Beyond Liberty Alone

A Progressive Vision of Freedom

and Capitalism in America

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To my wife, Carroll,
who brings out the best in me.

Contents

GDP, the more it is consuming resources, the more wealth it produces, and therefore the more wealth it should pay back. The dollars raised in this payback should be paid to those countries who have lower GDP and who embrace a similar political philosophy in their constitutions. States themselves should not be the recipient of this repayment or equity payment. It should be distributed to nonprofit organizations that work locally in states to help those who need the most help.

To summarize, we have seen that the traditional definition of the state as an institution that serves to protect the lives, liberties, and properties of its citizens is too limited. That notion of the state assumed that properties came about rightfully and fairly in history and ignored the fact that conquest and violence have always been in the history of the human species and that where individuals labor they do so on the backs of thousands before them. For these reasons, the distribution of properties by individuals and states cannot be thought to be fair. Since individuals are born into a state with a set of obligations to pay back their debt to the past, the state shares in that obligation to history. What we have in part has always been on loan from our ancestors and the human capitalists who invested in us from the past. We have an obligation to pay back their heirs, who are our contemporaries. This means that we each carry a debt that we must fulfill and that the state in which we live carries our collective debts as citizens. We labor to support ourselves and create lives of enjoyment. But we labor too to pay off a debt, and because we are beings with moral aspirations.

Chapter 9
Beyond Economists as the Priests of Liberty

It is a common refrain today among some that governments should not overregulate economies or markets, just as they should not overregulate people's lives. Both forms of intervention infringe on liberty, and both undermine the economic well-being of the world. This argument is often presented as an argument for protecting individual liberty and has two different flavors or variations, which are interrelated in various ways and are often used to justify each other. One argument says that free markets are a right like other rights of life, liberty, and property. We have a right to sell to whom we want and at what price we want, just as we have a right to our lives, liberty, and properties. Regulation of markets interferes with one of our key liberties, related to our liberty to do what we want with our property and to our liberty in general.[1]

The other argument holds that free markets create economic prosperity and are right and good for a liberal society because they help create and perpetuate liberty and justice. In this version of the argument, the consequence of free markets and an absence of regulation has consequences that are critical to the flourishing of liberty. Economic prosperity is an end in itself, and it also supports a life that embraces liberty.

Sometimes both of these positions are used together, sometimes one or the other. Both use the language of liberty but come at liberty from different perspectives. As we shall now see, however, both have misleading ideas of liberty and distort the liberty tradition in critical ways. Let us dive into these positions in more detail.

Take the first variation of the free market argument, which claims that economic liberty is part and parcel of liberty itself. To protect liberty requires enabling markets and economies to function as freely as possible. You can't have liberty without market liberty. Some of the people who hold this view refer to themselves as "market liberals."[2] In this view, economic freedom is a right just like other kinds of freedoms. Liberty, in other words, by definition includes economic freedom, just as it includes the right to life, liberty, and property. Economic liberty is thus part of the definition of what liberty is and means. It is part of the rights of "liberty" and "property." Milton Friedman, one of the most well-known proponents of this position, put it this way: "underlying most arguments against the free market is a lack of belief in freedom itself," and "freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself."[3] As we shall see below, this position is wrong in several critical respects. To say liberty by definition includes free markets is not to defend liberty but to become dictatorial by mandating a single position on markets and imposing a set of values by fiat. By contrast, liberty should be understood as giving the right for liberal societies to decide how much freedom to give markets, understanding that that decision is a moral one and that efficiency is not the only value in town.

The second flavor of the argument contends that the liberty of markets is critical for the growth of the economy, wealth, and human prosperity. This argument is utilitarian or "consequentialist" in nature, and it makes the assumption that the material benefits of free markets are superior to the benefits of a regulated economy. Furthermore, because human flourishing is critical to liberty, the freedom of markets is important for the achievement of liberty.

This view traces its history back to the economic insights of Adam Smith's *Wealth of Nations*, in which Smith argued that an "invisible hand" guides the exchanges of the market. By "invisible hand," Smith identified how markets efficiently set prices by the level of demand for goods

and services through the thousands of minute exchanges between individuals as they pursued their own individual self-interests. There were several key notions in Smith's work that set the foundation for modern economics, which was built upon Smith's insights. The first was that markets could efficiently regulate the prices of goods and labor without help. Second, the idea that individuals each pursuing their own interests generated not something bad, but a fair exchange of value in the market contrasted with earlier religious views that goods had fixed fair prices based on intrinsic value and that setting too high a price was "usury." On Smith's economic model, the implication was that individuals could pursue their own economic interests wholeheartedly without acting immorally. On the contrary, by pursuing their individual personal interests, they were helping everyone and doing good.

In calling the market mechanisms an "invisible hand," Smith perhaps somewhat unknowingly put the market itself symbolically in the place previously occupied by "God." The market took the omniscient position, or "God's-eye" view, above the fray of thousands of transactions and ultimately set the fair price of a good. For devotees of Smith, since the market is thought to be "omniscient," or at least smarter than governments, it is right for governments to let markets manage themselves. Governments that intervene in markets destroy a market's equilibrium and their ability to adjust and maximize productivity, innovation, and wealth, and such interventions therefore unintentionally undermine the prosperity and happiness of individuals. Philosophers and writers such as Friedrich Hayek, Ayn Rand, and more recently Richard Epstein are among those who have articulated this kind of utilitarian justification of economic liberty. They argue that to limit markets is to undermine human motivation, stultify economic growth, and thereby curtail general human prosperity and happiness. The way to deal with the uneven distribution of resources and wealth is to let the markets operate freely, for by growing markets, more knowledge and benefits will be produced, raising all boats on the rising tide of human advancement. By contrast, redistributing wealth destroys productivity and motivation and ultimately harms everyone by denying growth, opportunity, and future knowledge.

In this approach, the justification of free markets is that the overall benefits to the majority outweigh any individual costs. More overall satisfaction and happiness are produced than would be the case otherwise. More medicines, scientific advances, technological breakthroughs, and overall growth are achieved, leading to more enjoyment, health, and longevity. While the assumption is that individuals who work hard will improve their situations, the end game is not to worry about individuals per se, nor even their rights. The end game is to let things improve overall and for individuals to fend for themselves in this growing pie of more opportunity and better conditions of life.

There are thus two very different philosophical justifications for why governments should stay out of the business of regulating markets. Both link themselves to the concept of liberty in different ways. Those who lean on one do not always buy the arguments of the other. Those who argue from the utility of markets do not always think the concepts of rights make sense.[4] However, because both positions agree that markets should be unregulated as much as possible, there is a political coalition among those who otherwise disagree on a more fundamental assumption. Indeed, market liberals disagree among themselves on whether governments should get involved in other nonmarket matters such as forbidding abortion, defining marriage, and so forth. Libertarian-leaning market liberals tend to want government to get out of the business of enforcing any kinds of moral values and leave such decisions to individuals, though even some of them think government should regulate and forbid abortion. Market liberals who lean on rights arguments often speak with a social and religious conservatism that wants government to stay out of economic markets but to get involved in a set of moral restrictions (such as making it illegal to burn a flag or refuse to say the Pledge to Allegiance, or to have an abortion or a gay marriage).

Rethinking Liberty and Free Markets

In what follows, we see that both of these arguments about market freedom are confused and conflate the question of liberty inappropriately

with the question of markets. To begin with, liberty and markets intersect and touch each other but are not the same matter. One can fiercely defend the concept of liberty but still advocate for various kinds of interventions in markets. This is not a contradiction in terms. Indeed, various kinds of interventions in the market are necessary for liberty, and the decision of whether and in what ways to regulate markets is itself part of what it means to live in a liberal society. This is not a position that free market proponents recognize, for they tend to see any intervention in the market as incompatible with liberty. In framing the relationship of liberty and markets in this alternative way, we have turned the free market story on its head. *We believe liberty itself includes the right to decide how much latitude or freedom to allow the market.* Indeed, to take away that freedom by trying to mandate and prescribe a set relationship between government and markets is to deny liberty itself. In other words, to impose free markets and to insist they are not a choice, but a mandate of liberty, is as much an imposition as the imposition of socialism would be. Insisting that governments cannot intervene in markets is tantamount to saying that we cannot try to live our lives by deeply held values and morals.

There are three different pillars on which this alternative understanding of markets and liberty rests. The first pillar is to dethrone economists as the priests of modernity and the source of truth about morality. Economists are good at economics, though they don't all agree on economic theory either. More important, they are not superior to the rest of us at morality and values and, by extension, how to define liberty. Indeed, they risk having moral blinders on precisely because they filter everything through an economist's lens. Economics is only one way of seeing moral questions. It is therefore important to separate economic questions from the questions of morality and see them as two different but intersecting sets of inquiries and knowledge.

