troubling presupposition. For instance, Amartya Sen showed that elements of commitment can come into play as ‘irrational’ factors for action<sup>35</sup>, while others have shown that through ‘nudging’, preferences and choices can be influenced by external factors<sup>36</sup>. These issues point to the fact that market participants are not always egoistic, rational agents, but instead ‘flawed’ and able to have their ‘true preferences’ influenced, or stray from them intentionally. This also shows that a market is not a homogenous institution that is contained to its own boundaries. Drawing from Smith and Marx, Satz shows that markets can shape the preferences and capacities of agents through their labour and the market. Though much more can be said on this, and we will return to this throughout, it is important to remember that both the economist model of an ideal market and a ‘fully rational agent’ are not necessarily represented in practice.

Efficiency is an important virtue of the market, and according to Wempe and Frooman, exclusively represented by the free market as allocation method. However, as Satz showed, efficiency may not have enough normative strength as the only virtue of the market. Together with the virtue of freedom however, the market gains a prominent position. The connection between markets and freedom has long been established since Adam Smith attributed them with the ability to subvert feudalistic systems. Smith, quoted by Satz, states that markets introduce “liberty and security of individuals [...] who had before lived almost in a continual state of war with their neighbours and of servile dependency upon their superiors.”<sup>37</sup> As mentioned above, the notion of choice is a crucial element that is supported by the market. This is for instance done by providing alternatives as competing agents wish to achieve the best deal with the resources they have. This component helps prevent abuse of power by preventing a lack of alternative options and aiding decentralised decision making. However, this ability of choice is not only a component of freedom, but also an instrument for freedom as being presented with alternatives can help us develop our ability to choose.<sup>38</sup>

Freedom is also expressed in the ‘directness’ of the market, since it is, in principle, an allocation method based on people’s individual preferences as they themselves see fit. There are no complications as preference-satisfaction goes since agents can express this directly by engaging in the market. Though this primarily helps efficiency, it should not be forgotten that this also *ideally* prevents paternalistic actions that may reduce freedom. Here too it should be noted that though these benefits may hold merit, they do once again rely on idealised notions of the market. Firstly, the ability for agents to fulfil their preferences in the market relies on the ability of the agent to correctly recognise their ‘true preferences’. In the reality, issues such as advertising can greatly influence an agent’s ability to accurately know and pursue such preferences,

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<sup>32</sup> Satz, *Why Some Things Should Not Be for Sale*, 19.

<sup>33</sup> Ibid. 20.

<sup>34</sup> F.Y. Edgeworth, *Mathematical Physics: An Essay on the Application of Mathematics to the Moral Sciences* (London, 1881), 16. From: Amartya Sen, "Rational Fools: A Critique of the Behavioral Foundations of Economic Theory." *Philosophy & Public Affairs* 6, no. 4 (1977), 317.

<sup>35</sup> Sen, “Rational Fools: A Critique of the Behavioural Foundations of Economics Theory,” 343.

<sup>36</sup> Gerardo Infante, Guilhem Lecouteux & Robert Sugden, “Preference purification and the inner rational agent: a critique of the conventional wisdom of behavioural welfare economics”, *Journal of Economic Methodology* 23, no. 1 (2016), 1.

<sup>37</sup> Adam Smith and Mark G Spencer, *Wealth Of Nations*. (Ware: Wordsworth, 2012), 402.

<sup>38</sup> Satz, *Why some things should not be for Sale*, 22.

as the market thereby does not increase, but in fact diminishes one's freedom. A similar issue arises with the issue of the platform of the modern 'markets' where online or offline intermediaries can decide what a buyer and seller can signal to one another. Online platforms can limit or direct the products to their own accord, and additionally charge 'unfair rents' thereby creating inefficiencies and muddying the freedom which is often praised under the market ideal.

Markets and freedom are crucially linked, however, the latter is not always secured by the former. As stated above, markets can shape the preferences and capacities of individuals and have a changing impact on society, therefore it is important that one also looks at ways the market may reduce freedoms. As Satz notes, political freedoms can still be limited despite the presence of markets, and extreme allocation of wealth or lack of opportunities for exit can still deprive people of their independence, even if a market system is present. And just as markets can fail to ensure freedom, so too can important freedoms be experienced in a 'non market context'. With regard to the presence of the market, it should be clear that a market should be appropriate in its reach, not to transgress the boundaries of its sphere so as not to diminish those freedoms which can only arise due to the absence of the market. As the paradigmatic issue of voting shows, it is important that limits are posed so we do not digress into a market society, thereby diminishing particular non-market virtues (such as freedom), and ensuring that there are some non-market contexts left where the sting of unequal wealth does not reign. Considering notion of freedom *within* the market, it is crucial that the correct balance is found between the market and the background institutions to thereby help ensure the proper working of the market system so that it can embody its particular virtues.

### Preconditions for the Market

For the existence of any market, there are certain background conditions that must be in place. Firstly, for the trade in any good, property rights—a social and legal framework to recognise which good or resource belongs to which person—must be established. As Satz states, "true laissez-faire is not even logically possible" as some state must ensure that property rights are respected and that contracts between agents in the market place are enforced. In fact, the discussions surrounding the market are primarily on property rights, what can and can't be owned (and to what degree). Satz notes that [p]roperty rights are also relevant for the real freedoms a person can achieve."<sup>39</sup> Bringing in Anatole France, she remarks how the rich would be more free to enjoy the restaurants of Paris than the poor. G.A. Cohen makes this same point, stating that the "lack of money, poverty, carries with it a lack of freedom." This approach sees monetary power as an ability to remove interferences, ensuring the (exclusive) use or possession of goods or services. Here we can find that the increased property rights (or freedom) of one, reduces the access to property rights of another. The idea of property rights is therefore a foundational element for any market, and a proper relation with the state is necessary for the market to embody the virtue of freedom.

In addition to property rights, there also has to be effective banking, infrastructure, educational systems and justice departments, institutions that must all be maintained, administrated and financed with whatever appropriate taxation. For the effective functioning of a market, a free flow of information is necessary as "decisions [must] be made with adequate information on benefits and costs."<sup>40</sup> To ensure proper relations between buyer and seller, both must be aware of other prices and the quality of products in comparison with alternatives, but must also be able to process this information properly to be 'rational agents'. Trust is also an important precondition for the efficiency and freedom of markets. Having assurances of the reliability of other agents in the market will help efficiency as it enables people to trade without relying on extensive background checks of the opposing agents to secure their agreement. Satz notes an interesting tension in this relation as though agents can be seen to follow through on their agreements to prevent a label of untrustworthiness, markets also increase the scope of options and agents, thereby enabling trade between distant and even unknown agents, causing a strain on trust in the market that must consistently be reassured.

Some may argue that these institutions, information and trust are unnecessary as elements of a market, but it should be remembered that the normative strength of (the form of) the market lies in its ability to properly embody its virtues. If appropriate background conditions were not ensured one can doubt how consistent and reliable such a market would be. A lack of information can cause great inefficiency, not to mention the increased odds at disgruntled or dissatisfied participants. This ties in with the issue of trust, as the confidence of agents can affect not only one's eagerness to trade, but also influence their demands so as to ensure the safeguarding of their preferences. I do not see how a diminished provision of such preconditions could possibly aid in the stability of a continuous market in a particular good. Though a single

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<sup>39</sup> Satz, *Why Some Things Should Not Be for Sale*, 27.

<sup>40</sup> Ibid. 27.

transaction may be possible and go without any issue, consistent and efficient trading in a certain good requires definite preconditions to enable agents their individual pursuits without suspicion or unnecessary complex safeguards.<sup>41</sup> Therefore, though one may be able to contest the extent to which these measures may be needed, one cannot deny their minimal necessity, nor their additional contribution to the market's promotion of its virtues.

Lastly, as stated earlier, markets can help remove wasteful enterprises thereby helping efficiency. But this in turn can lead to monopolies or 'cornering' of markets as only the 'strong' (most efficient) companies stay standing. Competition helps 'discipline companies' and ensures that prices will be lowered, however, market control of a small number of agents can limit alternatives, thereby "re-creating a feudal relationship of dependency"<sup>42</sup> despite the liberating intentions of the market. Therefore, monopolies must be prevented by some governing body and a proper balance must once again be established.

Through these preconditions of the market, we can see how the state and market are not merely opposing forces, but instead cooperative institutions to promote particular virtues when appropriately composed. Before we move on to the contemporary critiques of the current composition of state and market as set out by Satz (and subsequently Sandel), we should quickly note the issue of externalities and market failures.

A market failure usually occurs from the economist's perspective due to certain 'externalities'. These externalities are seen as unaccounted for costs. Issues such as pollution causing certain environmental problems are not priced and this causes others' position to diminish, whereby the market loses its Pareto optimal state. However, as Satz notes, economists usually consider a certain imperial nature of the market whereby these externalities can be brought into the market—for instance by monetarily compensating the deficits of environmental catastrophe. Therefore, according to the economist's view, any externality can be accounted for if the scope of the market were to encompass a greater extent of issues (here we can see Sandel's notion of the ever expanding reach of the market return). However, as Satz succinctly notes, these ideas on market failures presumes that market inefficiencies are always preferred to state interference. And though this point can be criticised, what Satz is more concerned about is the fact that a trade in butter, human organs or guns all look the same to the economist, as long as externalities are accounted for. As Satz claims, economists cannot help us to decide "when we should use markets to allocate particular goods and when other mechanisms are more appropriate."<sup>43</sup>

## Satz on the Market

### Place and Scope of the Market

"Markets have important roles to play in society, but they cannot be used as the fundamental standard by which we determine what resources people are entitled to."<sup>44</sup> In reaction to the flaws of an unbound market with respect to freedom and equality, Satz discusses two differing egalitarian theories. General egalitarianism aims to secure equality alongside the market by advocating a redistributive tax and transfer system that removes excessive wealth disparities. Specific egalitarianism holds that some goods should not be distributed by the market, or that these scarce goods "should be distributed less unequally than the ability to pay for them."<sup>45</sup>

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<sup>41</sup> A different criticism consists in the the actual possibility of these preconditions. Naturally issues such as effective banking, trust and the free flow of information can be difficult to ensure, but it would be folly to see them as mere ideals. Though the notion of trust may not be as clear-cut as some may pose, there are definite degrees of trust that can aid in the improvement of market efficiencies. Previous encounters, reliable reviews and renown can aid an agent in choosing a supplier, and substantial available information can help agents be more confident in distancing oneself with the product of their labour, and additionally make them less remorseful when their trade did not work out (which in turn should be less frequent as an agent's prediction of their loss-gain would be more accurate with increased education, trust and information).

<sup>42</sup> Satz, *Why Some Things Should Not Be for Sale*, 30.

<sup>43</sup> Ibid. 34.

<sup>44</sup> Ibid. 65-66.

<sup>45</sup> James Tobin, "On Limiting The Domain Of Inequality", *The Journal Of Law And Economics* 13, no. 2 (1970), 264.

To see how these two forms of egalitarianism help equality in a market background, Satz presents the Titanic Case, originating from Thomas Schelling. The idea is that when the unsinkable ship sank, the wealthy had access to lifeboats, whereas the lower ‘steerage’ were left to go down with the ship. Whether fully accurate or not, the argument focuses on the idea that if tickets with lifeboats were more expensive, this would be unfair to those who cannot afford it. A general egalitarian would consider this objectionable due to the unequal distribution of wealth underlying these ticket prices, and would therefore aim to reduce this gap through tax and transfer. One of the main reasons why this form of egalitarianism is popular is due to the fact that a compensation in money respects the freedom of the individual to choose what to do with this redistributed welfare. If someone were to sail across the Atlantic, but they did not care for their safety and would rather spend their money on other things than those extra costs for lifeboat spots, then this view respects that. However, specific egalitarians would claim that safety is not something that should be ‘compensated’ through tax and transfer. As example Satz mentions a memo by Lawrence Summers of the World Bank in which he notes the profitability of migrating dirty industries to less developed countries. These countries would receive monetary compensation for hosting these industries, yet they will have damaging effect on the people’s health. Specific egalitarians state that this is wrong since health is not something that can be compensated. In this line, Satz claims that people would still find the general egalitarian case troubling, even if it arose by choice as safety is not something that should be for sale. Satz claims that the discomfort for such cases arises due to the relational inequality that people have in these situations, where some people would have access to lifeboats and others would not. Though specific egalitarians place themselves in a position of paternalistic tendencies, as the state would have to impede some freedoms of choice towards individuals, they hold that this is justified with regard to noxious markets.

