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The State and the Market – A Parable: On the State's Commodifying Effects

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Abstract. Commodification has become the central parameter in delineating the contours of the market and in the division of labor between the market and the state. The commodification critique has become a 'buzz word' against the market and thus in support of state intervention. In what has been termed "taboo trades" – human organs, reproductive capacities, sexuality and the like – market-based orders have been condemned on the basis of commodification, thus leaving the floor open for state-intervention by regulation. The central argument of this article is that the commodificatory effects, often associated with monetary transactions, are not exclusive to monetized exchanges nor to the market arena. Rather, state intervention, as such, involves similar reductive effects, in light of its inherent itemizing, categorizing and ranking nature. This understanding has a significant implication for the structuring of the market-state debate: In light of the fact that upon closer scrutiny state ordering shares similar commodificatory effects with the market – we argue that it is not enough to raise the commodification banner in order to justify state intervention. Put differently, an implicit premise in the prevailing commodification discourse is that where the market commodifies, the state is necessarily neutral. However, state intervention – we will show – suffers from similar flaws. Another purpose of viewing commodification through the prism of state intervention is to expose the multi-faceted nature of the anti-commodificatory sentiment. Expanding the horizons of the commodification discourse beyond the traditional contexts of taboo markets to the unexplored terrain of state regulation exposes the fact that money is but one instance of a whole family of cases where thick social interactions are translated into a uni-dimensional currency that has a reductive effect on them.

Key words: commodification, regulation, markets, taboo trades.

Commodification has become a focal point in the delineation of the contours of the market and in the division of labor between the market and the state.[1] The commodification critique has become a "buzz word" against the market and in support of state intervention. In what has been termed "taboo trades"– human organs, reproductive capacities, sexuality and the like – market-based orders have been condemned on the basis of commodification, thus leaving the floor open for state-intervention. The central argument of this article is that the commodificatory effects, often associated with monetary transactions, are not distinctive to monetized exchanges nor are they unique to the market arena. Rather, state ordering could be subjected to similar critiques, in light of its inherent itemizing, categorizing and prioritizing nature.

1] Of course commodification is not the exclusive consideration for limiting the scope of markets. Other considerations such as efficiency, distribution or democratic participation rationales may also play a paramount role in the structuring of the market arena. For further discussion of these considerations and their effect on marketability, see Dagan and Fisher 2011. This paper focuses only on the perspective of commodification .

The paper is an analytical one, aimed at exposing the similar critiques that can be raised against regulation and market interactions. Of course, the analytical framework offered in the paper can ultimately translate into the normative debate – concerning the desirability of privatization of core functions of the state, or the infiltration of market logic to spheres of life, currently ordered outside the market realm. These normative questions deserve a separate analysis, and will remain outside the parameters of the paper.

At first glance the claim that governmental regulation[2] entails "commodificatory"[3] effects may seem surprising given the radically different organizing principles underlying state ordering and the market: while the market is decentralized and oriented towards profit and preference maximization, the regulatory arena is the quintessential case of central planning and is public policy oriented. State regulation is viewed as the antidote of market. These differences notwithstanding, we claim that the effects of state forces in regulating social relations are similar to those of market forces. This understanding has a significant implication for the structuring of the market-state debate: In light of the fact that upon closer scrutiny state ordering shares similar commodificatory effects with the market, we argue that it is not enough to raise the commodification banner in order to automatically justify state intervention.

Put differently, an implicit premise in the prevailing commodification discourse is that where the market commodifies, the state is necessarily neutral. However, state intervention – we will show – suffers from similar drawbacks, and therefore the commodification tendency is not, in itself, a case for state intervention.

It should be noted that the analogy between commodification and regulation extends not only to the vices of each of the phenomena but also to their virtues: Though the issue of commodification was traditionally raised as an objection to the market, there are also commodification effects that support marketability. First, commodification enables the fragmentation of resources and thus facilitates conversion of one type of resource into another. Second, the uni-dimensional structure of the information regarding the value of a given resource, when translated into monetary terms, could in certain cases improve choice-making capacity by simplifying it (assuming, of course that the information lost in the simplifying process does not impair choice making capacity). Third, commodification may have a liberating effect in converting resources into monetary instruments. The currency of money (notwithstanding, of course, the dangers associated with a discrepancy in access to monetary means) is democratic, for market players can effectively discard

2] Throughout this paper "regulation" will be used in a broad sense of the term to include the numerous types and forms of state intervention in human interaction, and the allocation of resources irrespective of the originating institution for the prescription.

3] According to Radin (1992, 1859) the term "commodification" accommodates a variety of possible meanings. Those narrowly construed refer to the actual buying and selling of items. Those broadly understood include, inter alia, the very use of market rhetoric and market methodology. Following this inclusive definition, our use of the term "commodification" is broader than a mere actual sale or marketization of the regulatory functions. Rather it also includes many other phenomena that are tacitly infiltrated by market logic.

social identities that restrict participation in other social institutions and arenas. Finally, in a world where money buys respect, markets can inculcate a sense of value for things that might be taken for granted when not paid-for. Marketability of housework, for instance, may lead to under-appreciation of its economic value, whereas its monetization signifies that it has market value. From this perspective, the commodification of housework is a virtue.

