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# Contested Commodities

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## Preface

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The contemporary arena of moral and political debate is full of painful and puzzling controversies about what things can properly be bought and sold: babies? sexual services? kidneys and corneas? environmental pollution permits? These things are contested commodities. They challenge us to try to understand the appropriate scope of the market. This book presents a pragmatic philosophical and legal approach to thinking about some of our contested commodities—those that are related to persons and the nature of human life.

It is now customary for scholars in many fields to borrow the sociologists' concept of "social construction" to denote the way social practice creates the meaning of the interactions and events in which we participate. In exploring the meaning of our market transactions, I am investigating one kind of social construction.

The ungainly word "commodification" denotes a particular social construction of things people value, their social construction as commodities. Commodification refers to the social process by which something comes to be apprehended as a commodity, as well as to the state of affairs once the process has taken place. "Contested commodification"—the focus of this book—refers to instances in which we experience personal and social conflict about the process and the result.

The word "commodity," as I use it, is a conception embedded in modern market society. There are other ways of understanding the word "commodity" that are outside the culture of the market society or that antedate its historical era. But in this book I am concerned with the connotations of something's being treated as a commodity against the background of our contemporary common understanding of organized markets.



Although there are affinities between my use of the term “commodity” and Marx’s, I do not adopt the notion, which some derive from Marx, that commodification is always wrong. Nor do I find, as many Marxists would, that commodified understandings of social interactions cannot coexist with noncommodified ones.

Instead I believe there can be coexistent commodified and noncommodified understandings of various aspects of social life. The questions I believe need to be asked are in what instances there actually is such coexistence, and whether that coexistence is unstable, threatening to decay into a monolithic structure of commodification.

These questions arise from the pragmatic methodology I favor. This book reflects a pragmatist’s take on the social meaning(s) of market trading and of the attendant notions of property entitlements alienable through freedom of contract. True to the pragmatic spirit, the explorations in this book are relatively retail rather than wholesale—sticking fairly close to the details of context and not engaging in a search for a grand theory. In my view, no one theory is suitable for all cases of contested commodification.

Meaning—and attendant normative evaluation—is the aim of these explorations. Thus, I consider not only actual buying and selling but also thoughts couched in terms of buying and selling—the conception of things as suitable for trade. I consider market discourse and its role in commodification as a worldview.

Considering commodification as a worldview involves confronting one influential strand of contemporary economic analysis. The Chicago school of economics tends to conceive of everything people may value as a scarce commodity with a price. Economic journals are full of studies treating as market commodities aspects of life and love that the rest of us are used to thinking of as noneconomic. Policy analysts ask us to make monetized tradeoffs about the length and quality of life in order to allocate health care resources; they ask us to value life in dollars in order to find out the “right” level of occupational safety risk. Is anything wrong with reasoning that way? If there are realms of social life that are or should be off-limits to the market, how should we delineate those realms, and what kind of analysis could we use in them? What (if anything) is wrong with commodification of everything?

Because these questions ask about the appropriate relationship of particular things to the market, it looks as if we need a normative

theory about the appropriate social role of the market to answer it. Theories about the role of the market can be imagined as ordered on a continuum stretching from universal noncommodification (nothing in markets) to universal commodification (everything in markets). On this continuum, Karl Marx’s theory can represent the theoretical pole of universal noncommodification. The views of Gary Becker, a Nobel laureate who applies economic analysis to family life, and of Judge Richard Posner, author of an economic theory of sex, can be seen as close to the opposite theoretical pole. In this book I explore the theoretical poles, but I find matters too complex to be captured adequately by one of these wholesale theories.