### Noxious Markets

As we have seen, markets can promote values such as efficiency and freedom, but unrestricted markets can have adverse effects. Monopolisation can create a lack of alternatives and monetary power can create status and exclusivity, impeding real freedoms and conflicting with virtues that may be more significant in certain realms. The market and the state must therefore have a proper relation to ensure these virtues when they are appropriate. The discussion has long been about the proper redistributive side of this relation, ensuring that certain minima are established to diminish the influence of the market. The MLM debate however, looks at the scope of the market in *what* one may buy and sell. Most proponents still argue for redistributive justice, and both Satz and Sandel’s theory rely on this as we will see soon. Nevertheless, ‘market moralists’ wish to establish that certain goods and services cannot be traded. A market in such goods is considered noxious as it evokes “widespread discomfort and, in the extreme, revulsion.”<sup>46</sup> Examples of such ‘contested commodities’ are votes, human organs, child labour, but also university admissions through donation and wedding speeches. Though the debate has largely been argued case-by-case, Satz has presented a framework by which one ought to be able to analyse a market in any commodity. Satz’ uses four parameters by which one can judge these markets: weak agency, vulnerabilities, harmful outcomes for individuals and society. The first two relate to the background conditions, or *sources* of the market, and the latter with its *consequences*.

Regarding consequences, Satz considers destitution—whether of a participant or a third party—as an exemplary form of harmful outcomes for individuals. But even beyond leaving some destitute, she also brings in Amartya Sen’s distinction of welfare interests and agency interests. With welfare interests, Sen intends one’s ‘overall good’, whereas agency interests pertains to a “person’s ability to participate in deciding matter that bear on this good.”<sup>47</sup> As Satz puts it, a ‘benevolent dictator’ could fulfil someone’s welfare interests, but restrict someone’s ability to be an agent. From this she concludes that basic interests such as agency and welfare have a certain minimum, and that harmful outcomes would “leave these basic interest unsatisfied.”<sup>48</sup>

Harmful outcomes for society are understood as markets that “undermine the social framework needed for people to interact as equals”<sup>49</sup>. Satz claims that markets such as child labour and bonded labour prevent people to ‘claim their rights’ as subjects of these markets often withhold them from education, prevents them from pursuing their own interests, and can create a servile attitude. Satz explicitly mentions markets in political spheres, as in this realm there is a more than minimal notion of equality present. In line

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<sup>46</sup> Satz, *Why Some Things Should Not Be for Sale*, 3.

<sup>47</sup> Ibid. 95.

<sup>48</sup> Ibid. 95.

<sup>49</sup> Ibid. 95.

with Sen's agency, being a co-deliberant on the laws that apply to oneself is of such importance to equality that market which manipulate this balance would be considered noxious.

As pertaining to the sources of the market, Satz considers weak agency as "highly asymmetric knowledge and agency on the part of market participants."<sup>50</sup> In some markets there are significant disparities in agency or knowledge about the contract. For instance, in organ donation markets, there is often little information on the risks and consequences of the market. In reproductive labour it is hard to secure sufficient knowledge of the experience of surrogacy and giving away a child. However, even if weak agency does not lead to harmful outcomes, markets of deception such as advertising, can still give a noxious sensation. Or imagine the increase in advertising directed at children, taking advantage of less informed wills as professionals tries to compose the most effective form of influencing a six-year old's preferences<sup>51</sup>. Lastly, there are also markets in which one is not even directly involved in the decision. In child labour, parents are often transacting on the behalf of the child and apart from the consequential denial of ability to develop as an equal agent, the lack of consent can just as well be called objectionable.

Lastly, there are particular markets in which there are certain vulnerabilities on one side of a transaction. Vulnerabilities are taken to be 'highly unequal needs', where the weaker party is compelled to accept any terms. These instance often arise in markets that arise among destitution such as bonded labour. In some cases, labourers must pay tribute to work the land, lacking alternatives to otherwise sustain. Another common example is with markets in kidneys. These markets are often used by desperate people that have lost any other monetary power at their disposal, lacking any other means, ready to be exploited. In the kidney market we also see another vulnerability besides destitution, as the prospective donee is subject to the greatest need of all. The current demand for organs by far exceeds their supply, and assuming this does not change<sup>52</sup>, we find vulnerabilities on both sides of these markets.

As we can see, a large part of Satz' framework relies on the application of a certain form of general egalitarianism, necessary to ensure certain minima of welfare and a certain relational equivalence in knowledge and participation. Since the 'noxious sense' of certain markets originates from unequal standing, any noxious market can theoretically become acceptable if inequality in sources and consequential harm can be removed. For instance, if a society wishes to implement an organ market, and its people were protected against destitution or other desperation to use their health as a necessary transaction, and donors were sufficiently informed and taken care of, then a market in kidneys could indeed become perfectly fine<sup>53</sup>. However, there are some markets where it is harder, if not impossible to achieve this, such as to remove weak agency in advertising to children or prevent need in an organ market, which is why they are commonly more contested.

### Critique of Noxious Markets

Satz claims her theory contrasts the essentialist theories, avoiding some of their issues, yet some have argued that this distinction may perhaps not be justified. Commenting on Satz' book Rutger Claassen, Joseph Heath, and Elizabeth Anderson all question this issue, and when we analyse these concerns, we can once again find the heart of the MLM debate, concerning itself mainly around the issue of virtues and domains. However, before we do this, we should look at other crucial critiques posed by Claassen and Vida Panitch concerning Satz' framework.

The first critique comes from Panitch who questions whether "equality functions for Satz as a political ideal or a distributive principle."<sup>54</sup> For instance, we have seen that goods such as votes must be distributed equally as an unequal (or misallocated) division through the market would disrupt our equal status which in this case can only be secured through equal shares. However, some goods may be qualified to be distributed sufficiently, such as housing or utilities, only to be supplied up to a point, instead of fully equal in shares. This distinction between equal or sufficient shares is crucially important, and Satz indeed does not seem to take an explicit stance on either. However, though Satz may not have specifically clarified this distinction in every instance, she clearly denotes equal standing as the ability to 'interact as equals'. Herein

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<sup>50</sup> Satz, *Why Some Things Should Not Be for Sale*, 96.

<sup>51</sup> Cross, G. S. And Proctor, R. N. "Containing Civilisation, Preserving the Ephemeral, Going Tubular", *Packaged Pleasures: How Technology and Marketing Revolutionized Desire*. (Chicago ; London: University Of Chicago Press., 2014).

<sup>52</sup> Satz, *Why Some Things Should Not Be for Sale*, 192-195.

<sup>53</sup> See Appendix 1.

<sup>54</sup> Panitch, "Liberalism, Commodification, and Justice", 69.

we find the notion of a political ideal, and though Panitch is right to note that this may not immediately set the distribution of every good, it does crucially inform this notion and this critique is therefore not necessarily against the notion of equal standing, but merely asking for further enunciation. We will return to the issue of distributive principles in the final chapter, but there remain other issues with Satz' idea of equal standing and the subsequent framework.

There are three structural concerns Claassen has with Satz' framework. The first questions the normative force of the *sources* of the market, being weak agency and underlying vulnerabilities. Claassen wonders whether weak agency and vulnerabilities are objectionable on their own, or if markets only become noxious when there are harmful consequences too? For instance, in bonded labour, weak agency and vulnerabilities may cause someone to enter into lifelong servitude and psychological dependency, but it would merely explain why such harmful outcomes came to be. There are many markets where lack of knowledge and desperation can cause unsatisfying restaurant meals or somewhat overpriced gas. If these parameters were used as such, "any market with weak agency and vulnerabilities would be problematic."<sup>55</sup> On the other hand, if these parameters were to lose their universal consistency, their reliability to discern noxious markets diminishes.

However, as Huub Brouwer<sup>56</sup> notes, Satz does mention a few examples of markets which are noxious despite having no harmful outcomes. Advertising to children and markets based on deception can be noxious, even without harm. Satz also suggests markets where desperate people sell their assets at low prices that can still be conceived as noxious, even if it does not result in destitution or other harm (such as losing personally valued assets). Additionally, one could potentially argue that a lifelong servitude due to bonded labour, yet chosen freely and knowledgeable would perhaps be 'less noxious' than such a life chosen out of ignorance or desperation. Nevertheless, it does seem that weak agency and vulnerabilities risk losing some of their discretionary power, even if it can aid in the analysis of the underlying factors of unequal standing.

Another concern entails the relational dependency that Satz' theory has, relying solely on the relational concept of equal standing. Claassen poses that though vulnerabilities (disparate needs) and societal harms are inherently relational, weak agency and individual harms are not. Though Satz mentions cases of advertising to children or grain markets which leave impoverished people starving, whereby agency and individual harms are relational, Claassen questions whether in these cases, there is not something "morally worthy of protection about the individual"<sup>57</sup>. Claassen states that though "the phenomena causing agency loss (such as markets) and the solutions (such as state regulation) are themselves social constructions [...] the object of moral protection need not be."<sup>58</sup> This objection ties together with his third critique, as he wonders whether there is indeed not something more than a mere relational standard to value. Concerning agency, Claassen wonders if it is not something worthwhile in itself, regardless of the proper relation to others.

He is right to argue that there is always some loss whenever any being misses the knowledge to comprehend a situation, and as we have seen, Satz includes Sen's capabilities approach in this sense. Claassen recognises this, yet as Claassen points out, "that doesn't get translated back into the main normative criterion she uses to present all four of them."<sup>59</sup> If all parameters could be supported by one principle—equal standing—it would simplify the judgement of markets as there would be no competing value as any market judgement would merely depend on the measurement of this one virtue. If a market needed to be analysed, and all parameters can be derived from a single notion, this idea of equal standing would be unrivalled in such a consideration, thereby providing a clear and unopposed criterium of noxious markets.

However, one can wonder to what extent weak agency and individual harms are not relational. When Satz discusses weak agency, she considers a lack of information or someone acting on another's behalf. And though in markets such as organ donors, gambling and surrogacy, weak agency comes from a lack of knowledge 'on both sides', it can be posed that in some markets, it is the relational weak agency that makes such a market particularly noxious. If one party were to have superior knowledge, experience or agency, this would make this market increasingly noxious as opposed to a market where neither side 'knows all the ins and outs'. Imagine a contract between children, equally weak in agency, trading juice-boxes. Neither can 'rationally' think on their own good or have a proper control over their 'true preferences', whatever they may

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<sup>55</sup> Satz, *Why Some Things Should Not Be for Sale*, 7.

<sup>56</sup> Huub Brouwer, "Discussing Why Some Things Should Not Be for Sale". *Erasmus Student Journal of Philosophy*, 6 (2014), 18.

<sup>57</sup> Rutger Claassen, "Why Some Things Should Not Be For Sale: The Moral Limits Of Markets, By Debra Satz. Oxford University Press, 2010.". *Business Ethics Quarterly* 22, no. 3 (2012), 6.

<sup>58</sup> Claassen, "Why Some Things Should Not Be for Sale", 7.

<sup>59</sup> Ibid. 7.

be. Is it wrong for children of equal ignorance to trade their drinks as it would be an affront to some innate agency? Or imagine the case of the titanic once more, this time without any lifeboats on board. An isolated sinking ship brings extreme harms to individuals as they will most likely perish in the icy waters. Yet though this transgresses those minimal welfare requirements set out by Sen, one can wonder whether any moral injustice is done unto those individuals with regard to their safety (disregarding the negligence of sinking the actual ship). The point is that though there may be individualistic factors to these parameters, it would be difficult to show that they do not also rely on some relational element.