The advantages associated with translation of social relations into regulatory terms are of a similar nature: Conversion of attributes into administrative currency entitles their holders to governmentally provided benefits. The categorization offered by regulation may simplify the legal implications of the rich nexus of underlying social relations, thereby improving the ability of individuals to understand, define and communicate these legal implications. Like money, the currency of regulation is also democratic, allowing subjects to discard social identities that restrict participation in other social arenas. Finally, the formal recognition by the regulator of social statuses and relationships may inculcate a sense of value for these social interactions. The one-dimensional features shared by market price and regulatory categories are the source of their power – facilitating comparison, evaluation, conversion and mobilization. At the same time they entail a potentially reductive effect for many acts, attributes and human interactions. This last point will be further discussed in the paper.

Another contribution of the paper and its view of commodification through the state prism is the enrichment of commodification scholarship: The prevailing discourse on commodification acknowledges the difficulty in drawing a clear line between market and non-market spheres. In fact, some of the most influential writings on commodification focused on the grey areas, between universal commodification and universal non-commodification.[4] Our paper joins the voices calling for a more nuanced perception of the market-non market dichotomy, in that it highlights similar commodificatory effects existing on both sides of the line. The surprising commodificatory effects prevailing in the non-market spheres both explain the difficulties encountered by scholars who attempt to draw the boundaries as well as refutes the necessity for such rigorous delineation.

Moreover, expanding the horizons of the commodification discourse beyond the traditional contexts of taboo markets to the unexplored terrain of state ordering further enriches the commodification debate. While the classic commodification critique associates commodification with monetization or with the introduction of market logic into relationships, blaming monetary evaluation ("price-tagging") for flattening human interaction – the paper shows that money is but one instance of a whole family of cases where the rich variety of human existence is being reduced (Dagan 2010).

4] For example, Radin (1996, 103) famously suggests "incomplete commodification," acknowledging the option of incomplete commodification alongside universal commodification and universal non-commodification. Radin further discusses market compartmentalization and the multiple meanings of any given object (113). In a similar vein, Zelizer's conception of "connected lives" views markets and non-market interactions as co-constitutive instead of rival conceptions (2005, 2).

Commodification, we will show, can occur by commitment to various types of currency in the evaluation of resources and relationships.

I. THE CASE AGAINST COMMODIFICATION: TAXONOMY OF PREVAILING ARGUMENTS

We start out by outlining the conventional arguments underlying the commodification critique of certain market transactions. Our primary purpose in this part is to use the conventional arguments raised in the literature as a means for unveiling the normative foundations that stand at the core of the opposition to commodification The normative foundations we expose will set the stage for our discussion, and will be used in subsequent parts to show that on an abstract level they are manifested in non-market settings as well, including that of state ordering.

The classic case made against commodification can be divided into two archetypical arguments: coercion-based arguments and corruption-based claims (Sandel 2000, 94-96).[5] Broadly speaking, the coercion category groups together considerations of autonomy and distribution. The corruption category relates to the moral worth of the resource at stake or of the nature of the interaction between the parties to the transaction. Our discussion follows this dichotomy starting with the coercion-based considerations:

1. The Coercive Nature of Commodification

Coercion-based anti-commodification arguments focus on the distributive aspects of transforming various attributes into market commodities, questioning the economic neutrality of markets on two fronts: one set of arguments focuses on the background distribution against which market transactions are made, while the other centers on the distributive outcomes of such deals: The former set of anti-commodification objections – also known as the "desperate exchanges" critique (Walzer 1983, 100) – relates to the inherent coerciveness of market transactions against the background of polarized economic conditions. The concern underlying this set of critiques of commodification is that seriously deprived groups may be pushed, in lack of other viable options for survival, to commodify their personal attributes. In Radin and Sunder's words: "Unequal distributions of wealth, make the poorest in society, with little to offer in the market place, more likely to commodify themselves-their bodies for sex, their reproductive capabilities, their babies, and parental rights." (2005, 11) The economic necessity and lack of alternative means for survival, claim those critics, may undermine the voluntary nature of the transaction. The latter set of objections to commodification refers to the distributive consequences of market transactions. Allocating resources which are vital

5] For a different view on the sources of objection, see Satz, 2010; Satz offers a typology of what makes certain markets "noxious markets" based on two dimensions regarding the source of a market (weak agency and vulnerability) and two regarding the outcomes of a market (extreme harms for Individuals and extreme harm for society).

components of human existence through the market – the objection goes – deprives the underprivileged from obtaining them, thus impairing their choice-making capacity. To take a simple example, when transplant-organs become a market commodity, and are distributed according to economic capabilities rather than on a need-base, the poor have limited access to these life-saving measures. (Radin 1986, 1851).