The second pillar of our alternative position is to realize that for markets to exist and function well in the first place, they require law and regulation. It is a stable society with a government and laws that makes markets and liberty possible. When there is war or panic, markets don't function well or at all. In other words, governments and intervention help to create stable and prosperous markets. This is a point that often our opponents overlook as they try to insist that regulations are against liberty.

The third related pillar involves understanding how values do and should enter into decisions about the market. To take a position on market intervention is to take a position on a set of values. We don't believe everything should be for sale, such as human lives, for example. Nor do we think people should be sold into slavery. We believe markets should have limits based on values that are themselves part of what we understand liberty to be. And if we recognize limits on selling some things, then we recognize the relevance of values to limiting markets in general. The question is thus when and why to invoke values to set limits on markets. All of these points show us that ultimately liberty gives us the freedom to decide how much we want markets to be free and in what ways and for what reasons. Let us take these points up in turn.

Beyond the Economist as Priest

It is one symptom of our moral decay in the modern world that the economist is often treated like a priest in the medieval Catholic Church. I say this partly tongue-in-cheek but also partly in seriousness too. The professional economist has emerged as the source of values and truth by which we should run our liberal societies. Indeed, economists are often the very favorite spokespersons and authorities of those who hold the liberty-first position, although progressives pay way too much attention to them as well.[5] The notion that free markets are best for prosperity or equivalent to liberty is really a political and moral position that rests on economic models of well-being, human nature, and truth. In putting our modern faith in professors of economics as the source of truth and wisdom, we have abandoned much of our own individual moral judgments and intuitions about what's right, and left them in the hands of a class of professionals who argue from abstract mathematical models that are a mumbo jumbo few of us noneconomists can understand. This

"arithomania," as one economist calls it, is just as inaccessible to the average person as the Catholic Latin mass was to the early modern Catholic laity before the Reformation.[6]

I use the analogy of the economists and priests intentionally as more than simply an interesting metaphor. Among our proponents, professors of economics are playing a role similar to priests in the medieval church. The economist is to the market as the priest was to God. Only economists are thought capable of discerning the true inner workings of the omniscient market, which laity cannot possibly understand. People like you and me have nothing meaningful to contribute and should abandon our own individual intuitions and listen to the professional class. We are told to 1) trust the economists who are the source of truth, even though 2) we can't understand their abstract mathematical models, and even though 3) there is evidence that contradicts their claims. We are told too to 4) ignore our own moral intuitions and judgments in favor of their rendition of truth. All of this of course fell apart for the Catholic Church when Luther and the Reformation came along and said that 1) the church is corrupt and serves its own interests, and 2) the relationship between religious and moral life is between an individual and God; a professional class should not dictate our consciences and moral insights.

Economists are not the first type of scientists to have this near-religious status accorded to them in the modern period, though they are perhaps the last to be dethroned from the position. After the Reformation questioned the Catholic Church's monopoly on knowledge, thinkers in the modern tradition turned to science and rationalism as an alternative source of truth. As discussed earlier, philosophers thought they could discern moral truths through the methodologies of science. Modern natural rights thinkers were among those trying to found a human morality on reason and the science of the human being, a project that ultimately failed by nearly all accounts.

There is general agreement among university academics, for example, that the social sciences and humanities have been unable to achieve the same level of certainty that was theoretically possible in the natural sciences, though even the certainty of natural sciences is questioned among some historians as well. Most sociologists, anthropologists, and psychologists would say that the social and human sciences have been unable to discover and likely will never discover laws of human behavior. Instead these disciplines provide insights into the factors shaping human behavior and ways of seeing ourselves and our societies that change and deepen our self-understanding. Economists, however, still pretend to be more like natural scientists than social scientists and put on the air of discovering laws of economic behavior that are as true as laws governing the natural world. For this reason, many people listen to the pronouncements of economists as gospel truth and discount their own moral intuitions that tell us that matters are not right the way they are. In the meantime, we mistake economic theories for moral blueprints about the nature of human beings and our moral obligations.

What is needed for us is a new reformation that dethrones the economists as the priests of our generation. We should see economists as having one interesting angle on truth, but not the only or necessarily best one. Let economists pronounce insights on the economy, but let us *not* turn to economics for insights on morality, justice, and liberty. Our ethicists, historians, psychologists, sociologists, and religious leaders all represent other voices and perspectives on how we should see ourselves and the societies we live in. Those voices emphasize other values and responsibilities that we humans have, based on our moral and religious traditions and based on other analyses of human society and human character.

The first step is to realize that economics has the capacity to harden the heart of the human being precisely in its inclination to view all issues in numbers only and to flatten the complexity of the human being. At the core of traditional economic models are mathematical models and ideal types of the "rational man" (or at times the "rational person"), who is said to act from his personal self-interest, or what economics summarize under the term "utility." The man or person behind the economic models is "half a man" or half a person who acts out of rational self-interest but is not motivated by other dimensions of the person or soul, such as altruism, love, compassion, or duty.[7] If these other dimensions of the person are acknowledged by economic theory, they are reduced to utility as well.

A person is said to be altruistic only because he or she gets benefits or pleasure from it. But the reasoning is circular, for it assumes that anything I do is from my self-interest, and thus it cannot explain why one person's self-interest is in helping others and in selfless behavior whereas another's is in dominating others or building wealth. The rational person model may work as an ideal type for economic models, though it has been criticized from various quarters for portraying a one-dimensional person who pursues only utility. The economic model also fails to grasp the complexity of the psyche and the ways that people's behaviors are shaped by complex nonrational currents in the human personality or "soul," an insight from psychologists for which economic models cannot account.[8] Even if this image of the rational person seeking utility works as a heuristic and predictive basis for economic models, it does not necessarily provide a blueprint for morality and human relations. Economic models provide insights only for economic facts, but not for understanding what human obligation and duty should be. The move from facts to obligations and duties is the business of other human disciplines, such as ethics, religion, and political philosophy. Economic facts are not recipes for human behavior. They are maps of the landscape, perhaps, but not driving directions for a destination.

Even the father of economics, Adam Smith, author of *The Wealth of Nations*, seemed to intuit such a bifurcation between economics and morality, a fact noted by some economists who see the limitations of economic theory.[9] It is not widely known outside academic circles that before writing *The Wealth of Nations*, Smith wrote a completely separate treatise on morality called *A Theory of Moral Sentiments*. In that context, Smith's conclusions about moral inclinations and obligation were not derived from his economic theories of self-interest but from the concept of sympathy, a concept that plays little role in his later economic analysis. In the start of that book, he wrote: "How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortunes of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it."[10] This attempt to characterize the instinctual nature of care in the human character suggests that even the father of modern economics glimpsed the limits of economic theory for understanding human character. A similar point is being made here. Economics can generate facts that moralists, ethicists, and philosophers should consider and weigh. But it cannot and should not tell us what our obligations and responsibilities are with respect to those facts. For our moral duties and responsibilities arise from our deeply held convictions about what we understand human beings to be and how we weigh different choices about what matter. It is debatable whether any theory can prove that these deeply held convictions are true in some natural and absolute sense.

There are several reasons that economists have no special standing on the question of morality. The first reason is that their theories can only produce facts that are relevant to moral theories, but they are not moral theories themselves. Moral theories are claims about what values matter and why. Moral theories postulate a position about what humans are and should be, based on a set of founding assumptions. These founding assumptions may include ideas about human nature, God, duty, obligation, and so on. For example, the claim that we are all created equal in value is a moral theory that has been, and I believe should be, at the foundation of our understanding of liberty. How that founding assumption should be interpreted and what it means is still up for debate. Economists can't tell us whether we should treat humans equally or not, nor can they tell us how we should interpret that modern position. They can only give us guidance about the consequences of various kinds of economic decisions. But they have no special expertise or standing in helping us draw moral conclusions because their expertise is in economics, not morality.

To make matters worse, economists as a class do not seem able to predict economic outcomes nor to even come to agreement on the causes of economic phenomena. Events such as the Great Depression, as an example, are subject to conflicting interpretations of their primary causes. One perspective, put forward by John Maynard Keynes, interprets the Great Depression as resulting from the instabilities inherent in modern capitalist economies and a failure of government response. In this view, there are many reasons why the self-correcting mechanisms that many

economists claim should work during a downturn may not work. From this position arose the view that government should intervene to stimulate the economy and to counter market failures. The other position, put forward most forcibly by Milton Friedman and Ann Schwartz, interprets the Great Depression as a crisis that was deepened by the monetary policy mistakes of the inept Federal Reserve.[11] In this view, it was not primarily the failure of markets that was the cause of the crisis, but the way government responded to markets. As is evident, there are economists on both sides of the story, and alternative explanations as well, showing that a neutral science of economics is not ultimately likely to solve our political disagreements. Each political perspective has economists in support. In some ways, this failure to agree among economists should come as no surprise. Like other human sciences, there seems to be a fundamental inability to discover laws and predict outcomes with consistency or to agree on policies.[12] To rely on economists because they are economists, and not just people like you and me, would be a double mistake. It would be a mistake first because they have no special moral insight, and second because they wear particular moral blinders in looking at decisions through an economic lens only, a lens that posits only a one-dimensional person who acts only out of rational self-interest.