Another point should perhaps be made in accordance with this issue. Though equality is certainly a relational criterium, it is crucially tied to freedom. An increase in freedom (as a free and informed choice), can mean a (relative) decrease in freedom for another. Equality therefore is in essence a measurement balancing freedoms parallel to one another. To state that equality is *merely* relational, would be to state that freedom is merely personal. Instead, freedom and equality are both intertwined with one another on a relational and individual level. If the one were to diminish, the other would surely be affected. Weak agency and individual harms can be seen as impediments to freedom (whether of agency or welfare), and hereby one should immediately ask: free in relation to what? Though chapter two will investigate this relation to a further extent, it can be argued that freedom and equality are tied together in both the relational and individual realm.

Satz indeed uses weak agency and individual harms as non-relational parameters and Satz also seems to support these (mostly) individual parameters with the relational notion of equal standing, which may not immediately show any individual content. Yet what this intends to show is that equal standing is indeed related to freedom and therefore necessary to secure according to Satz. Those with weak agency should be protected, and safety should be secured for each equally, due to both relational and individual factors. Though it may well indeed be an independent hardship to have minimal agency or to have no means to sustain oneself, it becomes an issue for markets if it's mechanism causes a relational disparity in these domains where it should not.

### The Story of Equal Standing

As we can see, issues such as agency and alternatives intend to support a certain equal standing before the market, whereas harmful outcomes aims to secure it after. Though the strength of her framework can be questioned, Satz is worthy of praise for providing 'systematic attention' to the "inequalities underlying and being reinforced by some markets,"<sup>60</sup> By placing equal standing as supreme virtue, she aims to judge specific markets by their influence on social relations, and not by the specific good itself. With this idea she claims to circumvent the issues often met by essentialists, but this might not be the case. Claassen, Heath, Anderson and others have sketched out the issue as follows.

Firstly, Anderson states that though essentialist arguments often aim their criticisms towards specific goods, such as sex or kidneys, they are also concerned about the fact "that commodification of certain goods places the parties to a market transaction in certain social relations that can be problematic for the [...] standing of some of the participants."<sup>61</sup> Though Anderson states that Satz is more consistent, her framework is still closely related with the essentialist theories. A good example to show how they are similar is by looking at cases of prostitution and reproductive labour. Anderson for instance, has argued that prostitution degrades the seller<sup>62</sup>, and that market surrogacy 'devalues' a child as a mere commodity<sup>63</sup>. The idea of status and equality is clearly central in Anderson's arguments too. Nevertheless, Satz' draws special attention to equal standing as general virtue to "cut across differences in types of goods"<sup>64</sup>

Here begins a core issue that Satz was hoping to avoid. Claassen formulates the issue well when he states that "[a]rguably, we do not need to stand in relations of equals all the time."<sup>65</sup> We might expect to see

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<sup>60</sup> Claassen, "Why Some Things Should Not Be for Sale", 10.

<sup>61</sup> Elizabeth Anderson, "Why Some Things Should Not Be For Sale: The Moral Limits Of Markets Debra Satz". *New Political Economy* 17, no. 2 (2012): p. 242

<sup>62</sup> Elizabeth Anderson, "Ethical limitations of the market". *Economics and Philosophy* 6, no. 2 (1990a), 187-188.

<sup>63</sup> Elizabeth Anderson, "Is Women's labor a commodity?" *Philosophy and Public Affairs* 19, (1990b), 77.

<sup>64</sup> Satz, *Why Some Things Should Not Be for Sale*, 84.

<sup>65</sup> Claassen, "Why Some Things Should Not Be for Sale", 10.

health care as distributed equally on the basis of need, but we do not expect the same of dinners in restaurants. As Claassen notes, there must be ‘something about’ healthcare, safety and education to deserve this virtue of equality. Here we see Wempe and Frooman’s framework of virtues and domains once again. Though naturally Satz’ parameters *can* be applied to all goods, it does not immediately follow that it *should*. Heath remarks this too as he states that in a free society, one can expect “reasonable disagreement over the values at stake in each of these spheres”.<sup>66</sup> Therefore, Satz needs “a specific story about why certain markets (and not others) tend to be problematic on these parameters.”<sup>67</sup>

As we have seen, Satz can argue that in some markets, such as organ markets, sex and surrogacy, it is too difficult to remove the weak agency, desperate needs or harmful outcomes to an acceptable level. It might be too difficult to understand the experience of giving away a child or know the difficulties that come when living with one kidney. But this seems to point more at the severity of the events in relation to the prescient knowledge of it, rather than the actual inability to have full understanding. And this would not necessarily bring Satz’ theory back to its prominent discretionary power.

Satz’ theory promises a framework by which one can judge markets in specific goods, grounding this in equal standing. Perhaps it is more accurate to recognise it as a free and equal standing as these two are inextricably linked. This reformulation can help support those more individualistic parameters of Satz’ framework while also providing normative force for the sources of the market. Nonetheless, a ‘story’ is still necessary to explain why particular virtues matter for certain goods. Satz hereby joins the essentialists once again, and to understand the argument they have before them, we will look at the challenge of Michael Sandel.

## Sandel, Essentialists and Semiotics

### Sandel’s Market

Michael Sandel uses Inequality as one of his two parameters in his book *What Money Can’t Buy*<sup>68</sup>, an expansive venture to encourage public debate on the MLM debate. This inequality parameter can be seen to parallel Satz’ conception of equal standing, embodied in both sources and consequences. According to Sandel, the fairness argument of inequality “objects to buying and selling goods against a background of inequality severe enough to create unfair bargaining conditions.”<sup>69</sup> Sandel paraphrases Satz’ sources of the market, stating that some “[m]arket choices are not free choices if some people are desperately poor or lack the ability to bargain on fair terms”<sup>70</sup> As Sandel succinctly notes, this argument relies on quality of consent. However Sandel also seems to consider consequences as part of this parameter, for instance with the sale of blood<sup>71</sup>, or markets of children where ‘less wanted’ children remain ‘on the market’<sup>72</sup>. Sandel’s form of inequality can be aligned with Satz’ equality, especially if one sees Satz’ four parameters as indicators of unequal standing, rather than elements of equally strong normative force. However, Sandel still has his secondary parameter, Corruption. This objection to the market “asks about the attitudes and norms that market relations may damage or dissolve”<sup>73</sup> These essentialist objections claim that there is some intrinsic value that becomes degraded, changed or perverted when introduced to the market. A common example is prostitution, in which ‘market moralists’ argue that sex is an intimate and personal expression of care that

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<sup>66</sup> Joseph Heath, “Review Of Debra Satz’s Why Some Things Should Not Be For Sale. Oxford: Oxford University Press, 2010, 252 Pp.” *Erasmus Journal For Philosophy And Economics* 4, no. 1 (2011), 100.

<sup>67</sup> Claassen, “Why Some Things Should Not Be for Sale”, 10.

<sup>68</sup> Michael Sandel originally introduced his two parameters in his Tanner Lectures in 1998 under the terms ‘Coercion and Corruption’, later revising these parameters to Inequality and Corruption. “What Money Can’t Buy, The Moral Limits of Markets” in Grethe B. Peterson, ed., *The Tanner Lectures on Human Values*, vol. 21 (Salt Lake City: University of Utah Press, 2000), 87–122.

<sup>69</sup> Sandel, *What Money Can’t Buy*, 71.

<sup>70</sup> Ibid. 7.

<sup>71</sup> Sandel, *What Money Can’t Buy*, 78.

<sup>72</sup> Ibid. 70.

<sup>73</sup> Ibid. 70.



would be depreciated in the market. With regard to surrogacy, as we have seen, there are some who argue that it treats children as ‘mere commodities’<sup>74</sup> and disrespects the value of motherly love.

In their recent work, Brennan and Jaworski call these kinds of objections the ‘semiotic problem’. They claim that the value people place on particular goods and the market is culturally contingent and that any objection based on a transgression of these contingent values fails to provide substantial reason for not allowing those goods to access the market. Instead they purport that “[i]f you may do it for free, then you may do it for money.”<sup>75</sup> So, if you are willing and free to choose to have sex with someone, you are just as free to ask money for it. They defend this claim by stating that since the meaning of markets are contingent, the addition of market values does not *signal* any disrespect towards that good’s value, and that therefore semiotic objections fail; the market indicates no essential meaning. Brennan and Jaworski instead hold that markets should not be judged by socially dependent values, but by their consequences (and even more so, our conceptions of markets should be put under the same cost-benefit analysis). Though this may merely seem like a problem for essentialists that call upon intrinsic values to specific goods, we have seen that Satz must also be able to justify which markets and domains have equal standing as principle virtue, and which do not. To be able to discern and align virtues and domains, one needs to be able to prove that there are certain virtues that do transcend contingency in the first place. Therefore, Satz and the essentialists face the same problem. Both are in need of a justification of virtues beyond mere consequentialist claims and must be able to tie those virtues to certain goods. In this section we will look at this critique against semiotic arguments and set out some attempted rebuttals as we illuminate the main issues that face the moral limits of the market.

### Brennan and Jaworski

Brennan and Jaworski place a harrowing critique on the MLM debate that had already been looming for a while<sup>76</sup>. As we have seen, the arguments put forth by market critics such as Sandel, Anderson, Walzer and others claim that some goods *should* not be sold as such a market “violates the meaning of those goods.”<sup>77</sup> They hold that there is reason to object to markets in some goods even if there are no non communicative<sup>78</sup> objections. Brennan and Jaworski reject this claim as they consider three possible forms of the semiotic objections to the market.

First, Brennan and Jaworski consider the Mere Commodity Objection which holds that markets in certain goods fail “to recognise their non-instrumental value”<sup>79</sup> and therefore treats them as a ‘mere commodity’. This argument is based on the idea that markets in surrogacy, treat children as mere commodities, as something that can be bought and sold, not something as worthy of love and care. However, as Brennan and Jaworski note, the buying and selling of certain goods does not immediately imply a purely instrumental regard for these goods. For instance, art collectors buy and sell art, yet this does not imply that art collectors do not consider these artworks as worthy of appreciation. People can respect goods beyond their instrumental value as the specific motivation people have is not unilaterally expressed by one mode of action. If anything, Brennan and Jaworski note, this is merely a complaint against the attitudes people can sometimes have when engaging with markets, and therefore it is not a complaint “about the objects of sale, but about the participants to a market exchange.”<sup>80</sup>

The other two objections are the Wrong Signal and the Wrong Currency Objection. These arguments arise from the distinction between *regarding* something as a mere commodity and treating it as such. Though the mere commodity objection held that market participants regarded contested commodities for their mere instrumental value, these objection claim that they are in fact treated as mere commodities when introduced

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<sup>74</sup> Anderson, “Women’s Labor a Commodity?”, 77.

<sup>75</sup> David Rondel, “Semiotic Limits To Markets Defended”. *Philosophia* (2021), 2.

<sup>76</sup> Heath, “Review Of Debra Satz”, 100.

<sup>77</sup> Jason Brennan and Peter Martin Jaworski, “Markets Without Symbolic Limits”. *Ethics* 125 no. 4 (2015), 1057.

<sup>78</sup> Non-communicative objections are wrongful exploitation, misallocation, right violations, paternalism, harm to others and corruption (corruption taken here as causing defective character traits or preferences). Brennan and Jaworski, “Markets without Symbolic Limits.”, 1053-1054.

<sup>79</sup> Brennan and Jaworski, “Markets without Symbolic Limits”, 1057.