2. The Corrupting Effect of Commodification

Another type of objection to commodification relates to the potential corrupting effects of certain market transactions. This objection is independent of the abovementioned coercion critique: According to this critique, even assuming that the distributive background conditions could be rectified, in a manner which eases the involuntariness concerns, and even if marketability of certain attributes proves genuinely beneficial to both parties to the transaction, as well as distributively progressive, there may still be room to object to commodification, in light of the moral and social weight of the object of trade. Irrespective of the parties' genuine voluntariness and their comparable bargaining positions, the very subjection of certain resources and interactions to market logic is in itself problematic.[6] This corruption objection can be supported by either essentialist or conventionalist considerations. Under the essentialist strand, marketability stands in contrast to the ontology of the resource; under the conventionalist understanding marketability conflicts with its established social conceptualization. (Cohen 2003, 689)

According to the main line of the corruption critique, treating attributes constitutive of identity as monetizable items and as the objects of market transactions is inconsistent with the appropriate or established vision of personhood and human flourishing and thus should be curtailed. In Radin's words, "many kinds of particulars – one's politics, work, religion, family, love, sexuality, friendships, altruism, experiences, wisdom, moral commitments, character, and personal attributes [are] … integral to the self. To understand any of these as monetizable … is to do violence to our deepest understanding of what it is to be human." (Radin 1986, 1851, 1905–6) Commodification may alter the attributes being commodified, for when a personal item is exchanged, its meaning transforms. Paid-for companionship is different from going out with friends; paid-for care is unlike care by family or friends; selling a kidney is nothing like donating an organ; and sex for money is very different from sex for love.

Elizabeth Anderson provides another version of the corruption critique of commodification based on a pluralistic theory of value, which supports a plurality of authentic but conflicting ideals and conceptions of the good. (Anderson 1993, 118) Goods, according to Anderson, "differ not only in how much we should value them, but in how we should value them." (xiii) Because people value different goods in different ways in different contexts, their freedom, maintains Anderson, requires multiple sphere

6] Put differently, while coercion arguments relate to problems with the market interacting with the real world, corruption arguments would have a problem with the market operating even in any ideal world.

differentiation.[7] Thus, although the market "produces and distributes these goods with unsurpassed efficiency and in unsurpassed abundance" (167), when market norms apply in respect to nonmarket goods, they violate the way we properly value these goods (217–18). Anderson proposes restricting the market when its norms, by governing the circulation of a particular good, undermine important ideals such as freedom or autonomy.

Another version of the corruption critique refers to what has been termed the "domino effect." The domino theory emphasizes the potential adverse effects of commodification not only on the resource being traded or on the parties to the transaction, but also on the non-market arena. The domino theory critique essentially rejects the possibility of a co-existence of a commodified version and a non-commodified version of certain resources or interactions. It adds another layer to the abovementioned corruption critique in that it stresses the negative externalities and adverse effects that the commodified versions might have on the ability to maintain non-commodified versions of these attributes. In Radin's words: "The prohibition theory stresses the wrongness of commodification – its alienation and degration of the person. The domino effect stresses the rightness of non-commodification in creating the social context for proper expression of personhood." (1986, 1913) For example, the claim against selling sex for money is not only that this would alienate and corrupt the self-perception of the men and women selling their sexual services, but also – under the domino theory, that it ". . . will contaminate or infiltrate everyone's sexuality, so that all sexual relationships will become commodified." (1996, 95)

To further understand the nuances of the corruption critique, it is useful to distinguish between two possible manifestations of commodification, currently weaved together in the literature.[8] The one relates to the corrupting effects of monetization on the resource itself. (Silbaugh 1997, 84–85) The argument in this regard is that the subjection of certain attributes to market logic alters them and transforms their meaning. The other manifestation relates to the corruption of the interaction between the parties. (Dagan and Fisher (2011) Portraying certain interactions as quid-pro-quo market transactions and thereby depicting them as "impersonal, egoistic, exclusive, want-regarding, and oriented to exit rather than voice" (Anderson 1993,145) strip them of their possible altruistic nature.[9] At times we may be concerned that marketability would corrupt certain social

7] "If different spheres of social life, such as the market, the family and the state, are structured by norms that express fundamentally different ways of valuing people and things, then there can be some ways we ought to value people and things that can't be expressed through market norms." (Anderson 1993, viii)

8] Anderson (1993, 217-18) writes: "When value is represented as the object of just one generic response, such as desire or pleasure, we don't bother to consider whether the ways we produce and exchange goods adequately express the other ways we properly value them or one another."

9] "The goods exchanged and jointly realized in friendship are not merely used but cherished and appreciated for they are expressions of shared understandings, affections, and commitments. The goods proper to the personal sphere can be fully realized only through gift exchange. They cannot be procured by paying others to produce them, because the worth of these goods depends upon the motives people have in providing them. Among these goods are trust, loyalty, sympathy, affection and companionship." (Anderson 1993 ,151) interactions even when the resource exchanged is a classic market good, and vice versa. Thus, portraying gifts as bartered transactions may have a corrupting effect on the interaction even when the resource exchanging hands is a classic market good. The mirror image is plea bargaining where infiltration of market logic to the interaction between prosecution and well-informed defense (i.e. the bargaining process) is not considered to be corrupting, while monetization of the resource traded – relinquishing the defendant's liberty for monetary consideration -would be considered corruptive.