A critique of the traditional abstract economic models has come from a subset of economists themselves as well as from other disciplines of the human sciences. While traditional economic models may be useful for predicting economic outcomes, dubious though that may be, humans are more complex beings than economists posit, with other layers of their psychologies, needs, and souls. Self-interest is only one motivator of human behavior. Sometimes humans do things destructive of their self-interest, an insight understood by premodern religions and rediscovered by modern depth psychology, after Adam Smith. Humans are also altruistic in various kinds of contexts, such as the family and the household and even sometimes at work.[13] Altruism, care, and empathy have not traditionally been lenses built into economic models. In fact, economic analysis has been built on abstract mathematical models of analysis. However, just because an idea is couched in math and is incomprehensible to the average person does not mean it is right. Indeed, mathematical reasoning has the weakness of abstracting away from the concrete nuances of real-life situations. "Nature, childhood, bodily needs, and human connectedness" are cut off and remain safely out of sight.[14] The whole economy of "care" involving women in the household, teachers, nurses, caretakers, providers, and other "feminine" labeled roles, has until recently been ignored for this reason by economists. The point is that the economic models themselves are open to criticism for being one-dimensional, underplaying the complexity of human beings, and using tools of analysis that may not tell the whole or correct story. One has to be an academic and mathematician to even engage in the debate at this level. That tendency is a problem too, for economics tries to sideline the average person's normal moral intuitions as individuals and tell us not to worry about our stirrings of compassion, care, altruism, and responsibility in favor of abstract models we cannot understand or critique. It is the message of our economic priests.

Since there are conflicting interpretations of economic events in the past, the predictive and explanatory ability of economics as a science is in doubt, and we must take the conclusions of economists with a grain of salt. For the reasons described above, economists should be seen as offering a set of insights that should be weighed in the process of deciding what kinds of regulations to make in the market. But they should not have a veto, and their guidance should be set alongside our own moral values and judgments that sometimes must trump those that pretend to be science. This leads us to the second pillar of our argument: prosperous markets invariably rest on regulation and intervention by definition.

Markets by Definition Rest on Regulation

Those who espouse free markets either forget or hide the fact that markets themselves thrive on a foundation of law and regulation and a decently strong and liberal government. Markets of course can exist without any government or regulation at all. People can barter with each other as well as buy and sell even if there is no government present. But what makes more complex markets work well and flourish are the security of a population and the predictability of laws and contracts that bind them in their transactions. Well-functioning markets require and presuppose a government that protects a population from threats from outside and enforces contracts and laws on those on the inside. This seems so self-evident that it is almost embarrassing to have to say it. But often the stability provided by a government, by laws and regulations, and by a judicial system that is enforced fades into the background and is forgotten by those who now take it for granted. Only then can people say "the market should be left alone and free." Yet that position appears plausible only to those who have forgotten how much government and regulation have made the peaceful functioning of a society and its markets possible in the first place. All of this becomes terribly apparent if a people or country sinks into war. War devastates commerce and markets. The lack of a stable society prevents investment from businesses and undermines the security of contracts. The lack of predictable and enforceable laws has the same effect, which is why countries that are lawless cannot sustain economic prosperity.

Indeed, except in a simple barter economy, markets depend on the predictability of contracts. This is because we make all kinds of exchanges where the delivery of payments or goods is delayed beyond an immediate exchange. Such "delayed gratification" is the key to the foundation of more complex and prosperous capitalist economies. We would not make such exchanges if we could not be relatively certain that the payment or the promised goods will be delivered. Without trust or enforceable contracts, we would need markets where delivery and payment occurred at the same time. Even when money is in use in an economy, commerce relies on a dependable currency that requires a stable and peaceful existence and sufficient economic reliability to trust in the currency itself. This is why some theorists see the institution of a contract as the very basis of social life itself.[15] While trust can be the foundation of exchanges between those we know and are intimate with, such as friends and family members, contracts that are governed by law and enforceable by courts and ultimately police powers are required to enable secure exchange between those who are otherwise anonymous to each other.[16] The contract is thus the extension and replacement of either "immediate exchange" or "trust." It allows people to feel protected in their commercial activities without knowing the person with whom they do business. Law and contract are the substitute for trust among people who do not know each other.

In this sense, the market is like liberty itself in having two sides or dimensions. There is a side of liberty that is defined by my privileges and protections of my rights. This side of liberty gives me moral entitlements to do things without interference and imposes a legally enforced boundary, backed up by power, on what others can do to me or my things. The second side of liberty is what I have to give up or sacrifice so that other people can have their rights protected as well. We talked about this paradox of liberty at the start of this book. My liberty implies your restriction, and your liberty implies my restriction. Liberty cuts both ways. My liberties are protected only because you have restrictions in those same areas. Markets are the same way. What appears as the freedom of exchange in markets is only made possible by a set of restrictions that defines and enforces contracts and prevents their violations. Markets come into being through the set of laws and powers that make contracts predictable and secure. The presence of a stable set of predictable laws, a judicial system, and a police power to enforce them are required to make commerce secure and prosperous.

We thus get the benefits of free markets only because there are very serious limitations on what is permitted and not permitted. Markets have a whole host of contract law behind them that specifies rules for selling and buying and doing business. Without contract law, the market could not function with confidence. The point is that good markets are made possible by good governments, both in the peaceful life that government can provide as well as through the sets of enforceable rules that replace trust among people who do not know each other well. What is often forgotten or buried in the claim that "liberty implies free markets" is the fact that both liberty itself and free markets themselves rest on a foundation of restrictions that make them possible in the first place. Government intervention is thus the mother of economic prosperity. Contract law is the foundation of free commerce.

When we understand government's presence as an enabler of fair markets, we see how misleading or simplistic it is to say that that "governments should stay out of markets" in order to protect liberty.[17] Well-functioning markets sit on top of government laws and enforcement by their very nature. These enabling regulations that make fair and free commerce possible are constrictions of economic exchange and thus limitations on liberty, just as the very laws that make societies possible limit liberty even as they make it possible. Both achieve their objective by forbidding certain behaviors and by using law backed up by force to achieve predictability. It is the confidence and trust born of the foundations that allow both liberty and markets to function at all.

The open question before us, therefore, is what kinds of regulations are best to produce the best kinds of markets and the best moral life possible. Reframing the issue this way shows that the issue is one of degree, not of kind. Regulation is necessary for markets to be prosperous and function well. But which regulations are best and why depends ultimately on what the goals are. As soon as we are in the question of degree, and not of kind, we are in the domain of values and judgment. In other words, the question at hand is not whether government should regulate markets, but by what criteria it should regulate them. Those economists such as Milton Friedman who claim that economic liberty is a right are missing the point and really saying nothing very meaningful. As with liberty itself, what we understand to be a right comes into being through restrictions on both ourselves and others that make that right possible. A right is nothing more than a protection or privilege made predictable by law. Without government intervention, there would not be the foundation for prosperous markets, and thus economic liberty is itself born out of regulation. Regulation can be said to produce liberty as much as limit it.

The claim that governments should not interfere in or regulate markets is thus exposed as a rhetorical smokescreen used to criticize certain specific types of governmental interventions that are disliked from within a particular political and philosophical perspective. The government interventions that are preferred or believed in are ignored and treated as background foundations, as if the intervention did not exist. By contrast, those interventions that are not liked are grouped under the category of intrusions and violations of liberty. The problem is that markets have no conscience, and when left on their own they violate our sense of justice and morality in various kinds of ways, as discussed next.

Markets Have No Conscience

Markets may have an omniscient view of economic transactions, but they are not God, for they lack a set of intrinsic values and a conscience. Markets are neither alive nor are they people, but instead represent abstractions of the outcomes of people's choices, which may be based on thousands of individuals transactions motivated by equally many motivations. But markets do have consequences and thus embody a set of values when left alone on their own. Thus, to not act on markets is to act. Or, to put it less cryptically, to not regulate markets is to endorse the consequences of markets and thus implicitly endorse a set of conditions that markets produce. To intervene in markets, by contrast, is to attempt to bring other human values and moral concerns into a process in which they are not present by default.