<sup>80</sup> Ibid. 1060.

to the market system. The wrong signal objection “holds that buying and selling certain objects is wrong because it expresses wrongful motives, wrongful attitudes or fails to communicate proper respect.”<sup>81</sup> The wrong currency objection however, claims that market values ‘communicate estrangement’ towards certain relationships, such as time spent between friends, or sexual partners. The foundation of these claims is as Julian Jonker puts it, based on the difference between seeing smoke on the horizon as an *indication* of fire, or seeing smoke as a *sign* of war.<sup>82</sup> According to Brennan and Jaworski, these arguments hold that there is some trait in the meaning of the market that conflicts to certain goods when applied to these contested goods or services.

In reaction to this, Brennan and Jaworski try to show that the meaning of markets and their relation to certain goods, is socially contingent. In fact, Brennan and Jaworski claim that because our semiotics are purely social constructs, we should change them based on a consequentialist cost-benefit analysis. The social contingency of meaning is introduced with King Darius asking the Greeks and Callatians what they do with their deceased. They each have their own custom, supported by their own reasons, yet they are both repulsed by the other’s answer. Building on anthropologists and sociologists, they note that though Sandel claims that giving money as a gift communicates a lack of concern, this is kindheartedly accepted among the Merina people in Madagascar<sup>83</sup>. Another example is the fact that in some cultures in Romania, China and historically in England, it was ordinary (if not expected) custom to hire ‘professional mourners’ for a loved one’s funeral. The point is that our cultural ‘yuck responses’<sup>84</sup> to certain customs and values are purely culturally contingent as they are “nonnatural meaning[s] given to it by convention or by its place in a communicative practice”<sup>85</sup>. Certain things attain a particular value merely through chance, and more importantly for Brennan and Jaworski, the meaning of the market in relation to goods and services is equally contingent.

David Rondel places some considerable doubt on this contingency, as he criticises a particular ambiguity on their idea of the market. Rondel distinguishes between incidental and pervasive markets. Incidental markets are ‘discrete occasions’ such as a transaction at a garage sale. As we have seen before, Satz follows Kanbur in the rejection of a singular transaction as a market, and indeed Rondel shows that it is pervasive markets—with legal and social institutions and principles—that we tend to discuss in the MLM debate. Yet Brennan and Jaworski, as Rondel notes, seem to use both these terms interchangeably, making their argument hard to pin down and ‘elusive’<sup>86</sup>. Furthermore, if we would take the pervasive notion of markets, one can still question to what extent the market’s meaning is contingent. Brennan and Jaworski hold that money and markets have no ‘deep metaphysical meaning’<sup>87</sup>, however the money and market sphere has some definite characteristics. As Anderson notes, the market is a sphere of freedom within which one “is permitted and expected to satisfy their own preferences, within the bounds of the law.”<sup>88</sup> Goods in this sphere are excluded from general or public accessibility in the sense that use or property of such a good must be paid for. Market exchanges are usually want regarding as though some market may originate from need—such as food or shelter—this mainly concerns the characteristic that the commodity is desired. Market relations are also usually impersonal, or at least the engagement is done with the primary motivation surrounding the good. And lastly, “[d]issatisfaction with a commodity or market relation is expressed primarily by ‘exit’ not ‘voice’.”<sup>89</sup> The market as allocative concept immediately brings with its ‘laws’ or workings certain implications, and the question should be whether this is compatible with the essence of a particular domain or good.

Nevertheless, Brennan and Jaworski conclude that instead of grounding our semiotics in cultural chance, they argue that we should subject our semiotic meaning to a cost-benefit analysis to see whether these semiotics are worth keeping. For instance, the Fore tribe in Papua New Guinea honoured their

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<sup>81</sup> Brennan and Jaworski, “Markets Without Symbolic Limits”, 1061.

<sup>82</sup> Jonker, Julian D. 2019. “The Meaning Of A Market And The Meaning Of “Meaning””. *Journal Of Ethics And Social Philosophy* 15, no. 2 (2019), 186.

<sup>83</sup> Viviana Zelizer, *The Social Meaning of Money* (Princeton, NJ: Princeton University Press, 1995), 202–3.

<sup>84</sup> Heath, “Review of Debra Satz”, 102.

<sup>85</sup> Jonker, “The Meaning Of A Market”, 186.

<sup>86</sup> Rondel, “Semiotic Limits To Markets Defended”, 6.

<sup>87</sup> Brennan and Jaworski, “Markets without Symbolic Limits”, 1076.

<sup>88</sup> Anderson, “The Ethical Limitations of the Market”, 182.

<sup>89</sup> *Ibid.* 182.

deceased by eating their brains. However, since this practice causes the deadly paralytic kuru disease, it seems apparent that those meanings structures should change as they cause harm. This also means that if a market in sex, wedding toasts or surrogacy is properly regulated so there are no non-communicative objections, and if we still have some reason to object to such a market, then maybe we should change this reason. Anthony Booth calls this the collapsing move<sup>90</sup>. If we find a market in sex degrading for the seller, but there are no other objectionable effects—such as weak agency or desperation—, then we must change our understanding of why it is degrading.

Even if we allow Brennan and Jaworski to conclude that a cost-benefit analysis would in some way trump whatever value is related to the market, or the good, there are still issues concerning this new moral judgement. Firstly, this hides a considerable assumption as to the presumed clarity of what would qualify certain criteria to be considered a ‘cost’ or a ‘benefit’. What we would consider a cost or a benefit is just as contingent. Though we could state that non-communicative objections may be considered as costs, benefits would be less clear, and it would seem that Brennan and Jaworski are begging the question. Lastly, as Rondel notes, this claim does not necessarily aid a market expansionist (or even conservationist) as there are many markets—for instance in alcohol or cigarettes—that are currently allowed which may indeed fail this cost benefit analysis, and thereby force us to adopt restrictions on this market.

Nevertheless, Brennan and Jaworski hold that markets have no intrinsic meaning (or that it cannot conflict with whatever essence of a good), and that if you therefore are allowed to give something for free, you can receive money for it. And since our meaning of particular markets should depend on their consequences, Brennan and Jaworski claim that semiotic arguments fail as market moralists can no longer call upon the corruption of some innate value as the market brings no transgressing expressive attitude with it when added to certain transactions.

### Responses to the Semiotic Problem

There have been several attempts to reply to this challenge by for instance, Anthony Booth, and Jacob Sparks and David Rondel. The aim of these responses is to show that markets in fact non-contingently express an incompatible value in relation to certain goods, but as Julian Jonker argues, these attempts to revive the semiotic objection fail to create any substantive expressive objection through the meaning of the market.<sup>91</sup> For instance, Anthony Booth has argued that markets do have meaning in that they imply a certain comparability. If an agent engages in noxious market behaviour with a particular good, they signal that this *incommensurable* good is comparable with another, and that a choice or mechanism is made on this comparison. Recall the distinction of the mere commodity objection whereby smoke indicates fire, and can contingently signal, or express war. Jonker argues that if Booth claims markets indicate that someone is comparing, say sex with money, this does not seem like a semiotic argument, let alone raising something immediately objectionable. And if Booth argues that it is a matter of expressing, for instance signalling an endorsement of the market as proper comparison, then it is vulnerable to the collapsing move since “endorsement is not indicated by participation in the market”<sup>92</sup> as one could also simply ‘accept’ it as possible method of trade.

Jacob Sparks has presented a different argument, claiming that allowing a market in certain goods “always express preferences”<sup>93</sup>. If we take this to be revealed preferences<sup>94</sup>, then though this is a ‘non-revisable indication’ of a particular attitude of exchange, this is merely objectionable if the attitude of exchange itself is regrettable. Jonker argues that such an objection is not semiotic, as it merely notes a regrettable preference or choice. Indeed it is no longer semiotic in that it no longer concerns signals surrounding inappropriate attitudes in relation to some essential value. Nevertheless, there are still some things to note with regard to these defences.

Firstly, we can see Booth argue that there is a distinct comparative element to the market. Though Jonker may be right to point that there is nothing immediately objectionable with the comparison of money

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<sup>90</sup> Anthony Robert Booth, “The Real Symbolic Limit Of Markets”. *Analysis* 78, no. 2 (2017), 200.

<sup>91</sup> Jonker, “The Meaning Of A Market”, 186-187.

<sup>92</sup> Jonker, “The Meaning Of A Market”, 188.

<sup>93</sup> Sparks, Julian. “Can’t buy me love: A reply to Brennan and Jaworski”. *Journal of Philosophical Research*, 42 (2017), 343-344.

<sup>94</sup> Revealed preferences taken here as indicator of choice following Paul Samuelson. “A Note on the Pure Theory of Consumer’s Behaviour.” *Economica* 5, no. 17 (February 1938), 61-71.

and (say) votes, it would be folly to say that the market ‘merely’ indicates an incidental comparison. In a pervasive market setting, there is the presence of an comprehensive pricing equilibria which adheres to market systems, thereby not only establishing prices, but showing a pervasive valuation which can potentially conflict with some other value in that good’s domain. Additionally, we should once again note the distinction between incidental and pervasive markets, and how this also is crucial to recognise from a normative standpoint. Whereas pervasive markets have certain clear connotations regarding valuation and regulation, incidental markets do not. Issues such as garage-sales do not abide to particular market norms, but there are additional financial transactions that are important to note. The idea of a gift economy also stands separate in normative judgement, as it is dependent on free will to give independent of potential returns. An example of this are honoraria, whereby payment is gifted for pro bono lectures by professors.<sup>95</sup> This is not related to any market valuation of their labour, and the ‘reciprocal’ action of lecturing would happen regardless of this monetary transaction. This distinction between incidental payments or a gift economy is ... different from pervasive markets, and this must be recognised in the normative judgement as they have varying elements and characteristics with regards to pervasive markets. They may not conflict with the particular values of the domains as pervasive markets do.

Secondly, Sparks notes another distinction, found in Sandel. This clarifies the essentialist and semiotic approach from one another. As we have seen, Brennan and Jaworski hold that the market has no significant meaning, and that therefore, the addition of a market system does not signal any inappropriate attitude where there first was none. However, as Sparks notes, some goods are just not the same when they are introduced to the market, their nature is corrupted, or changed. We mentioned how a paid friend is merely a lackey, the same goes for a Nobel prize. If a Nobel prizes were up for sale, they would be corrupted as they would no longer have the same essence. As Jonker states, these goods change since they largely rely on “judgements-sensitive attitudes.”<sup>96</sup> But as Jonker notes, this is a “non-semiotic objection that a market crowds out or destroys the good it purports to trade in.”<sup>97</sup>

Here we once again find the notion of virtues as posed by Wempe and Frooman, as this form of corruption shows that Nobel prizes and friendship are necessarily allocated in accordance with merit. Brennan and Jaworski would not consider this corruption, as their notion corruption entails defective preferences or character traits. We would see this as what Brennan and Jaworski call ‘misallocation’, but this is focused more on consequential unjust allocation than an allocation improper towards the good. It is hard to place these kinds of market-critiques in any category for Brennan and Jaworski, and they interestingly can be called to with regard to their may do it for free, may do it for money claim. Brennan and Jaworski acknowledge several objections to the market, yet when they talk of intrinsic value they do so in the context of semiotics, and usually on the meaning of the market.

Rondel argues for this very issue, stating that “semiotic arguments do not depend fundamentally on the meanings that prevail about *markets* [...], they depend on the meanings that attach to various goods”<sup>98</sup>. Though Brennan and Jaworski consistently point to the (mistaken) contingency of the meaning of the market, they also seem to assume this about the goods and thereby seem to implicitly deny “the possibility of shared value judgements in society”<sup>99</sup> Here we can find the essentialist and semiotic arguments overlap as both claim that this is in fact possible.

The issue we find at the heart of our discussion is therefore built into the framework of domains, virtues and allocation methods. Symbolic, or semiotic objections to the market hold that noxious markets signal an incongruent relationship between the allocation and the intrinsic value of a good. The essentialist poses that the intrinsic meaning or value of the good is corrupted and Satz must defend a conventional or universal property to show that there is something special about safety, health or education. We have arrived at the point where we needs to wonder “what we understand these goods to be— what is the best way for

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<sup>95</sup> I owe this example to dr. Yogi Hendlin.