If both theoretical poles are inadequate, what is in the middle? A traditional middle way has been a kind of market compartmentalization. Many theorists in the liberal political tradition see a normatively appropriate but limited realm for commodification coexisting with one or more nonmarket realms. They partition the social world into markets and politics, markets and rights, markets and families, and so on. For a compartmentalizer, the crucial question is how to conceive of the permissible scope of the market. An acceptable answer would solve problems of contested commodification. Nevertheless, I argue that traditional liberal compartmentalization is at best oversimplified and cannot lead to the kind of answer envisioned. Worse, it may tempt us to overlook the ways in which market and nonmarket conceptualizations of social interactions can and do coexist, and it fails to give us a theoretical handle on how to evaluate these cultural crosscurrents.

I want to argue for a different kind of middle way. In this book I develop a notion of incomplete commodification that I hope will help us deal better with the complexities of commodification as we experience it. These complexities include the plurality of meanings of any particular interaction, the dynamic nature of these meanings (their instability), and the possible effects (good or ill) in the world of either promoting or trying to forestall a commodified understanding of something that we have previously valued in a noneconomic way. I give no wholesale argument that commodified understandings—market conceptualizations—are bad no matter where and how they occur. Instead I try to work through these complexities with respect to a number of salient issues, among them prostitution, baby-selling, and tort compensation for pain and suffering. I consider the rami-



fications of understanding free expression as a laissez-faire marketplace of ideas, and of understanding democracy as merely a species of economics.

This book is one of many possible pictures one might draw, with a particular collection of shapes portrayed, many others omitted, and some lucky accidents. It seems to me in retrospect that trying to write about commodification more systematically would be like trying to write a systematic treatise on life as we know and live it.

Thus the theory of description matters most.  
It is the theory of the word for those  
For whom the word is the making of the world,  
The buzzing world and lispings firmament.  
It is a world of words to the end of it,  
In which nothing solid is its solid self.

Wallace Stevens  
"Description without Place"

# 1

## Commodification as a Worldview

### Literal and Metaphorical Markets

In a literal market, things are exchanged for money under certain social conditions. Sellers deliver goods to buyers; buyers deliver money to sellers. We participate in this practice every day, and we take those social conditions for granted. There's nothing strange about taking a Coke from the shelf and handing the store clerk money in return.

In a metaphorical market, social interactions that do not involve actually handing over money for goods are talked about as if they did. When Nobel prize-winning economist Gary Becker writes of family interactions, of love, marriage, and birth, as market transactions,<sup>1</sup> the market is metaphorical. This theoretical practice, unlike our habitual participation in literal markets, seems very strange to many people. Lovers and family members do not conceive of their own actions as trades, nor do they collect money from one another when they receive benefits from one another.

As a theoretical practice, the market metaphor is not necessarily intended to reflect people's actual understandings of themselves, their relationships, and activities, but rather to make accurate predictions. Nevertheless, it will be revealing, I believe, to investigate the implications of the divergence between the terms of the model and people's



actual understandings; and this investigation will occupy much of this book.

Commodification as I understand it elides literal and metaphorical markets. In one sense, there cannot be any sharp divide between the literal and the metaphorical, because there is no sharp divide between action and discourse—between the nature of a transaction and the conceptual scheme or discursive framework in which we understand it. But neoclassical economic theorists, especially those of the Chicago school, elide literal and metaphorical markets in a much more straightforward sense. The writings of these economic theorists can be understood to reflect a methodological archetype that I will call universal commodification. This is the methodology that undergirds conceiving of love, marriage, and birth as market transactions.

## Universal Commodification

Our investigation of contested commodification must begin with an understanding of the archetype in which commodification is understood. As an archetype, universal commodification is oversimplified, a caricature. It is my attempt to gather together and boil down fragments that are part of a certain way of thinking and of talking. The archetype is useful for analysis, although it does not—and could not—fully describe the complexities of the real world or real people. I present here a more or less intuitive overview of its contours, which can serve as a basis of exploration in the next several chapters.