What values should determine which interventions are deemed acceptable and which are not? It is precisely this question that is at issue, and not the question of liberty itself, as proponents of free markets like to argue. In saying this, I am arguing that there is no neutral definition of liberty that exists above political interests and that does not already serve some group or groups' interests more than another. In other words, the very idea of liberty itself is a political concept whose very definition will ultimately serve to benefit certain people and interest groups more than others. This is an important point that is worth pausing to think about. The concept of "liberty" that is often presented as a "metapolitical" or "nonpolitical" commitment is in fact shot through with political implications. And the question of who benefits from which definition of liberty is precisely what is being debated, not the question of liberty itself. The liberty-first proponents and free market liberals try to position

any definition of liberty but their own as "nonliberty" or "socialism." They position their definition of liberty as the only definition and the one embraced by the American founders. At stake is the very question of whose version of liberty shall prevail.

There is no escaping the politicization of the liberty concept. What liberty means is caught up with the question of what interests the concept serves. And the very question of who is served or helped by which conception of liberty is itself contested and part of the debate of what liberty should mean. In other words, part of the question of liberty itself is how much freedom to give markets and why. To have the opportunity as a society to debate and decide how much freedom to give markets is itself part of the right of liberty. This turns on its head the claim of Milton Friedman that economic freedom is part of liberty. On the contrary, liberty includes the right to regulate markets.

The question at hand, therefore, is which interest groups will ultimately own the definition of liberty and the moral meaning of that definition. Many market liberals and liberty-first proponents claim that unfettered markets benefit everyone, that all boats are lifted on a rising tide. This is an argument from the consequences and utility of free markets. Those of us who have a responsibility-first view of liberty and see reasons for government to intervene in key ways in the economy see the free market argument as serving best the well-being of those who already hold wealth and belong to the capitalist class. In other words, the "free market" definition of liberty is a concept of liberty that promotes those who already are economically well to do at the expense of those who have fewer resources.

This alignment of the "liberty-first" or free market philosophy with the interests of the economically well-off explains in part how and why the philosophy has such strong appeal. It resonates with the institutions of late capitalist society and those who occupy positions of power in our systems. This philosophy of liberty fits snugly with the interests of business leaders, financial leaders, and other individuals who comprise the capitalist elites and work in business and financial institutions. It is a theory that endorses minimal government intervention in the economy and in the practices of business. But this explanation alone cannot be sufficient, for this theory of liberty also appeals to many people who lack resources and are not part of the capitalist elites. How do we make sense of this?

There may be many reasons. To begin with, one cannot discount the sheer power and success of the ideology itself, and the failure of liberals to successfully articulate an alternative theory of liberty that is progressive and resonates with the vision of America's founding. The Right and libertarians have built a propaganda machine over the last thirty years that places this view of liberty at its foundation and presents the theory as aligning with evangelical Christian morality and with the founding values of the American republic, which are viewed as compatible. The failure of progressives to successfully articulate an alternative view of liberty that aligns with an understanding of the founding and of Western religions and their willingness to relinquish the concept to conservatives explains in part why this theory of liberty has become so hard to contest. There simply are not many voices articulating a different way of understanding liberty itself.

But there may be other, deeper reasons that are harder to pry loose and render visible. The ideologies in late capitalism often act not only to represent the interests of capital but also to help stabilize and ameliorate the tensions in late capitalism itself. The conservative theory of liberty helps build ideological commitment to the capitalist system and gives laborers reason to overlook and downplay the very discrepancies of wealth that grow increasingly worse. The free market theory of liberty diverts their anger from the issues in free markets that are the source of the problem toward government, which is portrayed as the source of the problem. Ironically, the idea of liberty that justifies free markets is partly responsible for exacerbating the economic inequalities.[18]

The alternative perspective on liberty put forward in this work and by others who move along a similar path holds that certain human values must be brought into the market because in markets there are no values except efficiency and utility. Human values are for the most part "supra" market. Markets do not care about people or the environment. Markets

do not care at all really. And thus, when markets are allowed to operate as they would in an unconstrained manner, they do not inherently respect many of the values that we cherish.[19] What markets do very well is push efficiencies in the system. Markets figure out how much demand there is for a product or service and signal, through prices going up or down, that more or less of a product is needed. Markets help with competition that benefits consumers and helps spawn innovation. These are among the results that markets achieve well and for which they should be and have been appreciated. But there are many ways in which markets behave poorly, and if markets were children they would be disciplined for bad behavior.

The Markets in Human Beings

There are countless examples of how markets couldn't care less about certain human values and how laws, which impose values, must be brought to bear on markets. The most telling example, of course, is the market in slavery that existed (and still exists underground) until humans came to discern that protections of life, liberty, and property mattered and that humans should not sell each other nor treat each other as commodities. Markets themselves did not by themselves end slavery. In fact, markets were just as effective in setting prices and demand for slaves as they were with other commodities. It was the idea of liberty itself that gave birth over time to the value that humans should not be slaves. In other words, the interpretation of liberty and the values embedded in an understanding of liberty led to perhaps the most important limitation on markets that we now have. One may not trade in human beings, even if, paradoxically, those human beings wish to sell themselves.

Free market liberals who invoke a rights argument have no way to explain why human beings should not be sold as commodities unless they invoke values as superseding and trumping the idea of free markets.[20] The market system itself, apart from the humans who comprise it, has no way of discriminating between selling an apple, a boat, and a human being. These things all look like commodities if people see them as objects to sell. It is thus certain values that we bring to a market that determine what is a legitimate transaction and what is not acceptable. Most (though unfortunately not all) people today condemn slavery, thus acknowledging a consensus on a case where human moral commitments should trump the liberty of the market. In this case, we have an example where most people who endorse liberty today would agree that the market should be limited by human values, and in so doing we exercise our belief in liberty.

In recognizing the triumph of values over markets in one situation, the question naturally arises as to why and when values should trump market efficiencies in general. On what grounds do we say here that the efficiencies of the market don't matter and that other values triumph? This is really the issue at stake in the debate between the responsibility-led liberals and the free market or liberty-first liberals. The debate is not about liberty per se but about when and why to invoke values other than efficiency.

The answer among those like us who hold the "responsibility-first" position is that values should play a role in the regulation of markets to 1) minimize the suffering of those who cannot outwait the market, 2) protect the interest of those whom the market treats unfairly, 3) represent the interests of the species and thus future generations long term, and 4) pay back the debt to the human ancestors in general.[21]

The key idea here is that markets do not act fairly all by themselves. They do recognize and reward effort, talent, and ingenuity, to some extent. But they hurt people unevenly based on their differential impact on those with fewer resources. Markets need regulation to serve rather than trample on certain key human values. The ability and right to protect our values is part of what it means to live in a liberal society. Market liberals, of course, see regulation as trampling our liberties. But they have it all backward. It is the market that has the potential to trample our liberties, at least those who do not have enough wealth and resources to defend themselves against its mechanisms.

In this responsible view, government interventions are needed 1) to balance out the short-term tendencies of markets to ignore individuals

who a) lack resources and power and are b) disproportionally affected by downward market change, 2) to ensure benefits from the labor of past generations are shared across their descendants, and 3) to protect the rights of those who live in the future. In these situations, the interventions in the market are needed to introduce certain human values and to represent the rights and thus the liberties of those who have no market power. The core assumption here is that liberty is a power that can be exercised most when one has resources and wealth at one's disposal.[22] Since markets can trample individual liberty as much as governments, government intervention in markets is about protecting the life, liberty, and health of individuals from markets. Let us take up these ideas in more detail.

If a dictator comes along and says, "I will make everything better in the long run for everyone, but it will require us to reduce your income, take away your housing and job, or affect your health," we would scream that "our liberties are infringed." And we would scream both because we would not be confident in the result and because we might not agree the short-term costs are worth the long-term investment. Yet when markets do the same thing, they are treated as if they are protecting our liberties. The claim that free market advocates make about the beneficial consequences of markets depends on the consequences overall and in the long run. The claim is that markets provide the overall maximization of benefit or utility for the most people overall.

But this is wrongheaded in several different ways. First, it says the short-term negative impact on some individuals is acceptable for the long-term benefit of more people overall. But surely not everyone would agree with that trade-off, and especially those who are affected the worst in the short term or who may lack the resources or wealth to protect themselves from the short-term impact.[23] Indeed, those with less wealth and fewer resources are more negatively affected by downward market shifts in the short run than those with more wealth and resources. The obvious example is the loss of jobs in a down economy such as the "Great Recession" we just recently witnessed, which was the worst since the Great Depression. Those who are in lower-paying positions are more likely to be laid off and have less of a cushion to survive if they do lose their jobs. And because race and gender biases affect which groups have the lowest-paying positions, often the most damaging consequences of a downturn fall on women and minorities.

So suppose for a moment that the market is being efficient, though producing ups and downs in the short term, though over the long run prices will be better, there will be the right number of products on the market, and the production and invention of new products will have been stimulated. Does that long-term outcome justify the short-term pain of those who are hit the hardest short term? By what right is the longer-term benefit to the "all" more important than the shorter-term right of the poor and disadvantaged? Even if the poor will be better off down the road at some point, what if they would make a different decision because the short-term impact is far more painful than their long-term benefit? By what criteria and by whom can the decision be made that long-term outcomes trump short-term pain? Who has that right? Is that right simply the right of a majority? And what is the basis of that right to decide?