<sup>96</sup> Jonker, “The Meaning Of A Market”, 190.

<sup>97</sup> Ibid. 190.

<sup>98</sup> Rondel, “Semiotic Limits to the Market Defended”, 2.

<sup>99</sup> Ibid. 2.

them to be valued and treated?”<sup>100</sup> As Claassen succinctly notes, we need a story, and as Sandel shows, this can be essentialist or conventionalist.<sup>101</sup>

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<sup>100</sup> Rondel, “Semiotic Limits to the Market Defended”, 14.

<sup>101</sup> Sandel, “What Money Can’t Buy: The Moral Limits Of Markets”, *The Tanner Lectures on Human Values*, 106.

# Republican Freedom

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Satz and Sandel both uphold egalitarian principles in their frameworks. Additionally, Sandel explicitly defends the notion of corruption, supported by republican ideals. To show why a certain good should not be introduced to the market, one needs to show that the market is the inappropriate allocation system for the domain of the good as it would conflict with other more significant virtues. Due to the simple fact of value pluralism it is difficult to establish the proper appropriation of virtues, yet an inquiry into these domains and virtues can help greatly. In this section we will look at the different conceptions of freedom and equality and hope to show the nuance of this discussion, instead of the purported clear distinction. I will compare various liberal and republican arguments surrounding freedom and equality and defend a particular form of the latter following Kant who places prominence to agency. With such a form of freedom, we can translate its implications for particular limitations on the market. We will look at such an attempt made by Vida Panitch following John Rawls, who shows how one can effectively argue for certain limits to the market and who additionally provides us with a valuable framework for particular domains of goods. Finally, I will show how our own Kantian republican conception differs from the proposal made by Panitch that can establish definite foundations for Satz and Sandel's egalitarian limits to the market and additionally provide normative force for other possible restrictions such as essentialist corruption of goods.

## Freedom and Equality

### The Social Contract

The purpose of the state and its relation to freedom can be clarified by social contract theory. Thomas Hobbes' famous exposition in *Leviathan* shows a state of nature, where there is no civil society, no state authority and no laws. In such a state, each man decides what is right on their own account following their 'endeavour' or Will as their Power allows them. However, in such a state where no 'mine and thine' is established, one needs to be ever wary of anyone who's endeavour envies their own power, thereby making the life in the state of nature, nasty, brutish and short as one must ever be wary, lacking security and peace. As Hobbes notes, this state of war moves us towards a social contract, so that in the interest of peace and out of fear of death, every one give up their right to *all* things insofar as others do so too. Hobbes thereby views the state as a necessary contract of assurance in recognition of the sorrowful life of non-universal restrictions of freedom, and of the benefit of particular limitations. An earlier theory on the motivation behind a 'sovereign' or state comes from Mo Di and the idea of conflicting 'yi', being 'norms of righteousness'. Due to differing conceptions of the good, chaos ensues, illuminating the need for a unified moral standard to provide order and peace. Though Kant does not follow their single sovereign, he too regards the universal law as central to the civil state, and it is a particular form of Kantian freedom and equality that we will follow.

As we have seen earlier, the state can help ensure freedom, but it is necessarily rested upon universal covenants. These laws must give shape to ensuring the type of doings and beings that one may pursue in different domains. The form and strength of laws and the assurance of its virtues therefore depend on the appropriate definition of freedom as could universally be supported by rational beings in a social contract. The particular form of this freedom is what underwrites the discussion of the market.

### Forms of Freedom

In the discussion of markets and state distribution, Vida Panitch notes that there are two common proceduralist accounts against the free market based on the notion of freedom. Firstly there is the libertarian proceduralist account which seeks the state to secure protection against coercion and fraud. And there is the egalitarian procedural objection which asks for wealth distribution. Both these 'liberal' notions can claim that due to reasons of autonomy and freedom, particular measures must be taken to ensure passable degrees of freedom. The forms of freedom are usually aligned according to the distinction made by Isaiah Berlin, placing libertarians among the negative liberal dimension of freedom as non-interference, which he himself too advocated. Egalitarians are usually placed under the positive conception regarding issues such as self-mastery or collective government. Others use Gerald MacCallum's distinction of freedom as a triadic relation as: an agent  $x$  is free or unfree to do or be a certain act  $y$  by the absence or presence of some interference  $z$ .

On this occasion, positive and negative theories usually differ on what they consider  $x$ ,  $y$  and  $z$  to be.<sup>102</sup> For instance, 'negative' theorists usually regard an interference to be external and not internal to the agent, so, when one is subject to threats or when invoked fear to not do a certain  $y$ , a negative theorist could still consider them free to do  $y$ .

Then there is republican freedom, a third conception which is often viewed as a negative conception of non-domination. There are several differing forms of non-domination (and republicanism) and we will turn to them shortly, but generally this view consists in the "non-occurrence of those factors which are regarded as significantly diminishing a person's possibilities."<sup>103</sup> The negative non-domination is posed as a challenge to freedom as non-interference, claiming that this view falls short to encapsulate what it means to be free. The epitome of this critique is that of a slave to a benevolent master. A slave is usually considered unfree as when they wish to do a particular act, they are dependent on the will of his master and whether or not they will allow this act. If the slave wishes to sleep, but the master *could* prevent the slave from doing so, the slave cannot be considered truly free, but instead is dominated and subject to another's will. Here we can see that the republican idea of a condition of non-domination is something of a status in the absence of potential interferences, instead of an actual exercise of a particular activity.

These many different distinctions and conceptions trouble the debate on freedom and its corresponding debate on the market and state roles with regard to these freedoms. In the following sections I intend to defend non-domination against non-interference, and show that the varying forms of liberal, positive and republican freedom often collide with one another. By doing this I aim to illuminate the areas of discussion surrounding the negative freedom debate, and show broader support concerning republican notions of freedom.

### Negative Natural Freedom

In this section we will examine the tension between freedom as non-interference and freedom as non-domination. This discussion aids in clarifying republicanism and additionally tells us much about the forms of freedom that underwrites the market discussion. Both interference and domination are described by Horacio Spector<sup>104</sup> as *negative natural* unfreedoms<sup>105</sup>. That is, these forms of freedom do not rely on any civil state or norms, thereby being natural (or present in the state of nature). Additionally, they are negative as they do not consider anything other than exercise or condition such as the positive notions of self-mastery or self-government, usually derived "from the wish on the part of the individual to be his own master."<sup>106</sup> As stated, this discussion of freedom relates to the idea of whether this form should be about exercise of a particular action, or of a specific condition. Spector frames this conflict in terms of a reductionist move, but List and Valentini pose it in the clearer 'robustness'.

Christian List and Laura Valentini state that theories concerning freedom are *modal* in the sense that they depend "not only on facts about the actual world, but also on facts about other possible worlds."<sup>107</sup> They note that freedom as non-interference is modal in that it requires any agent in the actual world to do an act 'X', and that therefore there must be some possible world  $w$  in which the agent does X. Modally *robust* theories such as forms of republicanism (and their own freedom as independence), rely on "the possibility of

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<sup>102</sup> Gerald C. MacCallum, "Negative And Positive Freedom". *The Philosophical Review* 76, no. 3 (July 1967), 314.

<sup>103</sup> Charles Larmore, "Liberal and Republican Conceptions of Freedom". *Critical Review Of International Social And Political Philosophy* 6, no. 1 (2003), 97.

<sup>104</sup> Spector, Horacio. "Four Conceptions Of Freedom". *Political Theory* 38, no. 6 (2010), 780-808.

<sup>105</sup> Horacio Spector presents his own taxonomy of different types of freedom. He recognises two divisional factors being the positive and negative distinction, and civic and natural distinction. As with Berlin, the positive factor pertains to autonomy and self-rule and can be occurrent in the natural (state of nature) sense and in a civic sense through collective self-government. The negative distinction is focused on the absence of interference which in the civic sense pertains to the freedom enjoyed by the absence of legal restrictions non-interference. This matrix is not central in this discussion, but these distinctions can aid in the clarification of debates surrounding our differing forms of freedom.

<sup>106</sup> Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (Oxford, UK: Oxford University Press, 1969), 131.

<sup>107</sup> Christian List and Laura Valentini, "Freedom As Independence". *Ethics* 126, no. 4 (2016), 1047.

doing X not only in the actual world, but also in a range of nearby possible worlds.”<sup>108</sup> Robust theories propose that for someone to be free, there must be a certain greater absence of possible interferences to be regarded as free. This is once again best exemplified by the benevolent master who though in possession of the legal, social or brute power, chooses not to interfere with the slave in a particular action. A non-robust theory of interference would have to render the slave free, yet this seems to cause two issues. Firstly, this conflicts with what List and Valentini call the original language clause, claiming that upholding the slave to be free raises linguistic ambiguity or conflict due to the paradigmatic notion of slavery as a form of unfreedom. More significantly however, this view of liberty is incompatible with the “functional role desideratum”<sup>109</sup> which aims to point out modal constraints on freedom—particular impeded composition of actual and possible worlds towards an act X—that “stand in need of justification.”<sup>110</sup> As List and Valentini argue that in the case of the slave, “[t]he master’s *power* to interfere is enough to raise a justificatory burden.”<sup>111</sup>

One way for the liberal to respond is by denoting possibility and probability. Hereby a non-robust theory can claim that the slave is diminished in their probability to do X with regard to the non-slave, yet not their possibility. But as List and Valentini argue, quantifying the probability of freedom would point out the dependency of the slave on the contingent exercise of the masters will. Additionally, if this issue becomes one of comparative analysis of probabilities between for instance a slave and non-slave to likely be able to do X, then facts about freedom are merely about the level of probability of constraints across possible worlds, whereby the liberal and the republican merely differ on their degree of robust protection from such interferences. By doing this, the liberal must admit that freedom has some modal robustness and additionally would have to clarify its position of limited robustness compared to the republican non-domination condition with higher degrees of robustness.

Even more so, the republican can claim that “we need to recognize the *possibility* of constraints being imposed on the slave [...] as a limitation to freedom.”<sup>112</sup> The robust criteria of freedom can explain the issue of the slave as one of dependency on another’s will, thereby rendering them negatively unfree in a broader sense.

### Epistemological Priority

Boudewijn de Bruin aims to undermine the distinction between interference and domination by using an epistemological priority claim to argue that the ‘benefits of republican freedom’ can be captured in purely liberal terms. De Bruin argues that if the interferences, whether robust or non-robust, were known—what he terms the Common Knowledge of Republican or Liberal freedom (CK), the republican would be able to say no more than the liberal with regards to freedom. De Bruin argues that knowledge of domination implies knowledge of interference, but it is important to note that this is due to the fact that they are of the same nature (natural negative) and that this epistemological discourse merely shows the insufficiency of liberal freedom to provide a framework maximally promoting this form of freedom. And though de Bruin’s epistemological discussion is due more than I have time for, the approach helps to illuminate the normative distinction and the necessity of a republican framework.

De Bruin approaches the claim made by republicans that their notion of freedom minimises uncertainty, subordination and strategic deference. The republicans hold that in a maximally liberal world there would be more agents with the capacity to interfere than a maximally republican one and that therefore one would be less secure of what actions they can take, be more often subjected to another’s will and need to display deference more often than in a republican one. Take deference. If a particular world *v* has Sue write three letters of deference to her superiors to go on holiday, then, de Bruin argues, this would not be a maximally liberal world as one could make the world more liberal by assuring but one necessary deferential letter. De Bruin argues that both views would wish possible and probable goals to have minimal necessary deference thereby rendering one just as free liberally as in the republican sense. The same goes for the case of subordination. In the end de Bruin admits that “if there is a non-zero probability of subordination, both

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<sup>108</sup> List and Valentini, “Freedom as Independence”, 1048.

<sup>109</sup> Ibid. 1049.

<sup>110</sup> Ibid. 1049.

<sup>111</sup> Ibid. 1052.