This rough taxonomy of the anti-commodification arguments outlined above is not meant to be exhaustive.[10] Neither is the analytical dichotomy between the various types of arguments. In fact, in many of the debates concerning classic taboo trade arenas, the various types of arguments are simultaneously raised against commodification and in support of different types and levels of anti-commodification.[11] This admittedly over-simplified taxonomy is designed only in order to facilitate discussion of the parallel universe of regulatory commodification.

II.NON-MARKET COMMODIFICATION

After outlining the core arguments underlying the commodification critique in prevailing literature, we now turn to demonstrate how these lines of criticism can be applied with respect to state intervention, thereby exposing common themes underlying regulation and commodification. The structural similarities to which we will point go beyond the obvious cases where state ordering entails price-tagging (e.g. taxation of in-kind transactions), or where money's influence lurks in the background (e.g. fines). Instead, we will point to the surprising convergence of commodification and state intervention as they manifest at the heart of the regulatory mechanism.

In what follows we expose the common denominators of state intervention and marketization, as they unveil through the typology of the traditional critiques of commodification outlined above – namely, coercion, corruption and the domino effect. Since the parallels between the coercion objection to commodification on the one hand and the coercive nature (even if not necessarily objectionable from a normative perspective) of state intervention on the other hand seem quite self-evident, we set out by focusing on the corruption and domino effect critiques.[12]

10] For a recent more comprehensive discussion of the literature, see Cohen 2003.

11] In light of the different types of objections to commodification, Radin proposes a case-by-case analysis and discusses the option of incomplete commodification alongside universal commodification and universal non-commodification (1996, 103).

12] The coercion critique plays a central role in the commodification objection to the market. It challenges the public-private dichotomy, in claiming that coercion is not restricted to the public domain but is also manifested in the private-market arena. Since regulation falls under the public domain in the first place, its coercive power needs no further elaboration.

1. The Corrupting Effect of Regulation

The classic corruption-based critique of the market refers, as discussed in section 2 above, to the adverse effects in terms of personhood, associated with treating attributes or relationships constitutive of identity as monetizable objects of market transactions. Such monetization, it has been argued, is inconsistent with human flourishing or at least with its established vision. This critique – though seemingly intuitive – warrants further elaboration: one needs to articulate what it is in monetization that leads to such corruptive results when it infiltrates various social arenas. Such articulation is necessary for our purposes in order to demonstrate our claim that similar effects occur even absent monetization.

Close scrutiny of the corruption critique in the market context reveals that it revolves around two central assertions: one, that imposing objective criteria upon personal attributes through the pricing mechanism of the market alters their phenomenology. Personal attributes or relationships may change when they are infiltrated by market logic, thus becoming a commodity or a "thing." The introduction of the cash-nexus depersonalizes human interactions and imposes the harsh and reductive logic of the marketplace on preexisting social relations which then become anonymous economic transactions. Two, that the perception of the seller may become identified with, and thus reduced to, the attribute being put on the market. The thrust of this second argument, often made against commodification, is that the sale of personal attributes may lead to instrumental perception of individuals in terms of their use value – when the thin sliver of their human existence, that they offer to sell, becomes identified with who they are and thus, purportedly, captures their entire personality – turning the sellers themselves into a "thing."[13] Supporters of the latter alienation argument claim that sellers may internalize their role as mechanic service providers. To demonstrate these variable manifestations of the commodification critique, we return to the case made against sex for money. The arguments that have been formulated are twofold: first, that monetization of sexual relations may corrupt the meaning of sexual interaction; second; that consumers and sex workers alike will evaluate sex workers in terms of their "use value", thus alienating them from other parts of their personality.

Turning to state intervention we discover, that both layers of the corruption critique reformulated above – whether infiltration of external objective logic to social arenas or instrumentalism – are present in the public ordering arena and lead to similar effects on personhood.

13] It is interesting to note that this critique of commodification is contestable, for the very categorization of an attribute as "personal" and as prone to take over one's entire identity, rests upon a reductive preconception of the significance of such attribute to one's identity. (Krawiec,2010, 1739) However, in this current project we refrain from addressing this debate (as well as other debated among the various approaches criticizing the market). Rather, our aim is to unveil the analytical similarities between markets and regulation, and to show that the arguments that have been formulated against markets are as valid with respect to regulation.

First, regarding infiltration of objective logic to social relations, many areas of governmental regulation – taxation, regulation of co-ownership, welfare benefits, family law (adoption, marital status, alimony etc.), and immigration policies – turn the government into a de facto partner to social interactions. It is our claim that when the government becomes a partner to the social interaction, it infuses it with regulatory logic and imposes upon it an objectifying perspective similar to that of the market. When the State becomes a partner in identity-forming aspects of human lives, the areas affected cease to function and to be construed solely in the subjective and intimate manner characterizing the private arena. Instead, they are filtered through the public and formal reflection of these attributes in the public eye. The introduction of regulatory logic depersonalizes the regulated interactions and resources thus turning them into a "thing" or an "object." Individuals and personal relationships become faceless data. (Frug 1984, 1276) For instance, when the State intervenes in the relationship between life partners in order to determine whether it constitutes state-recognized marriage – say, for purposes of determining immigration status – the regulator's evaluation of the interaction adds a public and impersonal dimension to the relationship whether it defines them as falling under the category of "marriage" or under "non-marriage."