The archetype of universal commodification presents a one-dimensional world of value. From the perspective of universal commodification, all things desired or valued—from personal attributes to good government—are commodities. Anything that some people are willing to sell and that others are willing to buy can and should in principle be the subject of free market exchange. All social interactions are conceived of as free market exchanges. For example, when John gives his bicycle to Mary, he exchanges the bicycle, which he values at \$100, for a feeling of generosity, which he values at \$150. In the terms of universal commodification, the person is conceived of as both a commodity-holder and a commodity-trader. The person is a commodity-holder: universal commodification describes in monetary terms all things of value to the person—including personal attributes, relationships, and religious and philosophical commitments. In

the framework of universal commodification, the functions of government, wisdom, a healthful environment, and the right to bear children are all commodities. The person is also a commodity-trader: all these things are assumed in principle to be alienable; they are capable of being exchanged for money; and freedom is defined as free trade of all things.

In universal commodification, the value of a commodity (from the social point of view) is defined as its exchange value, often referred to as market value, when it is traded in a laissez-faire market—or hypothetically traded in a hypothetical laissez-faire market. Valuation in terms of dollars implies that all commodities are fungible and commensurable—capable of being reduced to money without changing in value, and completely interchangeable with every other commodity in terms of exchange value. (Commensurability is central to commodification, and I return to it below.)

Universal commodification takes into account that people may value their commodities “subjectively” at a sum other than the market price, but the value is still assumed to be a price. From the individual point of view, the value of a commodity is defined as either the sum of money the holder will accept in order to relinquish it, or the sum of money the potential holder will pay in order to acquire it. The simplest version of universal commodification tends to presume that individual value is equivalent to exchange value. When possible divergence is acknowledged, exchange value is often called “objective” value and individual value is often called “subjective” value.<sup>3</sup>

Most legal academics are familiar with this economic conception of life, because “law and economics” has been a prominent intellectual paradigm in law school teaching since the 1970s. Many of the writings of Gary Becker and of Judge Richard Posner, formerly a law professor, call readily to mind the archetype of universal commodification.

In his discussion of the criteria for an appropriate property regime in *Economic Analysis of Law*, Posner assumes that everything people value is (or should be) ownable and salable.<sup>4</sup> Posner’s criteria are “universality,” “exclusivity,” and “transferability.” He argues that “if every valuable (meaning scarce as well as desired) resource were owned by someone (universality), if ownership connoted the unqualified power to exclude everybody else from using the resource (exclusivity) as well as to use it oneself, and if ownership rights were



freely transferable, or as lawyers say alienable (transferability), value would be maximized."<sup>5</sup> The only limitation Posner places on this claim that everything valuable should be alienable property is that it must be qualified by the costs of implementing such a system.

These arguments may seem abstract, but Posner and Becker show the depth (and courage) of their convictions by applying this analysis to people's desire for, and relationships with, children. In a 1978 article coauthored with Elisabeth Landes, Posner explored the advantages of a free market in babies. He considered "the possibility of taking some tentative and reversible steps toward a free baby market in order to determine experimentally the social costs and benefits of using the market in this area."<sup>6</sup> He speculated that the poor may actually do better in a free baby market than under present adoption law, because "[p]eople who might flunk the agencies' criteria on economic grounds might, in a free market with low prices, be able to adopt children, just as poor people are able to buy color television sets."<sup>7</sup>

Gary Becker, like Posner, unflinchingly employs the market model to analyze the desire for children. In straightforwardly speaking of children as a commodity, Posner and Becker are using the vocabulary I call market rhetoric. In doing so they extend the market, metaphorically at least, beyond what we are conventionally comfortable with. But how close do they come to the archetype of universal commodification? Do they want to extend the market to everything?