<sup>112</sup> Ibid. 1057.



liberals and republicans have reasons to increase freedom.”<sup>113</sup> We can see the liberal make the move to necessarily become modally robust, admitting that even the conception of interference is maximally represented if agents had minimal probability of interference.

However, another problem is that though the liberal can claim that Sue is not maximally free, the decrease of necessary appeasement of those with potential power over one’s chances of doing X would necessarily come at the cost of another’s freedom. If Sue would only need to give one week notice instead of two she would be similarly more free in both senses, however this too reduces the freedom of the superior to have two weeks time to fill the vacant shifts. Though the liberal can hold that Sue would be maximally free with minimal need for deference, the idea of this relies on the restriction of freedom of another, thereby ignoring the relational side of freedoms. It is indeed unclear how a liberal would assure ‘far fewer possibilities for arbitrary interference’ for *all agents* without positing a republican consensus. To appease the one there is a relative decrease for the other, and the republican therefore can submit that if the liberal aims to maximise non-interference, this must not only be done robustly, but to that extent in accordance with all others, forcing them to move to a republican framework.

De Bruin’s discussion not only reiterates the identical nature of both forms of freedom but also shows the difficulties for a liberal to argue for a non-robust theory in the normative sense, even if the reduction is possible in an epistemological one. As de Bruin notes following Ian Carter, liberal freedom is normatively prior to republicanism in that a liberal can “defend republican institutions simply to the extent that they favour liberal freedom.”<sup>114</sup> Therefore the liberal’s acceptance depends on “how good actual republican policies are at increasing liberal freedom.”<sup>115</sup> As we have seen, republicanism is based on the definition of freedom as a condition of a robust absence of interferences and its consequent structures aim to appropriately and equally establish this extensive form of non-interference. Nevertheless, the republican encounters a considerable problem before moving from their definition of freedom, being what Valentini called, the issue of moralised freedom.<sup>116</sup>

### Moralising Freedom

The issue of moralising freedom is best explained by the paradigmatic troubling case for the republican. As the slave-master analogy stands to non-interference, so does the prisoner stand to non-domination. The republican view holds that freedom involves that one should not be subject to *arbitrary* will or power. The prisoner is subject to the will of another agent (in whatever form), yet the republican claims that this will is not arbitrary—but justified in some fashion—and therefore not an actual impingement of freedom. Though the republican can argue how unfreedom can exist without interference, so too can actual interference not be an impingement of freedom. The motivation behind this resides in the authority of the state and its alignment with freedom. The state preventing people from owning slaves, or forcing people to pay taxes would count as genuine interference, but it would be non-arbitrary and therefore not rendering people unfree. Hereby, the republican “reclassifies *just, legitimate, and non-arbitrary restrictions of freedom as no restriction at all.*”<sup>117</sup>

There are two prominent, but so far, insufficient, ways in which republicans have attempted to justify this moralised notion of freedom following arbitrariness: tracking preferences and democratic self-governance. In short using our case, it would be hard to argue that the prisoner’s interests are sufficiently tracked. Even if those of the greater majority could very well be, it remains an impingement on the prisoner. Secondly, though democratic self-governance may aid assuring just restrictions on freedom, it would be wrong to equate non-arbitrary limits to freedom as rule of the majority. Where the former relies on one’s preferences to not conflict with freedom, the latter can create “procedurally fair but substantively flawed”<sup>118</sup> laws.

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<sup>113</sup> Boudewijn de Bruin, “Liberal and Republican Freedom\*”. *Journal Of Political Philosophy* 17, no. 4 (2009), 438.

<sup>114</sup> De Bruin, “Liberal and Republican Freedom”, 438.

<sup>115</sup> Ibid. 439.

<sup>116</sup> Laura Valentini, “Kant, Ripstein And The Circle Of Freedom: A Critical Note”. *European Journal Of Philosophy* 20, no. 3 (2012), 456.

<sup>117</sup> List and Valentini, “Freedom as Independence”, 1059.

<sup>118</sup> List and Valentini, “Freedom as Independence”, 1064.

The idea surrounding this issue is that the definition of freedom should be robust, yet not moralised. With regard to robustness, it is important to recognise the more expansive impediment to freedom caused by the diminished probability due to a contingent external power. It is also linguistically incorrect to reject certain interferences as unfreedom as the republican view upholds and therefore we should indeed follow List and Valentini's freedom as *independence*. This definition of freedom is robust, yet not moralised and therefore does not exclude any forms of unfreedom due to their justification. However, as they note, this is a "*conceptual analysis of freedom* and [not] an overall *normative political theory*."<sup>119</sup> For any civil framework the idea is to justify the limit of particular freedoms however, List and Valentini rightly note that the republican has implicitly included this in their notion of freedom. With this distinction set out it is still possible for a normative political theory to provide procedural, democratic or substantive justification for certain limits to freedom.

### Kantian Republicanism

One such an attempt to justify a republican political theory is made by Arthur Ripstein using a loyal Kantian approach in his book *Force and Freedom*. However, Valentini argues that Ripstein's faithful analysis finds itself in a vicious cycle of freedom. Valentini argues that such a Kantian approach grounds rights in freedom, but that in turn freedom is grounded in those presumed rights. By analysing this tension, we can see why the definition of freedom should not be moralised and additionally why a pluralistic approach to the values that organise society is necessary.

As Valentini notes, Ripstein is primarily concerned with "the particular relations in which people stand vis-à-vis one another"<sup>120</sup>, thereby embodying the republican ideal of equal standing. Kant famously stated that there is but one innate right, freedom, and that this is to be interpreted as independence.<sup>121</sup> The right to independence entails that one can use their own powers for their own ends or purposes. Pursuits can be done individually and cooperatively, however, none can make you adopt their ends or make you sacrifice your own means and ends. The circularity of political theory originates from the following issue. Any negation of this condition would be an incursion to freedom, however, if a policeman stops a thief, we do not deem this wrong. Therefore, the negation to the negation must be grounded in rights, or a theory of justice (or at least some distinction must be established).

As Valentini states, any theory based on freedom alone may be appealing by being "quintessentially liberal"<sup>122</sup>, but it cannot justify limitations upon itself, and therefore cannot solely be relied upon as single value. It should be noted that the recognition of this fact—that justice cannot be uniquely bound to freedom—was also present in Kant. Though he held that freedom was the state's foundational principle, he also acknowledged that principles of justice ought to be based on equality for each and independence of every as citizen.<sup>123</sup> Freedom is a significant, yet equipoise value, and it should be distributed and restricted in such a way as to ensure independence for each. To find the appropriate form with regards to the market debate, we should look at the other components of republicanism, beyond negative natural liberty.

### Republicanism

There are many differing forms of republicanism, following from different forms of freedom. The republican usually holds that to be free is to not be subject to another's will, and many also intend this to mean to be one's own master. As we have seen, the republican view claims that negative natural freedom is to be understood as a condition of robust independence, rather than a mere exercise of non-interference. However, republicans do not limit themselves to negative natural freedom as in the idea of self-mastery lies the idea of autonomy, a principally positive notion. As we saw with Kant, autonomy is crucial to be one's own master and to set and pursue one's own ends. Whereas Kant grounds it in rational nature, some

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<sup>119</sup> Ibid. 1073.

<sup>120</sup> Valentini, "Kant, Ripstein And The Circle Of Freedom", 453-454.

<sup>121</sup> Immanuel Kant and Mary Gregor. *The Metaphysics Of Morals*. (Cambridge: Cambridge University Press, 2012), 6:237.

<sup>122</sup> Valentini, "Kant, Ripstein And The Circle Of Freedom", 455.

<sup>123</sup> Immanuel Kant, David L. Colclasure (trans.), and Pauline Kleingeld (ed.), "Theory and Practice", from *Toward Perpetual Peace And Other Writings On Politics, Peace, And History* (New Haven: Yale University Press. 2006), 8:290.

contemporary republicans ground it in “a basic kind of respect for the individual.”<sup>124</sup> Spector states that agency should be understood as a *natural* positive notion of freedom as it does not presuppose any civic character.

Additionally, Quentin Skinner has argued that the existence of a ‘master’ with the power to contingently interfere, does not only limit one’s negative natural freedom due to a probability of interference, but this dependency can additionally produce a “submissive fear [that] causes a loss of natural positive freedom”<sup>125</sup> Though Spector notes that this is in fact an issue of empirical research—whether constraining probabilities divert one from their own independent achievements—, the claim can be made that even if one is not subject to another’s actual will, passive constraints can indicate a lack of autonomy, and therefore a form of unfreedom.<sup>126</sup> The point is that internal control of discovery and pursuit of one’s own destiny are valid components one expects when considering freedom as independence. This not only includes issues such as fear or threat, but also a lack of knowledge or an inability to necessarily pursue happiness. Agency and autonomy are crucial elements of being one’s own master.

This idea of autonomy and the previously established notion of freedom as independence (robust and not moralised) gives substantial support for our necessary notions of freedom and equality, yet this also translates to particular civic forms of freedom. Horacio Spector parallels two forms of civil freedom to the forms of natural freedom we have seen so far. Civic liberty would deem prisoners, forced taxation and other forms of state interference as impediments to negative civil liberty. Following Hobbes, this is usually seen as the ‘Silence of the Law’<sup>127</sup>, being the absence of domination by law. One has civic liberty if one is not robustly interfered with in the actual and possible worlds in accordance with the law (regardless of whether it is just). The positive form of civic liberty is related to the republican issue to moralise freedom, seen as collective self-government. Just as positive natural freedom aims to secure individual self-mastery, positive civil freedom relies on the collective cooperation of one’s social institutions.<sup>128</sup>

These four forms of freedom must be distributed in accordance with “arguments that in principle can reach the assent of each citizen’s reason”.<sup>129</sup> To do this, freedom must be distributed in accordance with just principles and for such principles of justice, the republican can turn to John Rawls who provides a convenient republican framework with justice as fairness.

### Rawls and Republicanism

Now that we have defined freedom as a fourfold robust condition of independence, we must be able to appropriate their distribution by establishing their position and primacy in a framework of domains and spheres. John Rawls, being in line with the Kantian tradition, has provided a theory of justice which can help translate a republican conception of freedom into a comprehensive framework supported by justice which distributes the “benefits and burdens [of society] in the form of freedom and unfreedom.”<sup>130</sup> His original position imagines the content of the social contract following by rational agents from behind the veil of ignorance. Rawls concludes two principles of justice that would result from such a deliberation by reasonable and rational agents. The first principle of justice secures equal basic liberties, and the second entails fair equality of opportunity and the difference principle, stating that social and economic inequalities are to be of the greatest benefit to the least advantaged.<sup>131</sup> In the next section we will see how Vida Panitch has created a framework of virtues and domains using the principles and its theory. But before this, I will shortly clarify why Rawls, usually considered as a liberal, can provide the republicans a strong architecture to translate equality and freedom as independence into a civil theory of laws to ensure a just and fair society.

Spector has argued that republican elements of civil liberty were taken in by Locke through to Rawls. Though Rawls did not understand freedom as independence (and is indeed considered by Pettit as one

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<sup>124</sup> Larmore, “Liberal and Republican Conceptions of Freedom”, 115.

<sup>125</sup> Spector, “Four Conceptions Of Freedom”, 798.

<sup>126</sup> See Appendix 2.

<sup>127</sup> Spector, “Four Conception Of Freedom”, 792.

<sup>128</sup> See Appendix 3.

<sup>129</sup> Larmore, “Liberal and Republican Conceptions of Freedom”, 115.

<sup>130</sup> Ibid. 464.