The corrupting effect of the social institution or attribute is further exacerbated by the fact that state intervention is contingent upon reporting to the public official. The act of reporting is self subjecting in that in complying with the reporting requirements the individual herself actively defers to the intrusion of the regulator upon the intimate relationship or attribute. Just as price tagging and willingness to pay criteria in the market context articulate in public terms what may be one's intimate life choices, reporting such information to public officials can be viewed as a form of subscription to the public, regulatory "currency". The effects of reporting are thus parallel to the effects of preference revelation associated with subjecting an item to market force and to the pricing mechanisms of the market. Thus, the state regulatory realm, like the market, thereby carries an "objectifying" potential with respect to the regulated attributes, turning them into a "thing."

Second, the resemblance between the effects of state intervention and marketization also expands to the second critique of commodification mentioned above – namely, that of instrumentalism. State regulation functions as a means for guiding social behavior – it is inherently saturated with instrumentalism thereby offering an arena that operates under a distinct rationality. The regulator's perception of individuals as a means by which to promote public policy is structurally similar to the instrumental manner by which market players are said to view others – namely, as a means for profit maximization. To echo Elizebeth Anderson's famous depiction of market interaction as "impersonal, egoistic, exclusive, want-regarding, and oriented to exit rather than voice" (1993, 145). Interactions with the government are impartial, impersonal, goal-oriented, incentive-building, and offering take it or leave it choices. The impartiality of state regulation dictates uniformity and inherently technical language and criteria; It is also impersonal in its very nature: "Officials of the modern state are, of necessity, at least one step – and often several steps – removed from the society they are charged with governing." (Scott 1995, 191-233) Regulation is "want regarding," in the sense that it is saturated with cost-benefit logic, and operating – through incentive-building.[14]

Lastly, state intervention is often-times oriented towards exit rather than voice, offering those subjected to it to take it or leave it choices. Scrutiny by the State manifests instrumentalism not only in its goal oriented basis, but also in its alienating capacity. Regulation of personal attributes may have an alienating effect when individuals become identified with the attribute being regulated and when the rich texture underlying human interaction is converted into a fixed set of public criteria. For instance, the category of "non-resident alien" not only affects how one is viewed by public officials or by her peers but may also alter her own self-perception as a (non) member of the hosting society.[15]

2. Pluralistic Theory of Value Critique of Regulation

We now turn to demonstrate the applicability of Anderson's *pluralistic theory of value* critique of the market to the regulatory arena: As mentioned above, Elizabeth Anderson emphasizes another dimension of the corruptive effects of commodification – namely, that associated with uni-dimensional modes of valuation. In her critique of marketization, Anderson contests monistic theories of value, which assume that all forms of valuation are identical and involve "only one basic attitude or response – desire, perhaps, or pleasure – which can vary quantitively but not qualitatively." The monistic valuation scale implies commensurability between all assets and attributes. Anderson's claim is that different spheres of life may be structured by social norms that require fundamentally different modes of valuation and that market norms cannot, therefore, capture the proper evaluation of all goods and attributes. [16] While "economic goods" – under Anderson's characterization – are properly valued in market terms, other attributes constitutive of one's personhood demand a different valuation scale. Such differential modes of valuation prescribe incommensurability between economic goods and personal attributes. According to Anderson, the collapsing of multiple spheres of valuation to a single monetary market scale corrupts the proper conceptualization of these personal attributes.

14] True, governmental policy cannot be characterized as dictated by "preference" but rather operates according to "public reason". Yet, public reason it is similarly want –regarding and often operates through incentive-building mechanisms, which are parallel to the market-price mechanism. Accordingly, if one is interested in being characterized as a resident, as married, as entitled to some tax benefits-- she in incentivized to follow certain requirements.

15] More generally, regulation will always create categories of "law-abiding" and "law-breaking", which people really do see as central to their personalities and which can almost arbitrarily sort actions into each side of that distinction, so that an attribute that used to be minor is primary, particularly in terms of how the law will relate to you.

16] Anderson (1993, 143).

Anderson's critique of commodification can be interpreted as including two central lines of arguments: The first dimension (which we hereby refer to as "the commensurability critique") focuses on the reductive effect of monetary evaluation or price-tagging[17], which are based upon a hidden underlying assumption that the market price is able to fully capture the value of every attribute. For instance, when a kidney is sold for 50,000$ it is deemed to be worth 50,000$. Such price-tagging also facilitates transitivity between various resources and attributes. While in the social arena resources diverge in their modes of valuation, money reduces them to a single, thin, one-dimensional measure that facilitates comparability. Thus, if the market price of surrogate-motherhood is 20,000$, it is deemed to be worth less than a 50,000$ kidney. Anderson contests the ability of monetary assessment to capture the full value of non-economic attributes and rejects the ability to rank them according to the monetary scale.