Similarly, those with fewer resources are often hurt disproportionately by environmental and health impacts when markets are not regulated. Companies are more likely to spill pollutants into areas that affect low-income or poor individuals than those with money because those with money tend to live farther from industry by nature of where property values are highest. Pollutants' negative effects on the health and properties will be worse for those with less wealth. The same is true among countries as well. Poorer countries get and take disproportionate amounts of trash, e-waste, and pollutants than wealthier developed countries, partly because they have more lax regulations, but also because they do not have sufficient resources to refuse the incentives to take the waste of wealthier neighbors. Wealthier countries ship or smuggle such waste to poorer countries.[24]

Consumer protection attempts to address similar kinds of issues, though in this case harmful effects of products can at times fall more evenly across economic lines, though not necessarily. Businesses have some built-in incentives to protect consumers in the sense that if harm

to consumers becomes known, it can produce a negative backlash that undermines a company's brand and future profitability. For example, if it became known that a product, such as cigarettes, the brakes of a car, some medication, or a medical device kills or harms customers, then the market itself has some built-in corrective mechanisms. People will stop buying the product and may reduce what they buy from that company in general. The halo around the brand is damaged, and the company's profits will fall. The company's reputation is tied to its profits. But that built-in punishment occurs over the long term only if the harm becomes visible.

There are thus two critical problems in the way markets regulate harm by themselves: First, the negative consequences of a product on human health, life, or the natural environment may not be known or visible immediately, with many individuals suffering in the meantime irreparable harm, with loss of health, life, or the value of their property. A long-term correction and punishment of a company comes too late for individuals who died or suffered irreversible consequences to their health or fortunes. Second, the short-term harm may very likely fall more painfully on those with fewer resources to deal with the consequence of harm (such as hospitalization, damage from the product, and so forth). Of course, loss of life caused by products cannot be completely ameliorated by wealth, and its harm is more equalized across economic lines. Still, those with more resources may be able to avoid harm and loss of life more easily because they can "purchase safety" by buying quality products that are better made, as, for example, in more expensive and newer automobiles with better and more extensive safety features, or living in areas farther away from damaging pollutants.

Since companies are measured on the short-term profitability on a quarterly basis, they are also not properly incentivized in the short term to invest in discovering the potential harm or remediating it, hence the many documented cases where companies put faulty products into the market, such as faulty automobiles or harmful cigarettes, and hide the faults knowingly.[25] In the well-known Pinto case in the 1960s, for example, Ford chose not to implement an eleven-dollar-per-car safety correction to prevent the Pinto gas tank from catching fire in a rear collision, a problem that caused multiple deaths.[26] Ford's decision was based on a cost-benefit analysis that valued the cost of death at $200,000. Ford was held not guilty, because the company met federal safety standards at the time, though it had itself lobbied to keep the government from implementing tighter standards. Other examples include Dow Corning's possible awareness of the potential harm that silicone breast implants could cause women, and the company A. H. Robins's suppression of evidence that the Dalkon shield could cause pelvic inflammatory disease.[27] These are just a few of many examples where the short-term business incentives are perverse, which is why regulations are needed to set standards to protect people whom the market cannot protect. The market cannot act quickly enough to prevent harm in the short term, and the long-term efficiency gains and expansion of wealth do not always justify accepting the shorter-term consequence.

The tensions described here are well-known, classic issues in the debate between those who favor a "rights" view and those who favor a utilitarian or "consequentialist" view.[28] The two perspectives pull in different directions. A rights view focuses on protecting individuals, whereas a utilitarian or consequentialist view protects the maximum persons over time. The point is that any decision will have consequences for some group of people, whether short term or long term. As a result, it is a complicated moral decision about how to balance those short-term harmful consequences on individuals against longer-term gains that may accrue to the many. If one lets markets work things out for themselves, then one is favoring those with resources who can insure themselves against short-term consequences. While the end game could look better for more people overall, the effects of getting to the end game are not evenly distributed, nor necessarily fair.

To be sure, it is true that one cannot prevent every short-term harm possible. For example, imagine the cost to produce an automobile that does not permit any loss of life at all? The cost would potentially be so astronomically high that only a few people would be able to buy such vehicles, and the automotive dealer would go out of business or be

incented to leave the market. This is why we allow automobile driving even though there are thirty thousand to forty thousand deaths a year through accidents.[29] Why don't we claim that automobiles violate our collective rights to life? Of course, it is possible to mandate certain safety features, such as seat belts and bumpers, the cost of which are relatively low but whose safety impact is high. There will always be some trade-off between the end game of overall benefits and the short-term protections of individuals. There will always be a trade-off of safety and cost. Who gets to make the decision and why? There is no general rule that can tell us what costs or which safety features are worthwhile, and which are not. That moral question is at the heart of what a liberal society must debate, and it informs every decision that we potentially make. As discussed above, that trade-off is at the heart of how much consumer protection to provide. The ultimate decision has to be based on some detailed understanding of the cost to life and health, the cost to avoid those harms, and the overall industry in which the decisions are made. No one can legislate that answer in the abstract without the details. And the market by itself places few incentives on short-term protections.

Labor and Safety in Markets

The rules regulating labor and safety in the workplace provide another obvious area where markets and businesses do not build in sufficient protections by themselves. Businesses may have some incentives over time to care for workers, since to do so may lead to higher productivity and profits, as has been demonstrated in some case studies.[30] Yet we know from the history of industrialization and labor practices, and examples that still exist both inside and outside the United States, such as in the garment industry in Bangladesh, that in fact such incentives do not necessarily protect workers or their safety.[31] Businesses will work individuals more than eight-hour workdays if they can and will put very young children to work, and in some cases, even in this country, there is still what amounts to slave labor.[32] The global number of children involved in child labor is 168 million. More than 85 million are involved in hazardous work. Many businesses will not invest properly or sufficiently in the safety of the workplace if they have their choice.[33] They may force individuals to do incredibly repetitive tasks that can harm their bodies. They may work them in buildings that are not safe, as became so evident once again recently in Bangladesh's garment industry. We know that many businesses will not pay attention to such issues unless they have to, because when such regulations are reduced or removed, as when US businesses move outside the United States, they can be more lax, as in the example of the company H. B. Fuller selling an adhesive called Resistol that became the dominant source of glue sniffing among children in Honduras.[34] The H. B. Fuller case study shows the complexity of the ethical issues involved. Some states in the United States require that glue, such as Resistol, containing addictive narcotics must contain oil of mustard, which makes sniffing the glue so painful it is impossible to breathe. But there are debates on the health impact of the mustard oil as well, and the Fuller subsidiary actively lobbied to prevent the mustard oil solution in Honduras. Instead, Fuller focused on the causes of increased abuse in Honduras stemming from difficult economic problems and poverty. Ethical situations such as these are complex, multidimensional, and not simple to solve. Of course, businesses act this way only because some individuals who manage the business are willing to cause harm for their own gains and because the incentives of the market encourage those who would otherwise build responsible businesses to ignore their inclinations for care. And there are many individuals who, because of their poor financial situation, are willing to risk their lives and their health; they need to work even in conditions that are not safe.

Businesses, after all, represent the activities of individuals. To be sure, there are of course some business leaders who bring an ethical or moral vision to caring for their business, and there is some evidence that such a moral vision can have a positive impact on profits, as in successful businesses such as Ben and Jerry's and others that have operated with a moral vision or customer-centric philosophy.[35] But numerous examples of businesses that ignore such worries illustrate the fact that shorter-term pressures on profits frequently override moral concerns and the possible

long-term consequences of public opinion. Future punishment by public opinion seems too far away to help businesses act morally in the short run if profits are at serious risk. Incentives in the business often motivate individuals to suppress their own moral inclinations that might otherwise lead them to act differently. The system itself with its focus on short-term profits incentivizes business leaders to overlook their moral concerns and even the long-term profitability of the business. Indeed, the board and business leaders who make the decisions may not be present in the company in three to five years and thus worry less about how the company will be punished in the future than about the short-term gains they will achieve in the here and now. The market itself does not have built-in short-term incentives to act justly and with care.

Since markets can behave in unpredictable ways or have consequences that are damaging to human life or health, or to the species as a whole, we should try to harness and channel markets in ways that are less damaging and destructive. Bringing values into the market is a form of protecting the liberty of individuals, not compromising liberty. Or, to put it another way, like any part of liberty, rights are protected through limitations on others.