<sup>131</sup> John Rawls, and Erin Kelly (ed.), *Justice As Fairness*. (Delhi: Universal, 2004), 42-43.

who follows merely the negative natural form of non-interference), Rawls still “was reflecting American constitutionalism, influenced by the republican tradition.”<sup>132</sup> Charles Larmore also notes how Rawls defines liberty as “a certain pattern of social forms”<sup>133</sup> which shape our freedom through rights and duties. Rawls thereby recognises civil liberty as a component of freedom. Rawls also crucially notes that to be able to endorse or commit to the principles of justice, citizens “must possess two moral powers of free and equal citizenship.”<sup>134</sup> Citizens must have the capacity for reasonability and rationality to ensure that they can be ‘active and authenticating members’, and whereas the former is about a certain attitude and articulation, the latter is “understood as the ability to form, revise, and pursue a conception of [...] a worthwhile life.”<sup>135</sup> These preconditions of Rawls’ principles of justice clearly points to the natural positive idea of freedom known as self-mastery. Lastly, the theory of justice is built against the backdrop of two claims, concerning value pluralism and reciprocity—embracing self-mastery and the issue of domination—, yet a third claim necessarily follows, legitimacy. This last part of what Rawls calls the political conception of justice, requires that any restriction on freedom be in accordance with what reasonable and rational agents with diverse comprehensive doctrines would agree with. This last issue entails a certain degree of civic engagement that, though perhaps not as demanding, does require citizens to a particular degree of freedom in a self-govern capacity. Therefore, Rawls can be seen to regularly align with forms of republican freedom.

The Rawlsian principles of justice can therefore be a guideline for republicans to justify certain limitations to freedom. Before we move on, the exact approach we have compiled so far should be reiterated shortly. To defend the moral limits to the market of equality and corruption we must present a delineate the virtues and domains of society. Much like the semiotic argument, any limitation of freedom in a particular domain must be justified in accordance with some principles of justice. We have established republican freedom as robust independence and will align this with the principles of justice, grounded in pluralism and reciprocity. By doing this we can provide a valuable foundation for Satz, Sandel and republican moral limits to the market.

## **State and Market**

### Social and Honorific Goods

Vida Panitch offers an approach to use Rawls’ principles of justice to show that a liberal position can still provide an argument for particular goods and services to be restricted from the market. I will use Panitch’s argument—in light of Rawls’ republican leanings—to show that these principles of justice can provide republicanism with a framework to support moral limits on the market.

Panitch begins by noting that commonly “[l]ibertarian proceduralists can ask for protections against coercion and fraud, and egalitarian proceduralists can ask for wealth redistribution.”<sup>136</sup> Though, as we have established, this may aid our equality parameters, this is still ‘inadequate’ as this would either not prevent regular unfreedoms due to poverty, lack of agency or alternatives, or still allow the market values and allocation method to intrude on presumably protected spheres of life. Panitch names five spheres of contested commodities that I will largely follow as domains to assign virtues and value. Social Goods are seen as love, friendship, kinship, commitments and relations of a social nature. Honorific Goods are considered issues of merit such as prizes, awards and offices. Civic Goods are votes, citizenship and speech. Necessary Goods as shelter, education and healthcare<sup>137</sup>. And Physical Goods such as sex, surrogacy and body parts.<sup>138</sup>

This domain structure categorises the particular goods into domains according to the type of good it is and the role it necessarily plays. This can be clarified by looking at the argument for restricting the social and honorific goods. We have previously noted how issues such as friendship and love cannot be bought and sold as this would corrupt the meaning of that relation. This is because honorific goods crucially demand that

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<sup>132</sup> Spector, “Four Conceptions Of Freedom”, 789.

<sup>133</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 55-56.

<sup>134</sup> Panitch, “Liberalism, Commodification, and Justice”, 70.

<sup>135</sup> Ibid. 70.

<sup>136</sup> Panitch, “Liberalism, Commodification, and Justice”, 63.

<sup>137</sup> In light of contemporary discussions, environmental goods should be regarded as necessary goods, providing a strong claim to restrictions on polluting markets, goods or services.

<sup>138</sup> Panitch, “Liberalism, Commodification, and Justice”, 63.

they be distributed “in accordance with a principle of merit”<sup>139</sup>, as they are reliant on qualitative recognition of performance in accordance with the establishment of such a good as indicator. The essentialist argument can therefore exclude the market from these domains on a purely logical tension as the meaning of the goods is changed when these spheres are introduced to market allocation.

Though social and honorific goods may be protected by the essentialist argument, as we have seen—and Panitch notes—, this argument cannot be extended beyond such goods. Firstly, if the essentialist argument is extended beyond its potency, it loses its force due to a ‘misplaced generality’. But more importantly, Panitch notes that it is problematic to argue that, for instance, a necessary good such as health care is intrinsically corrupted when privatised. Panitch purports that if ‘meaningful access’ were assured, the form in which access is granted—market, voucher or redistributive means—does not matter. It would be equally difficult to argue that kidneys change in their meaning of function as a Nobel prize would when purchased. Therefore, other goods cannot be limited on grounds of corruption alone, and instead rely on a political conception of justice.

### Civic, Necessary and Physical Goods

For civic, necessary and physical goods, Panitch claims that “the extent to which markets should be allowed to distribute important goods depends on whether their doing so promotes or undermines the principles of justice.”<sup>140</sup> Following Rawls, Panitch begins by wondering what social conditions are necessary to ensure that citizens “develop and exercise their two moral powers?”<sup>141</sup> Rawls argues that to ensure an ‘active and authenticating’ populous with the capacities of reasonability and rationality, “citizens require a guaranteed sphere of rights and liberties, along with opportunity, the powers and prerogatives of social office, income and wealth, and the social bases of self-respect.”<sup>142</sup> This Rawlsian conception draws the limits on the market from the prerequisite of citizens to equally understand and engage with the spheres of society, aligning crucially not only to the republican idea of participation, but also thereby giving guidance to the appropriate allocation for these goods.

Remember the critique against Satz asking her to clarify her idea of equal standing. Panitch questioned whether equal status ought to be seen as an ideal or a distributive principle. She needed to present a reason for when equal standing means equal shares or when it merely entails sufficiency. Panitch brings up this issue in the discussion of *civic* and *necessary* goods. With regard to civic goods, the first principle demands a ‘fully adequate scheme of equal basic liberties’ that are non-alienable as they are preconditions for rational choice-making. As Panitch notes, in the original position it would be irrational to wish to receive a lesser share of such basic liberties and rights to pursue one’s own ends, and therefore none could ask others to accept this either. Because of this, any conception of justice as fairness would conclude that an “equal distribution [of civic goods] is the only one that could be agreeable to all.”<sup>143</sup> Since such rights and liberties rely on their equal distribution, they must be allocated according to a method that guarantees an equal shares outcome (i.e. ‘rationing’), and should not be allowed to be bought or sold. Here we can also find Brennan and Jaworski’s claim that one should not sell votes as they should not give them away, though there are inconsistencies in their accounts for instance in issues of friendship or goods of merit. This framework can explain why some values can restrict market allocation (but say not gift allocation) for some domains, while rejecting any kind of unequal distribution for others (as for political spheres).

Panitch argues this from the idea that the second principle secures the ‘social and material’ necessities to develop and exercise the moral powers. The first element of this principle hopes to ensure fair equality of opportunity with regard to public offices, demanding that these positions be filled according to merit. Hereby we can conclude that though equal opportunity is necessary, it is not sufficient for distribution as we still require an attributional assessment. It is important to note that this, in combination with the argument surrounding civic goods, introduces serious grounds for constraints within the marketability of the political realm. Ascent to public offices must follow equal opportunity and additionally allocated according to merit. For instance, effective financial disparities among aspiring public servants cannot be justified as this would incur certain disparities of wealth where it has no just place. If one party or person were to have a far greater budget at their disposal, it displaces the notions of equal opportunity and merit as sole allocative

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<sup>139</sup> Ibid. 65.

<sup>140</sup> Ibid. 68.

<sup>141</sup> Ibid. 70.

<sup>142</sup> Ibid. 70.

<sup>143</sup> Panitch, “Liberalism, Commodification and Justice”, 71.

virtues. Therefore, though some may indeed find the commodification of votes a tempting thought to entertain, they should instead aim to defend the influence of any wealth disparity within political processes such as election campaigns.

The second element, the difference principle, requires that the inequalities of wealth and income, come to the greatest advantage of those worst off. As Panitch notes, though this in first instance may have had quite a meagre conception, Rawls later reiterated to show that “the difference principle presupposes a guaranteed social minimum.”<sup>144</sup> Such a redistribution is crucial as it helps to ensure that citizens can actively participate in the social and political life, while enabling them to set and pursue their own ends. The social minimum secures ‘effective sufficiency’<sup>145</sup>, while the principle’s structure additionally hopes to achieve the “more ambitious goal of fairness”<sup>146</sup>. In this principle resides a maximum as any improvement would necessarily benefit the worst off, thereby securing a strict egalitarian proceduralist account. By establishing flexible maxima and minima relative to their difference, the republican can argue for a striving of equal standing in the market. Nevertheless, Panitch argues that necessary goods such as education and healthcare can still be commodified once sufficient meaningful access is secured.

Panitch argues that these are “governed by a principle of sufficiency that permits their sale only once they are no longer needed”<sup>147</sup>. Panitch argues that as long as healthcare can “maintain our capacity to be a normal member of society”<sup>148</sup>, it can be commodified, though one can wonder whether republicans should follow in suit. We have stated earlier that need and equality are primary virtues of healthcare. And indeed, if there were no qualitative differences between private and publicly provided healthcare (in whatever form) then this would indeed raise little issue. However, scrutiny can be placed on the reliability of this claim. Market allocation brings not only efficiency and freedom, but also status, and in the case of health care, this can be regarded as an accumulation of wealth and expertise. Good physicians can find prosperity by working at the most efficient and lucrative medical practice, and though sufficient access to these practices can be secured for all, one should really wonder whether the option for disparate qualitative care would be agreed to by all considering fairness.

The case of education sheds more light on this issue while also providing an important problem of privatising some necessary goods beyond sufficiency. One crucial element of the republican conception is not only that of actively authenticating the principles of justice through reasonability and rationality, but more importantly doing so in equal standing. Though two fools may indeed fail to reach the minimum requirements of necessary epistemological powers (as supported by Sen’s minimal capabilities), two wise citizens may still fail the republican ideal. The ability to reason on the laws of society, and the wit to be competently wary of domination, relies not only on the complexity of the principles of justice, but they are also crucially tied to the knowledge and power of the other citizens. Especially in education in the political, social and moral capacities, citizens must be equally equipped so as not to allow the opportunity of domination. As two wise citizens may both be able to reason on the principles of justice, it is no more than fair to say that the one could nonetheless be superiorly educated in ratio and reason. Therefore, education must indeed be sufficiently supplied but any society must be wary of possible disparities within the realm of education.<sup>149</sup>

This concern of inequality is not without merit when considering the privatisation of goods such as healthcare and education. As Nassim Taleb argues in *Skin in the Game*, there needs to be symmetry in the contributions and consequences in particular goods. The argument goes that though regulation may indeed assure cooperation to ensure sufficiency of, say education, there will always be those that circumvent or abuse regulations to their own benefit. Instead, Taleb argues for the notion of skin in the game where liability accompanies risk, ‘an existential commitment’ through which quality is ensured. Taleb clarifies his notion with the idea that someone must design a plane, only to be a passenger themselves.<sup>150</sup> This necessary

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<sup>144</sup> Ibid. 71.

<sup>145</sup> The effectiveness of any minimal assurance of wealth or power (UBI) will be dependent on its maximum. Though one can be ensured of a certain amount of wealth, this can be in such a meagre relation to its juxtaposition that one nevertheless becomes dependent on the arbitrary will of another.

<sup>146</sup> Panitch, “Liberalism, Commodification, and Justice”, 72.

<sup>147</sup> Ibid. 68.

<sup>148</sup> Ibid. 73.

<sup>149</sup> See Appendix 4.

<sup>150</sup> Nassim Nicholas Taleb, *Skin In The Game* (New York: Random House, 2018), 35.

participation would prevent people from cutting funds for public schools or hospitals if they and their children had skin in the game. This argument rightfully doubts the capacity to maintain equal standing when those without skin in the game would not be affected by deteriorations in the public good, and thereby open the door for a diminished contribution. This would require that education and healthcare be protected against the market so as to assure appropriate commitment to the universal quality of these goods.