The second dimension of Anderson's critique of commodification (which we will term "the autonomy critique") focuses on the resulting deprivation of choice, and its adverse effect on the choosing subject's choice-making capacity. According to Anderson, sphere differentiation is required in order to ensure a substantial repertoire of valuation options, which in turn allow for an effective range of choices. Absent such repertoire of choices, one cannot exercise freedom or autonomy. In her critique Anderson thus emphasizes the context of choice – the array of modes of human existence made possible by pluralistic modes of valuation in society, offering a more expanded view of freedom and autonomy than the traditional liberal conceptualization.

We argue that similarly to the market, the regulatory logic crowds out alternative modes of valuation, resulting in similar commensurability and autonomy concerns.

The commensurability critique is manifested both in cases in which regulation attaches easily quantifiable tags to the regulated attributes, as well as in cases in which it itemizes features of the regulated attribute in a non-quantifiable manner. Starting with the first, as with price-tagging in the market context, the translation of human interactions and attributes to the regulatory currency often entails a problematic hidden assumption, that such currency captures the value of the regulated activity or attribute.[18] A typical

17] We refer to the effects of money, for this is the currency of the market. However, this critique is equally applicable with respect to any other monistic scale of valuation – even all-inclusive ones such as social welfare.

18] For a similar claim, see Scott 1995, 228: "Officials of the modern state … observe and assess the life of their society by a series of typifications that are always some distance from the full reality these abstractions are meant to capture. … The functionary of any large organization actually "sees" the human activity of interest to him largely through the simplified approximations of documents and statistics: for example, tax proceeds, lists of taxpayers, land records, average income, unemployment numbers, mortality rates, trade and productivity figures, the cases of cholera in a certain district. These typifications are indispensable to statecraft as well as being potentially valuable. State simplifications such as maps, censuses, cadastral lists, and standard units of measurement represent techniques for grasping a large and complex reality that must be reduced to schematic categories of some kind to allow officials to comprehend aspects of the ensemble. There is no other way of accomplishing this end than to reduce an infinite array of detail to a set of categories that will facilitate summary descriptions, comparisons and aggregation."

example of such "price-tagging" in the regulatory arena is the sentencing guidelines. Incarceration periods set in the sentencing guidelines take the form of a list of quantifiable measures for involvement in certain behaviors. Crimes committed in various contexts and circumstances are classified as "worth" a given time in prison. The figure of speech "paid her dues" with respect to serving time in prison also conveys this form of conceptualization. Using the commensurability critique, however, we claim that the "menu of incarceration years" or the "list of prices" format of the sentencing guidelines entails reductive effects, for the penalties prescribed for rape, murder or theft obviously do not capture the entirety of their social harm and condemnation. Just as $50,000 do not capture the value of kidneys and other non-economic goods, 7 years in prison do not properly capture the ways rape is and should be evaluated in society. Second, similar quandaries exist even in regulatory arenas that are less susceptible to "quantification." Regulation, by its very nature, breaks the regulated activities and attributes into components or "items" of some kind on a bureaucratic spreadsheet. It arranges the world of human behavior in pre-existing, bite-size categories: to be eligible for governmental benefits (welfare, social security, visa, driving license) one is required to meet particular lists of criteria, relating to place of residency, age, income level etc. Such itemization for regulation purposes may entail an effect similar to the commensurability effect of the market, for the list pushes non-list items to the background. For example, listing the time spent in a relationship or being devoted to an activity may disregard the intensity, talent or care invested in such relations or activities. The list-related dimension becomes the quintessential characteristics of the resource.

Itemization in regulation operates both at the "input" and "output" level – namely, regulation enlists both the conditions to enter a particular regulatory category as well as prescribes a list of implications of falling under the particular category. On the input level treating certain features as "events" or as some kind of "proof" – say the length of time a couple is in a relationship for immigration purposes or the sharing of bank accounts – inflates the modest nature these features may actually play in some relationships. Enumerating such features as items on a spreadsheet may belittle the multifaceted meaning of relationships for couples – evaluating them based on one dimension only. Put differently, if we list the things that make individuals "a couple," or "a family" in an attempt to assess whether or not certain relationships are a sham for immigration purposes, we impose a particular scale of valuation for the assessment of the relationship that is restricted to such items. By so doing, we highlight certain features of relationships (and conceal others) thus potentially portraying the listed features as capturing the full essence of relationship in its full. "Marriage" may be the reduced to the equivalent of joint photos, joint bank accounts and long (but perhaps meaningless) relationships. A similar phenomenon, perhaps to a lesser degree, exists on the output level. Recognition of a couple as "married" carries particular implications in specific regulatory contexts ranging from immigration to tax and family law. But the configuration of family status as a list of regulatory implications may have a reductive effect of construing it as "amounting to" these effects. The social institution of marriage may become evaluated to a large extent according to its specific implication in the various arenas.

The ranking dimension of the commensurability critique with respect to regulation should be quite obvious at this stage: Regulation's listing format not only itemizes but also puts certain attributes on par with each other. To use our sentencing guidelines example, if rape and theft are both evaluated according to the same "incarceration years" valuation scale, there is a danger that they become comparable in public eyes (similarly to kidneys and reproductive abilities in the market context).