Human Values are Externalities to Markets

Many human moral values are "externalities" to the business goal. When values are brought into a business, they are attached to or added to the core goal but are usually not intrinsic to it. It is not natural to business, at least as business is currently defined, to pay attention to these issues. Milton Friedman summarizes this position in his well-known argument that "the social responsibility of business is to increase its profits" and that "to focus on anything beyond profits for the owners is to levy a tax and not to act in the best interest of the owners."[36] Indeed, he goes so far as to say a person who promotes concern over social issues is "preaching pure unadulterated socialism." He also insists that "insofar as his action in accord with his 'social responsibility' reduces returns to stockholders, he is spending their money."

Businesses in general tend to care about human values only in situations where by doing so they affect the bottom line or because the business founders or executives bring a social vision or particular care to the business.[37] There have been encouraging developments in this regard with the social entrepreneur movement, which specifically creates businesses with a core social vision. In addition, there has been a strong academic argument in the last couple of decades about businesses being obligated to "stakeholders," which is defined more broadly than simply shareholders.[38] In broadening the obligation of businesses to stakeholders, the business itself is understood to have responsibility not just to shareholders, but to citizens, neighbors, and the larger human community.

The problem with stakeholder theory, unfortunately, is that unless it is backed up by a visionary CEO, government regulation, or market punishment by consumers, it is an ideal that just doesn't have that much impact because incentives are not reinforced in the markets themselves. Markets care about stakeholders only in the long run, but they care about *shareholders* in the short term. This is because it is usually the case that the mechanisms to impose the stakeholders' perspectives are less direct and immediate and appear only over time unless stakeholders organize and leverage their clout via purchasing power, publicity, or their investment strategies.

Apart from these examples, businesses take account of human values in contexts where to do otherwise becomes problematic for the core constituents of the business. Businesses today have corporate social responsibility programs in which they make investments in local and global communities. These programs are understood to be good for business, helping to present the business as a good communal citizen and to give employees pride in their company. These social responsibility programs, however, are not core to the business mission. Most businesses are focused by their mission and by the structure of our economic and social systems to focus on the drive to profit. While other benefits may be core to the product's vision, businesses have a fiduciary obligation to their shareholders and board of directors, who are focused on return on investment. The drive to profit, which defines the core of the business mission, is

the amplification and institutionalization of many individuals' economic self-interest. The business is executing the collective goals of the individuals who comprise the board, the executive team, and the shareholders, and ultimately the social and economic interests embodied in the system in which the business operates.[39]

It is fair to say that businesses are focused on satisfying human desires by making products or providing services that meet some human need. Otherwise no one would buy the product in the first place. In this sense, businesses do inherently care about human beings' needs and desires. But in the execution of that goal and vision, businesses don't care inherently about how they get to those results. And thus they will trample certain human beings and certain human needs in the goal of satisfying other broader human desires in the market. Businesses, like markets, do not care intrinsically, for example, about how many hours a person works, the age of the person working, the minimum wage, the safety of employees, or the pollution that they emit. There are thus a host of government restrictions that have come from values, rather than from the goal of growing business or capital. Limitations on the number of hours in the working day, workplace discrimination, minimum wage floors, workplace safety, limitations on pollution, and so forth are all rules that stem from values that the markets do not develop on their own.[40]

It is not widely known, for example, that the great market liberal Milton Friedman went so far as to argue that business owners should have the liberty not to sell to certain types of people, such as blacks and Jews.[41] It was not that Friedman was a racist or anti-Semite (in fact he was born Jewish). It was rather that Friedman believed the marketplace would punish those who discriminated against people and government should stay out of the business of intervening in the matter. In other words, Friedman was willing to leave the question of values and the question of markets as separate domains. He assumed people would be punished in the long run by the market for their discriminatory values. It seems clear, however, that markets are not very good at stamping out bias and discrimination by themselves, as evident by the need for a civil war to end slavery in this country and then ultimately a civil rights movement. If markets can get to the right values, why is there a need for any kind of civil legislation at all? For those who take a responsibility-first position, by contrast, liberty means that we can bring our values to bear on market conditions because we don't trust the market to care about the impact on human lives.

In fact, to argue that markets or businesses should be left alone is really to argue that the lives, liberties, and properties of the lower class or marginalized individuals do not matter as much as others, for the unpredictable and uncontrollable consequences of markets damage those with less the most. Consider two people on the ocean in two different boats. One is a white male who has the means to buy a boat with many different bulkheads. The other is a poor woman of color who has only a raft. When a storm comes along, and the ocean is rocking and rolling, who is most likely to stay afloat, not capsize, and survive? This analogy is apropos. The ocean is the market, and its waves are not always predictable. One can't always anticipate when a storm will come along, and the more bulkheads one has, the more likely one is to weather the storm. Free market advocates argue that a rising market lifts all boats. But they ignore the fact that storms in the ocean can also turn over and destroy boats that are not equipped very well for the ups and downs.

We can now see how the failure to intervene in markets in critical ways can actually be a violation of human liberty. By letting a market act as it will and seek equilibrium, wealth becomes a critical if not primary determination of an individual's life, liberty, and the pursuit of happiness. Markets can be as or more abusive than monarchies from whom liberty was originally intended to protect individuals. Markets have tremendous power and the ability to punish individuals for not having made it financially. While the tyranny of *governments* was the object of the liberty advocates in the seventeenth century and the American founders, the *tyranny of markets* can be as damaging to lives as governments. Both can equally be foes of liberty if not controlled and channeled. The dichotomy between government and free markets is thus a false one. Absolute government and unrestrained markets can both be destructive to liberty. If

used widely, government intervention and regulation are the foundation of human liberty.

Environment, Regulation, and Future Generations

Human beings have operated until quite recently as if the oceans, the air, and much of the water in the world were free. The oceans have been free to fish, and the air has been free to breathe. No one owned the oceans or the air or the water in rivers that passed through their nations. The idea that the ocean and the air are still "in common" reaches back to the natural rights thinkers on property, such as Grotius.[42] These natural resources were thought to be in common and thus free, because they were viewed as limitless and also impossible to divvy up into private property. Unlike land, they had no obvious boundaries, and therefore labor could not establish private property on the air or sea.

Similar attitudes toward air, oceans, and water carried over into the business world, with some obvious problems that are now devastating in their clarity. Up until relatively recently in the United States, businesses could ingest air and dispense output into it at no cost. Until recently businesses could do the same with water. Such practices continue in countries that lack regulations, including rapidly developing nations. We now know that such activities do have a cost, and what some businesses put back out into the land, water, and air, and into what has been common, degrades what is left for the rest of us and causes irreparable harm to the environment, as well as health problems and even death. These outputs to the environment have been termed "externalities" by economists, because the costs were not included in a business's profit and loss statement but were born by others in the community in costs of taxes to clean up and in costs to pay for health care and hospitals bills, costs not born by business itself but by individuals and government.[43]

This insight into the harmful impact of externalities is incredibly important and actually exposes some of the deepest flaws in traditional economic and business theory. The discovery of externalities shows that neither markets nor businesses are actually capable of seeing or taking account of all the real costs that go into making a product. There is a large set of hidden costs through use of the environment and through impact on health and welfare that never get incorporated into the profit and loss statements of a company. There is no motivation built into the system for business to try to see these externalities either. *The obvious conclusion is that businesses and therefore the market itself are not really "omniscient" about the actual costs involved in making a product.*

This is a startling discovery that goes against the fundamental assumption of modern economics, for economic theory rests on the assumption that the market is all seeing and can discern what quantities of products to produce by seeing the costs and understanding the demands and the trade-offs individuals will make. If the market cannot see all these costs or cannot associate all these costs to a specific product's production, then the market has a flawed mechanism by which to decide how much of a product to produce and even what kind of product the market produces.

Think about what this means. It means that what the market's invisible hand leads us to produce is flawed, for we end up producing products that, had the real costs been known, would never have been produced or would have been produced in much smaller amounts. Had these hidden costs been borne by the businesses that produced the products over the last three hundred to four hundred years and not by the rest of us in what was owned in common, our business landscape would have been fundamentally different. The very nature of manufacturing would have changed, as businesses incorporated the environmental and health externalities into the cost of doing business.

As an example, imagine if the costs of automobiles to the environment had been anticipated and incorporated into the cost of manufacturing automobiles. Not only would fewer cars have been affordable, but the other ancillary infrastructure that grew up around them, such as highways and gas stations, may have been different too. We would have seen more environmentally friendly cars earlier. We may have seen more rail and public transportation develop too, and less urban sprawl. We have no specific idea really what would have happened had the market been able to see and calculate the whole cost of the product early on. But we

do know that it would have changed the shape of manufacturing and put the costs that would be discovered downstream in the future, upstream into the cost of the product.