I therefore hold a republican stance arguing that with an egalitarian redistributive pattern, civic and necessary goods cannot be allowed to be distributed via the market as this would disrupt the assurance of non-domination in society. Before we move on to physical goods, we should explicitly note the interesting inclusion of environmental goods. Assuming that environmental goods are necessary in nature, they become a crucial good to assure any civic or natural existence. It should be clear that environmental goods therefore necessarily require sufficiency, in the sense that they must be protected so as to minimise natural disruption. This would mean that environmental goods were rationed or even withheld from trade up to a point so as to assure that the principles of justice, and society as a whole, can persist and not digress into worse states that may distort or disable any pursuit of justice<sup>151</sup>.

Lastly, as Panitch states, physical goods are unique among domains as “we laud their gift-exchange [while] we decry their commercialization.”<sup>152</sup> In line with Satz, I have argued that in some markets, such as kidneys, sex and commercial surrogacy, the ability to remove all desperation (for family, intimacy, or time) can be particularly difficult. Though this may indeed give some cause to be cautionary towards any market such as this, Panitch additionally offers two other arguments. First, Panitch follows Satz in the fact that some practices (especially those of sex) diminish the social standing of certain groups in society. We have seen that though prostitution can marginalise women and reinforce the subjugated social image of women, however Brennan and Jaworski claim that these attitudes are contingent and that these can be changed. Panitch holds that though this in fact may be true, changing attitudes is not so simple, and he argues that perhaps a change in attitude is not an “alternative to a change in law, but rather a corollary thereof.”<sup>153</sup> Though this argument may not hold, the second argument made by Panitch offers a much more troubling issue for any market in physical goods. Panitch argues in line with Satz that the commodification of physical goods has an issue of enforceability. If a contract were voided, and a kidney or child were expected by the opposing party, the enforcement of such a contract would be considered a grave violation of their personal liberties. Panitch notes that “[w]hen it comes to the body, consent must be ongoing.”<sup>154</sup> A market in such goods would cause serious issue as to their enforceability (even if compensation were an option), as the good itself is fundamentally tied to the agent’s most innate rights that none would reasonably waive.

Therefore, Panitch provides a way for the republican to establish moral limits to the commodification of civic, necessary and physical goods as market allocation can conflict with the virtues assuring the ability to be one’s own master, and stand equal to others as active and authenticating members.

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<sup>151</sup> See Appendix 5.

<sup>152</sup> Panitch, “Liberalism, Commodification, and Justice”, 73.

<sup>153</sup> Ibid. 78.

<sup>154</sup> Panitch, “Liberalism, Commodification, and Justice”, 75.

# Conclusion

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At the outset of this thesis, we encountered two prominent forms of objections to the market. Firstly, Satz and Sandel argued that equal standing ought to be a prime virtue in the discussion of commodification. Secondly, Sandel posed the essentialist (and semiotic) argument of intrinsic value which holds that some goods ought not to be sold since this would either corrupt their intrinsic value, or express a certain inappropriate valuation or appreciation of that good. Whereas proponents of the market invoke the notion of freedom as normative claim to markets with less restrictions, however, Satz and Sandel criticise ‘unbound’ markets for this same reason, claiming it to undermine the ability to stand as free equals in society.

We investigated the virtue of freedom and its relation to equality, finding that the negative natural notion of freedom as non-interference necessarily collapses to a more robust form which consequently fails to establish its proper equilibrium. We have seen that republicanism can offer a robust theory of freedom as independence—to not be subject to any will in their beings and doings but their own—which can more competently explain the notions of freedom, equality, and its paradigmatic case of the benevolent master. To translate this virtue of independence to a civil form, we can follow Rawls’ principles of justice as it provides a framework for the notion of equal standing, and can support intrinsic restrictions of the market in certain spheres. We can find that social and honorific goods such as friendship or prizes cannot be commodified without corrupting their essential meaning. Further, the commodification of civic goods conflicts with the first (and the first part of the second) principle of justice which not only demands basic liberties that are crucial for active and authenticating members of the state, but additionally requires equal opportunity to public office, denying the market and assigning other allocative virtues. Necessary goods as supported by the difference principle can provide sufficiency, but additionally establishes a maximin which strives for fairness and equal standing. And though discussions can be held on potential commodification of some necessary goods, healthcare, education and environmental goods cannot be commodified as unequal shares would undermine the principles of justice and be a threat to independence or hold unequal regard in the face of autonomy and death. Lastly, concerning physical goods, the enforcement of any contract of this nature could conflict with the central liberties that would be agreed upon by reasonable and rational agents and implying that a pervasive market would impede the ability to stand as equals. The difficulty of continual consent, body security and irremovable lack of agency or needs can place severe scrutiny on the intrusion of the market in this domain.

It should once again be noted that this criticism regards market allocation systems, and not all monetary or good transactions. As stated earlier, a gift economy may enable people to be surrogates for their friends, who may give them a gratuity in return. However, since these gifts would be given regardless of the presence of money, and they do not follow any market valuation of that good, it may not conflict with our equal standing. Nevertheless, markets in civic, necessary and physical goods should be banned or regulated depending on their appropriate effect. For instance, assuming background conditions are secured, a market in prostitution may be justified as an illegal market could still arise and be a sight of domination.

In conclusion, it should be clear that the moral limits of the market of equal standing and corruption as posed by Satz and Sandel can be supported by the republican ideal of independence following Rawls. Republicanism can provide additional shape to these moral limits of the market as they could argue that the domains of civic, necessary and physical goods, should be influenced by the market without impinging on robust principles of fairness. Further inquiry can be done into this tensions of negative natural freedom, and the MLM debate would profit from further examination into the domains, virtues and allocation methods. However, most importantly, it should be clear that the markets expansive influence in particular goods should be paid significant attention to as it can greatly influence our ability to stand as free equals. The market should not be seen as the default allocative method, but instead appropriated according to its justified reach.



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## Appendix

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- I. It should be noted that Satz does admit one particular essentialist, or semiotically, sympathetic noxious market, relating to prostitution and reproductive labour. Here Satz, claims that due to historical oppression and inequality towards women, with the considerable effect of certain negative projections of women as ‘sexual servants’ or ‘baby-machines’, it would be complicated to ensure a market in these categories without further propelling this image of women, being a detrimental factor to the ability to stand as equals. Though in hundreds of years we may indeed have moved beyond this idea and be able to have markets in sex and surrogacy without such issues, it would be hard to ignore such significant societal standings now. Thereby, though not truly a essentialist valuation of these goods, it does attain such a form for the time being in Satz’ theory.
- II. An interesting note can be made with regard to ‘the absence of fear’ and ‘the perception of safety’ that republicans hold as “part and parcel of the concept of liberty” (Spector, 798). Though not acknowledged as element of freedom, Hobbes does note that the motivation for the social contract originates from the possible state of peace that lifts people from that horrid state of “continual fear, and danger of violent death” as indeed “the nature of foul weather, lieth not in a shower or two of rain; but in an inclination thereto of many days together: so the nature of war, consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary.” (*Leviathan*, Chapter 13:8). Here we can read Hobbes to align himself with the rejection of a freedom based state and recognise and qualify notions of reciprocity or at least assurance of peace as foundational elements of a state and recognise somewhat ‘positive’ values. As though where Locke can be found to state “*where there is no Law, there is no Freedom*” (*Second Treatise of Government*, section 57, 29), Hobbes may be read to insinuate that without Law, there can be no Peace. And though one would indeed give up their absolute freedom through the contract, it should be clear that Peace gains priority in Hobbes’ social contract and that perhaps that whichever can help ensure stability and peace can be preferred over its loss of freedom (to a certain extent).
- III. Charles Larmore denotes an interesting distinction on how republicans view collective self-government in relation to freedom. Spector categorises this positive civic freedom as a part of republican theory, however Larmore states that some consider this issue more valuable than others. Larmore, following Pettit, distinguishes Neo-Athenian and Neo-Roman republicans, each with their own valuation of this form of freedom. The former, with advocates such as Sandel and Arendt, “identify freedom with self-rule because they regard political life [...] as the primary domain in which the virtues are exercised and the human good achieved.” (101) Neo-Romans such as Pettit however, merely view self-rule as a promising tool and precondition to achieve just laws and securing republican freedom, regarding it as an ‘essential means’ instead of a ‘privileged expression’. (Larmore, 102)
- IV. In Colin Macleod’s discussion of non-domination in relation to education he mentions some valuable shortcomings of the republican form of freedom. Firstly, Macleod notes that this notion lacks applicability. For instance, though non-domination can be promoted in the sense of providing the tools to become their own active and authenticating master, children’s independence will regularly be affected by adult intervention as they purport to adhere to interests children do not yet comprehend to have. As Macleod notes, “[w]e cannot maximize the freedom of persons who have not yet acquired the agential competency on which the idea of republican freedom depends.” (Macleod, 464). Furthermore, Macleod questions the completeness of non-domination as there are many other facets to education (for instance notions of safety and pleasant school experience) that may not interfere with one’s autonomy, yet is nevertheless a crucial element in children’s educational experience. Lastly, Macleod mentions the issue that there remains options for exclusion among even when there is no domination. Macleod brings in Pettit who defends the *intensity* of ones choice-sets, the *extent* need not be equally secured. As example Macleod poses two children, Alan and Beth with parents of differing wealth. Whereas Alan may have a better education due to wealthier parents, Macleod claims that the parents choice to use their extra wealth for more educational opportunities does not put Beth at the mercy of anyone’s will and that therefore independence can fall short of a fully egalitarian theory. Though it is not my intention to fully refute this account (and indeed much work still needs to be done on republican educational theory), but much work can be done by acknowledging a more pluralistic view of society. Firstly, Beth may not directly be subject to another’s will, this can still occur due to Alan’s greater agency and opportunities. But more importantly, even if freedom as independence is somehow absent, other virtues in education, such as equal opportunity or merit, can still conflict with the privatisation of education.

- V. With regards to environmental goods, the notion of skin in the game may be able to help here to as the realisation of interdependency would perhaps motivate people more towards supporting sustainable practices. However, it is important to note (as for instance the Summers memo shows), that polluters have actively tried to take themselves out of the game leading to risk-less trading. This issue and intergenerational justification may lead people to object to ‘overtly’ stringent limits, but it should be no more than reasonable to ensure sufficient sustainability and shared skin in the game.
- A. However, not all environmental spoilage falls under the reciprocal principles of justice. For instance, the issue of intergenerational justice has been widely discussed and problems remain concerning the strength of an intergenerational contract. Some may aim to defend an intrinsic notion of nature, and this could indeed be considered regarding some innate striving to live (endeavour as Hobbes may say) in some sense, but an intergenerational contract may be sufficient to provide limits on the buying and selling of environmental goods (Tomasi, *Free Market Fairness*, 257).
- VI. Another interesting parallel to note is the tension of global moral limits of the market. It is a well known issue that any law passed will necessarily be bound to the reach of the state. Though much can be said on a global contract or cosmopolitanism, it should be noted that even Hobbes, who permits the sovereign with extensive authority for self-preservation, can be read to praise and promote a global contract in the pursuit of peace and prosperity. Such a non-standard reading has for instance been provided by Larry May who shows that the International Criminal Court can be defended from a Hobbesian account. Kant has also given arguments for the eventual move towards a global contract, even positing strong economical points. As Hobbes, so does Kant regard states to stand to one another as people do in the state of nature, and therefore both argue that a mutually beneficial move towards a global contract is necessary. Currently, markets have transgressed the bounds of the state, yet the reach and sphere of the market is still relatively disparate. Further inquiry is necessary, however, appropriate global limitations on markets may be fortuitous to the peace and prosperity of individual states and its people, and a necessary future development due to its economical and virtuous possibility.