In addition to the problems of commensurability, the reductive collapse of sphere multiplicity into monistic scales of valuation also compromises choice making capacity in the regulatory arena. In order to capture the full scope of the effect of regulation on choice-making we would like to draw a distinction between three layers of autonomy: the first relates to the freedom of choice – namely the negative liberty conceptualization aimed at the choice making process; the second refers to the effective repertoire of choices; The third refers to a neglected dimension we would like to highlight – the freedom from choice: advocates of the market and of commodification embrace the negative liberty version, according to which freedom of choice essentially amounts to the absence of coercion. In stressing the choice-making process itself, the negative liberty conceptualization of autonomy disregards the question of the effective repertoire of options, upon which one can exercise choice. As mentioned above, Anderson's critique of universal marketization is a manifestation of the repertoire of choices layer of the discussion. Her pluralistic theory of value is premised upon the notion, that the multiplicity of spheres of valuation are a prerequisite of autonomy, for only they can provide substantive choice which allows individuals to plan and lead meaningful lives. In other words, freedom from coercion is not enough to ensure autonomy: a central element at the base of freedom of choice emanates from, and is facilitated by, life among an array of pluralistic notions of value.[19] Regulation – like marketization – may compromise this more extensive understanding of autonomy, for it often involves a similar collapse of spheres of valuation – substituting multiple private scales of valuation with the single official sphere.[20] Regulation carries a reductive effect in that it restricts individuals' capacity to evaluate people, things, and relationships to the bureaucratic currency imposed. While the involvement of money indeed epitomizes the price-tagging, one-dimensional, reductive aspects of commodification – imposition of monistic valuation does not necessarily require translation into monetary currency.

19] This distinction reverberates on the debate between libertarians and liberal multiculturalists; the former stress negative liberty, while the latter emphasize life multiplicity of alternatives and cultural communities. In the words of Rosenblum: "What is wanted is the most extensive pluralism combined with chances to exploit it, where men and women can enter and exit groups freely, where new associations are spontaneously formed and where shifting involvements is commonplace." (1998, 63)

20] Regulation may affect the interaction as well – when the official portrayal of an interaction allows or assumes a one-size-fits-all reading of an interaction it significantly alters our reading of it, portraying it as what it is not.

But, the effect of regulation on choice-making does not end here. A third layer needs to be added to the conceptualization of autonomy- the layer of freedom *from* choice. Though the ability to choose is a key feature of what makes one human and plays a constitutive role in autonomous human existence, such existence cannot be reduced to the choice-making function. Human existence encompasses more than a matrix of choice. While individuals are indeed choosing subjects they are not merely choosing subjects. Part of the moral significance of enjoying multiple spheres of valuation rests in the ability to discard the need to select any one sphere and to operate in a deliberately ambiguous fashion. Individuals are simultaneous inhabitants of numerous social universes of meaning and of normative commitments among which they do not necessarily wish to choose. These parallel social worlds and systems of meaning are often incoherent and conflicting, echoing what may be paradoxical, fragmented, and clashing preferences and conceptions of the self. The simultaneous co-existence in these diverse social universes reflects and facilitates a richer form of existence and human flourishing. It is our claim, that allowing individuals to enjoy the paradoxication of order and the pluralism of social meaning, by not forcing them to choose between conflicting meanings and normative commitments, facilitates their autonomy in the fullest sense.[21]

The organizing principle of regulation compromises this *freedom from choice* dimension of autonomy. Beyond being a system of rules, regulation can be conceptualized as a system of meaning. It serves as a mechanism for merging sporadic, diverse, occasionally conflicting fragments of narratives and normative schemes into a consistent nomos. (Fisher 2008, 477) Regulation organizes the complexity of normative commitments and integrates them into a coherent voice, thereby endowing them with a particular meaning. In the regulated arenas individuals are banned from inhabiting parallel normative universes. In the regulator's eye people must often fall under pre-defined and mutually exclusive categories, and cannot simultaneously function in and define themselves according to fragmented and conflicting normative prescriptions. Under the regulatory arena they cannot be relieved of the need to prioritize – to create a clear hierarchy between different sets of choices. Even when individuals subject to a particular regulation are granted an opt-in or opt out choice, they must choose between mutually exclusive options. For instance, though individuals can choose whether to seek formal recognition of the regulator for their relations (through marriage), they are not relieved from the obligation to define their status according to the marriage versus non-marriage dichotomy that the regulator offers (Lifshitz 2010, 165).[22]

21] This is particularly true of mundane, everyday acts and attributes, since there is something more disturbing about subjecting the smaller things in life to classification: Big decisions entail considerable deliberation. People pause and mull over these decisions regardless of their regulatory implications. Part of the charm of mundane rituals is their ordinary, nonspecific nature.

22] Though nothing in the structure of regulation prevents characterizing a particular couple as married for immigration purposes but as non-married for tax purposes, each context dictates a single categorization and form of valuation.