There are several key insights and conclusions that spring from the understanding of externalities. The first is that the market is not omniscient and does not anticipate all the ways in which products may affect either the environment or human life. The market can't see these impacts until it is too late. By "too late," we mean that time has lapsed between when the costs were invested in the product's manufacture and its harmful consequences. The market can try to correct for this mistake by punishing the company for creating products with negative externalities. But this is after the fact, and therefore we cannot be sure either the company itself or the owners at the time the products were produced end up paying for the costs of the product they shipped and from which they made money. Perhaps the company can be made to pay, but the owners, employees, and shareholders who are paying are not those who necessarily benefitted from the profits of the product. Thus there is a gap between the discovery and the punishment, and the financial punishment falls on the wrong people.

The only way to try to collapse this time lag between the consequences and the original production of a product is through regulation. Regulation thus emerges as one of the principal ways that externalities can be internalized in a product's manufacture. By externalities here we mean not only the external impacts on the environment, traditionally called externalities, but also the negative impacts on human life, as defined by the set of moral values a society brings to the table, some of which have been discussed above. What emerges is a picture of regulation as not a negative, but a positive. Regulation seeks to make the market better by taking external costs that otherwise will occur after the fact and too late and moving them earlier into the production process, closer to when the product is made. It is true that regulators cannot always foresee externalities that are at this moment in time. But regulations attempt to hold companies accountable once externalities are discovered, and they try to enforce testing so that some negative externalities are discovered earlier (as in the production of medicines and testing of automotive safety). Regulators also can move faster than the market in holding companies accountable for externalities that are discovered. When this happens, the result is that those who profit from a product are much more likely to bear the real costs. In this view, it is wrong to see regulation as simply interference in the perfect functioning of a market. On the contrary, regulation becomes the only means by which the market can work effectively, by restoring actual costs upstream to the manufacturing process. To be sure, not all regulations have such a positive impact. There can be good and bad regulation. And because business interests influence regulation, it is difficult to get approval of regulations of this nature. But the point is that it is only through good regulation that the true costs of a product can be discovered in time to hold those who produce the product responsible for its true costs. Without regulation, the discovery of externalities is after the fact, and the clear winners are the owners of the company and the shareholders at the time that the externalities are hidden, for when externalities are hidden, society is subsidizing the cost of the product so that companies can take more profit, with the result that others down the road may be penalized by the hidden costs. And in putting externalities into the environment, companies are using resources that belong to us in common but not paying back for that use. The profit is made on the backs of what we share in common, but the benefits go only to those who are defined as the private owners of the capital. The discovery of externalities, both in welfare costs and cost to the environment, make plain how wrong is traditional economic theory that places all its faith in an unregulated market.

Those who potentially suffer most from undiscovered externalities are younger people and future generations. Nowhere is this clearer than in impacts to the environment. As we have noticed in our earlier discussion of property, if there are not unlimited land and resources, then the first movers and earlier generations can harm the slower movers and later generations. There is less abundance of land to go around. The same is true of the environment itself. The harm done to the air, the ground, and the water profits those who run the companies and businesses in the short

term, but it harms future generations, who will have fewer resources and resources at higher cost. While it is impossible to see what life will be like many generations into the future, and while technological advances may solve the problems of shortages that we are beginning to see today, we cannot know that that is the case.[44] Therefore we have to act as if there is a diminishing supply of resources until it is proven otherwise.

The way to address this problem is to seriously treat the ocean, water, air, and wildlife as property in common, in the sense that we are all tenants in common. Tenants in common does not mean it is a free-for-all, which is the supposition of the so-called "tragedy of the commons."[45] There can be ownership in common and regulations about the use of the commons. The use of these resources should cost businesses in proportion to their use, costs that will be passed on in the product itself to those of us who consume those products. Regulations are not unnecessary costs to the business, but costs just like any other cost of sale that a business has. In addition, there should be stricter limits on use until we discover a means of achieving equilibrium. The model for these commonly held properties should be the national parks, which have been successful in preserving beauty, making that beauty shareable among a much wider population than otherwise would have occurred. The only way to preserve nature is by forcing the actual costs of a product, which includes the use of what is in common to us all, to be embedded in the cost of doing business.[46] Cap and trade of carbon is one example of how we can force businesses to pay for their impact on the environment.

The Liberty to Be Moral

The claim that liberty is synonymous with free market capitalism should now be discarded. It should be replaced with our contrasting claim that liberty includes the right to have and pursue responsible and just markets. To be moral means not permitting markets to act as they will in all situations, for markets have no morality and no conscience. To allow markets to be completely free is to renounce the right that liberty gives us to bring our heart and soul, which tune into responsibilities,

82. Jefferson, *Notes on Virginia*, 497; see Banner, *How the Indians*, 50, on Jefferson's deleted note.

Chapter 8

1. Locke, II § 123.
2. Hobbes, *Leviathan*, 13:3-4, 83; Locke, II §§ 21, 94, 101, 123, 137, and see the longer summary above in chapter 7, note 4.
3. Our position on what the state or government should be and how it should act is thus tied deeply into and rests upon prior notions about our rights and property that were articulated in the early modern period. Indeed, in many ways the modern understanding of the state is really nothing more than an extension or expansion of the core ideas of individual rights and property that serve as its conceptual foundation. Since we have already questioned both the self-evidence of natural rights and the modern understanding of property that came with it, it stands to reason that the very conception of the state has to come under some serious scrutiny too.
4. In "The Original Contract," for example, David Hume calls the notion of a social contract a political myth analogous to the myth of divine right of kings.
5. The idea that states were founded on conquest, and not on consent, was a persistent theme prior to Locke, was familiar to many of the American founders, and was mentioned by some of the early American colonists. See, for example, the discussion in chapter 7.
6. See note 2.
7. I discussed this point in the previous chapter.
8. As discussed earlier, Locke actually waffles on this point, sometimes arguing that there is an actual state of nature and an actual social contract and at times suggesting it is an ideal state only. For Locke's reflections on the question whether there ever was a state of nature and a contract that created a nation, see Locke, II §§, 14–15, 100–105. See Hobbes, *Leviathan*, 13:11, where he asks the same question. Modern interpreters who still embrace something like a notion of social contract tend to portray it is as an ideal for which liberal states should strive. I take this to be part of the thrust of Rawls's work and also the way that Laslett, 93, makes Locke intelligible.
9. See doubts among the American founders about the social contract theory in my *Liberty in America's Founding*, 85–128, including summaries by James Otis, 100–101, on typical critiques of the idea of a social contract.
10. Locke, II § 59, 61, and discussion of how natural freedom and "subjection to parents" can subsist together.
11. See, for example, Locke, II §§ 75, 87, and Friedman, *Freedom and Capitalism*, 15, on the use of the umpire analogy.
12. On the view that states are like individuals in a state of nature with respect to each other, see, for example, Locke, II § 183; Hobbes, *Leviathan*, 13.12, 85, and discussion in Tuck, *Rights of War*, 8–9.

13. According to Alan Krueger, chairman of the Council of Economic Advisers, "Land of Hope and Dreams," "An astonishing 84 percent of total income growth from 1979 to 2011 went to the top 1 percent of families, and more than 100 percent of it from 2000 to 2007 went to the top 1 percent." For additional discussions see also Stiglitz, *Price of Inequality*.
14. For inequality falling unevenly across races and genders, see Stiglitz, *Price of Inequality*.
15. This link of property, industriousness, and fairness is evident already; see Pufendorf, *Law of Nature and Nations,* book 4, chap. 4:7, 367–368, as a justification of property. The importance of property to the self was developed most intensely in the modern period by Hegel. See Waldron, *Right to Private Property*, 129, 343–389.
16. A thoughtful critique of how conceptualizing payments to the disadvantaged as "charity" impacts self-esteem and self-value of recipients is offered by Munzer, *Theory of Property*, 110–119.
17. Locke, II § 138. [italics in original]
18. Tuck, *Hobbes*, 30.
19. See Skinner, *Hobbes and Republican Liberty*, 124; Tuck, *Hobbes*, 30.
20. Hobbes, *Leviathan*, 30:17, 229.
21. Ibid.
22. Ibid., 30:18, 230.
23. On dating of Locke's *Second Treatise*, see Laslett, *Two Treatises*, 45–66, which dates the *Second Treatise* to the period of 1679–81.
24. Locke, II § 140. [italics in original]
25. Ibid., II § 97. [italics in original]
26. For a more detailed reading of Locke in this way, see Kendall, *Doctrine of Majority Rule*.
27. Locke, II § 95. [italics in original]
28. Ibid., II § 42. [italics in original]
29. Ibid., II § 51, and see also II §46 and 50.
30. Locke, I § 42 [italics in original]. See also Grotius, *Rights of War and Peace*, book 2, chap. 2:6, 4.