This last point can be reformulated as an objection to regulation that emanates from its ambition for totality, which is similar to the prevailing commodification critique aimed at the totality of monetary valuation (and its assumption that everything can be translated into the currency of money). This critique stresses the fact that in order to function in certain regulatory arenas individuals are forced to apply pre-dictated modes of valuation which not only allegedly attempt to consolidate and reflect a shared value scale, but also play a pivotal role in constituting human cognition. The regulatory perspective serves as a filter through which human beings, subject to its jurisdiction, understand and experience the world around them. (Marshall 2006, 237). An even stronger criticism of the totality of regulation refers to the domino effect: namely, the imperialist tendencies of the pre-dictated valuation scale that potentially crowd out other social forms of valuation – not only in the regulated arena, but also outside it. As discussed above, the domino theory critique of commodification essentially rejects the possibility of a co-existence of a commodified version and a non-commodified version of certain resources or interactions. It recognizes the collateral corruptive effect that the commodified versions of particular attributes might have on one's ability to maintain a non-commodified version of these same attributes. This "domino effect" version of the corruption critique, if sustainable in the market context, is equally applicable to the context of regulation – the concern being that the regulatory categorization may spill over to the private arena, thereby crowding out alternative social meanings and impairing the ability to sustain their generation. [23] To borrow Cover's term, regulation functions in a "jurispathic" manner – destroying competing social meanings in the interest of social control.[24]

As an empirical matter, there may be room to claim that the spillover effects are not paramount, for individuals are capable of making a distinction between the private and public arenas, and between the way attributes or relationships are portrayed in each of these different spheres. Moreover, the effects of the public sphere upon the private one may operate in a reverse manner – namely, individuals may object to the imperialism of the regulatory categorization in a way that accentuates the private dimensions of their relationship. We do not wish to settle this empirical question. Our contention is a more

23] For instance, when the regulator defines marriage for immigration purposes as comprised of a list of features deemed essential for marital life (highlighting joint household, shared bank accounts, length of relationship) while disregarding other aspects of matrimony (the intensity of the relationship, emotional intimacy, or support that is not financial) it forces its vision of married life upon the constituents and can alienate attributes that tend to thrive outside the public spotlight. This, in turn, may affect the expectations and self perception of individuals as spouses or non-spouses. Such characterization of a couple as married under formal regulation, may crowd out alternative social meanings associated with the regulated relationship as well as alter the self-perception of the individuals involved, and the meanings that they attribute to their relationship. For a good example from popular literature, see Gilbert 2010.

24] According to Cover, the legal process allows to choose between conflicting normative commitments, suppressing some while crowning others as hierarchically superior. In Cover's words: "It is the multiplicity of laws, the fecundity of the jurisgenerative principle, that creates the problem to which the court and the state are the solution." (1982, 40) modest one: we claim that insomuch as categorizations infiltrate sphere borderlines there is no reason to assume that this effect is restricted to the market-nonmarket boundary. Rather, similar effects may prevail in the crossings of the private-public distinction.

CONCLUSION

An implicit premise underlying the commodification debate is that where the market commodifies, the state is necessarily neutral. Our article exposed the erroneous nature of this assumption, demonstrating that state intervention by way of regulation suffers from similar drawbacks to those of marketization.

As we have shown, just as marketization carries a corrupting potential when it objectifies individuals or attributes (as in the taboo market context), regulation raises analogous concerns regarding the objectification of social interactions. The introduction of regulatory logic depersonalizes the regulated interactions and resources, turning them into "objects" and faceless data. Moreover, the regulatory arena operates under a distinct rationality that is inherently saturated with instrumentalism. The regulator's perception of individuals as a means by which to promote public policy is structurally similar to the instrumental manner by which market players are said to view others-- namely, as a means for profit maximization.

The corruptive effects of marketization associated with uni-dimensional modes of valuation are also manifested in the regulatory realm. This, we have shown, occurs both in cases in which regulation attaches easily quantifiable tags to the regulated attributes, as well as in cases in which it itemizes features of the regulated attribute in a non-quantifiable manner. Regulation carries a reductive effect in that it limits the evaluation of relationships and resources to the uni-dimensional bureaucratic currency that it imposes upon them. While the involvement of money indeed epitomizes the reductive capacities of price-tagging, monistic valuation can also be the result of the intrusion of bureaucratic currency. The bureaucratic valuation scale, we claimed, may potentially crowd out other social forms of valuation – not only in the regulated arena, but also outside of its parameters. This consideration is analogous to the "domino effect" argument, which plays a pivotal role in the commodification debate.

The implications of our conclusions regarding the commodifying effects of regulation are twofold: First, by viewing commodification through the regulatory prism we allowed for the unveiling of the multi-faceted nature of the anti-commodificatory sentiment. Expanding the horizons of the commodification discourse beyond the traditional contexts of taboo markets to the unexplored terrain of state regulation exposes the fact that monetization is but one instance of an entire family of cases, in which thick social interactions suffer from reductive effects rooted in their translation into a uni-dimensional currency.

Second, the similarities between the effects of marketization and regulation shift the entire course of the "boundaries of the market" debate and may have substantial implications for the division of labor between the market and the state. We leave a more elaborate discussion of these implications for future research. It is our hope that the arguments brought forth in this article will set the stage for continued dialogue on this matter.

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