Chapter 9

1. Friedman, *Freedom and Capitalism*, 15, 8.
2. See, for example, Boaz and *Crane*, *Market Liberalism*.
3. Friedman, *Freedom and Capitalism*, 15, 8.
4. A notable example is Richard Epstein. See Epstein, *Simple Rules*, 30; *Principles*, 9–39, and "Utilitarian Foundations," 718, where Epstein argues that the original natural rights theorists often used utilitarian arguments and thus in their conclusions converge in many ways with utilitarian conclusions. He suggests that the loss in faith in God has led to a

modern emphasis on those utilitarian reasons but that core concepts developed by the rights tradition make sense and are consistent with a utilitarian perspective.

5. Milton Friedman, Fredrick Hayek, and Moses Mises are the most famous of those applauded by the Right and libertarians.

6. See Nelson, "Study of Choice," 31, quoting Georgescue-Roegen, *Analytical Economics*, 341. See also Debreu "Mathematization of Economic Theory."

7. There are a number of critiques of neoclassical economics for its single-minded narrowing. These come from within and outside economics. Examples of writers in this tradition include Sen, Sunstein, Kuttner, Hawken, England, Mansbridge, Nelson, Sibley, among others.

8. See the psychoanalytic and psychological traditions emanating from Freud and Jung and more recent commentators on the psyche, such as James Hillman, *Suicide and Soul*.

9. On this other side of Smith, see, for example, Sen, *On Ethics and Economics*, 22–28. See also Raphael and A. L. Macfie, "Introduction" to *Moral Sentiments*, 29.

10. Smith, *Moral Sentiments*, 3.

11. The fundamental disagreement arises from the positions of Keynes, *The General Theory of Employment*, and the monetary understanding was put forward by Friedman and Schwartz, *A Monetary History*. There is a vast second literature on the subject and disagreement. For useful summaries, see, for example, Smiley, "Great Depression," and White, "Boom and Crash."

12. On this critique specifically to economics, see Kuttner, *Economic Illusion*, and essays in Ferber and Nelson, *Beyond Economic Man*, and R. Nelson, *Economics as Religion.*

13. See England and Folbre, "Contracting for Care," and Nelson, "Study of Choice" on the way in which families and care pose a fundamental challenge to traditional economist models and the new economic theorizing about care. See also essays in Mansbridge, *Beyond Self-Interest*, and Leibenstein, *Beyond Economic Man*. For a counterpoint that argues that altruism doesn't exist, see Epstein, *Principles*, 133–157, and "Utilitarian Foundations."

14. Nelson, "Study of Choice," 26.

15. Hobbes, *Leviathan*, chaps. 14 and 15 are eloquent on this point. For a recent perspective, see Epstein, *Simple Rules*, 71–90.

16. See, for example, Epstein, *Simple Rules*, 43. In smaller and simpler social situations, pressure through social mechanisms of disapproval can suffice to pressure compliance, though it is doubtful that such mechanisms can work in broader, more anonymous exchanges, thus requiring "law" to enforce compliance.

17. This is basically the position of Hayek, Friedman, and Epstein, among others.

18. See, for example, the summary of analyses in Barrow, *Critical Theories of State*, for an understanding of how capitalist class interests may be developed and maintained through roles, institutions, and structures of late capitalist economies.

19. These views are influenced by many writers, including Kuttner, Sunstein, Hawken, Sen, among others.

20. Those who favor a utilitarian perspective must try to argue for the end of slavery without invoking the notion of rights. See, for example, Epstein, "Utilitarian Foundations," which tries to derive all the core values of the natural rights tradition from a utilitarian perspective. For my tongue-in-cheek critique of natural rights theory on this point, see my essay on endorsing suicide and slavery as part of a free society in Schwartz, "Liberty and the Public Good."

21. I am distilling the insights from Kuttner, Hawken, and Sens. I also see Rawls as attempting to ask a similar question but not going far enough.

22. See Waldon, *Right to Property,* who anticipates this perspective.

23. This is one of the classic challenges to the utilitarian position in general. For a discussion of objections to utilitarian approaches in general, see, for example, a useful summary and references in Velasquez, *Business Ethics*, 73–87. Rawls tries to mitigate this challenge by arguing everyone would agree with a liberal political system if they were in the original position and had a veil of ignorance about what their position would be. Since they don't know whether they will be poor or rich in the original position, they can come to agreement on how the system is most fair, and thus they can live with it, whatever the results. But as critics have noted, this strips the individuals of all the things they might want to know in the original position and thus undermines the ability of those in the original position to make rational decisions. For a critical discussion of Rawls's thinking, see Daniels, ed., *Reading Rawls*.

24. See, for example, Rosenthal, "Smuggling Europe's Waste," and NPR staff, "Electronic Waste."

25. Examples have been documented in Donaldson and Gini, *Case Studies*.

26. See Hoffman, "The Ford Pinto," 207–214.

27. Smith, et al., "Dow Corning," 39–42, and Gini and Sullivan, "The Dalkon Shield," 221.

28. See Velasquez, *Business Ethics*, 73–87.

29. http://en.wikipedia.org/wiki/List_of_motor_vehicle_deaths_in_U.S._by_year and NHTSA.dot.gov, June 2012.

30. See Pfeffer, *Human Equation*, and O'Reilly and Pfeffer, *Hidden Value*.

31. See, for example, the record of safety in the garment industry in Bangladesh, Ali Manik and Yardley, "Gross Negligence in Factory Fire," McCarthy, "Bangladesh Collapse," and Clean Clothes Campaign, "Making Bangladesh Garment Industry Safe." Another example is the treatment of workers in the fast food industry, as documented in Schlosser, *Fast Food Nation*.

32. See the International Labour Organization report on child labor "Marking Progress against Child Labour."

33. For documentation in the fast food industry, see Schlosser, *Fast Food Nation*. Recently, labor abuses have been reported in Apple manufacturing plants, Associated Press staff, "China labor watchdog accuses Apple supplier of worker abuse." http://www.nbcnews.com/business/china-labor-watchdog-accuses-apple-supplier-worker-abuse-6C10783106.
34. Bowie and Lenway, "H. B. Fuller in Honduras."
35. See case studies documented by Pfeffer.
36. Friedman, "The Social Responsibility of Business."
37. See, for example, the various critiques in Ferber and Nelson, eds., *Beyond Economic Man*, and *Feminist Economics Today*.
38. On stakeholder theory, see Freeman, "Stakeholder Theory," and Goodpaster, "Stakeholder Analysis." See, for example, Benioff, *Compassionate Capitalism*.
39. In this sense, I take Friedman's argument about the purpose of business to be for the shareholders as a description of how things in reality are, but not as a description of what they morally should be, though Friedman believes this is the way it should be as well. For the complexity of trying to see the relationship between corporate executives, board members, shareholders, and class, see the discussions in Barrow, *Critical Theories of State*.
40. It is difficult to see how one can get to all of these values from a utilitarian account.
41. See Friedman, *Freedom and Capitalism*, 108–118.
42. Grotius, *Rights of War and Peace*, book 2, chap. 3:1–16, 32–39, on the air and sea. For a discussion, see Tuck, "Introduction," *Rights of War and Peace*.
43. On use of term "externalities" by economists, see, for example, Flynn, *Economics for Dummies*, chap 14. For a sustained alternative perspective, see books by Hawken.
44. For discussions of how future generations should figure into ethical calculations, see the discussion in Velasquez, *Business Ethics*, 308–312, and references there.
45. I take this to be one of the original points of Garrett James Hardin in his original essay on "The Tragedy of the Commons," and one point I agree with. In my reading of Hardin's original essay, his point is that the commons becomes a tragedy *only if it is not regulated and that regulation is needed to protect it*. One example he gives is the national parks, which are owned in common (public property) but must be regulated to protect them. His point is that without regulation, things cannot be owned in common successfully. It is beyond the present context to discuss the extensive subsequent scholarship and popular discussion of whether the commons always ends in tragedy or not, and I do not agree with some of Hardin's subsequent moral conclusions, such as his moral conclusions about preventing immigration in his metaphor of "Living on a Lifeboat."
46. See on this point Hawken, et al., *Natural Capitalism*, and Hawken, *Ecology of Commerce*.

Chapter 10

1. See Wilson, *Rationality*. This was already noted as a problem by Locke and others as they reflected on why non-Europeans did not all come to the same reasoned assumptions about social life. This remains a key problem that is unresolved by liberal societies.
2. In other words, even if we argue there is shared rationality in modes of thinking, the substantive conclusions of rational people are not always the same. On the argument that there is a universal understanding of right and wrong, see discussion in Tierney, *Idea of Natural Rights*, 2–3, and Gewirth, *Reason and Morality*.
3. See my discussion earlier on this point, in chapter 4 and notes to that chapter.
4. Whether it is possible to discern the founders' intent and whether that should govern or dictate what we believe and do is itself an interesting question that I take up in *Liberty in America's Founding*, 309–323. See also Levy, *Original Intent*.

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