Yes, insofar as they adhere to characteristic neoclassical economic methodology, particularly as that methodology is applied by practitioners of law and economics. The methodology universalizes the market, both literally (to the extent possible, absent market failure) and metaphorically. The tendency toward universalization of metaphorical markets can be seen, for example, in Posner's definition of "value" in terms of money<sup>8</sup> and in his conception of justice as a good with a price.<sup>9</sup>

Many practitioners of law and economics define economics globally. In Posner's words, it is "the science of rational choice" in a world of scarce resources. Its task is "to explore the implications of assuming that man is a rational maximizer of his ends in life, his satisfactions—what we shall call his 'self-interest.'"<sup>10</sup> Unlike many other practitioners of the genre, Posner goes all the way; he applies his analysis to human sexuality. In *Sex and Reason*, he argues that sexual orientation and behavior can be explained in terms of the "reason"

of economics: sexual actors are simply seeking to satisfy their preferences in such a way as to achieve the largest difference between benefits and costs.<sup>11</sup>

Universal commodification, in conceiving of the person as a commodity-trader, implies a certain view of human freedom. Market trading and its outcomes represent individual freedom and the ideal for individuals and society. Unrestricted choice about what goods to trade represents individual freedom, and maximizing individual gains from trade represents the individual's ideal. In keeping with its conception of the person as a commodity-trader, universal commodification also implies a certain view of political life. All social and political interactions are conceived of as exchanges for monetizable gains. Politics reduces to "rent seeking" by logrolling selfish individuals or groups, in which those individuals or groups vie to capture social wealth for themselves. The social ideal reduces to efficiency.<sup>12</sup>

Efficiency is pursued through the market methodology of cost-benefit analysis. Cost-benefit analysis evaluates human actions and social outcomes in terms of actual or hypothetical gains from trade, measured in money. In seeking efficiency through market methodology, universal commodification posits the laissez-faire market as the rule. Laissez-faire is presumptively efficient because it is a system of voluntary transfers. In the framework of universal commodification, all human interactions are characterized as trades. Because freedom is defined as free choices of the person seen as trader, laissez-faire also presumptively expresses freedom.

The presumptive efficiency and presumptive freedom of laissez-faire suggest that the philosophical commitments of theorists whose views evoke universal commodification may be either utilitarian or libertarian. Many (probably most) law-and-economics theorists are utilitarians.<sup>13</sup> Some theorists whose views tend toward universal commodification see themselves as libertarians. If their reasoning is pressed, though, the ethic that drives their analysis seems to be wealth or welfare maximization.<sup>14</sup>

Later I will be exploring the philosophical implications of commodification—its theories of freedom, personhood, and politics—in more detail. For now, it is worth noting that the archetype I characterize as universal commodification is different from mere consequentialism or mere utilitarianism.



Consequentialism is a very broad label for the idea of identifying right and wrong by results; of course it is possible to do this without making monetization or market trading central to the scheme. Although some utilitarians may endorse universal commodification, others do not go all the way to its theoretical pure form, in which all values can be expressed in dollars. Amartya Sen, a prominent economist and social theorist, defines individual and aggregate social value as welfare maximization without supposing utility to be intrinsically characterizable in money terms and without supposing interpersonal comparisons to be possible.<sup>15</sup> This type of utilitarianism diverges to some extent from the characteristic reductionism of the market metaphor: that all values may be translated into—reduced to—money and readily (numerically) compared.<sup>16</sup> (Later, in Chapter 8, I will consider whether stopping short of expressing all value in dollars saves a theoretical practice from the implications of commodification.)

Finally, as I will discuss in more detail later, universal commodification implies extreme Objectification. Commodities are socially constructed as objects separate from the self and social relations. Universal commodification assimilates personal attributes, relations, and desired states of affairs to the realm of objects by assuming that all human attributes are possessions bearing a value characterizable in money terms, and by implying that all these possessions can and should be separable from persons to be exchanged through the free market.

### Market Rhetoric

Universal commodification is a conceptual scheme, a worldview. The language in which this conceptual scheme is couched is the rhetoric of the market: supply, demand, price, opportunity costs, production functions, and so on. By market rhetoric I mean the discourse in which we conceive of and speak of something as if it were a commodity subject to market exchange. I will sometimes speak of market rhetoric as the discourse of commodification, or as commodification in rhetoric.

Hobbes conceived of the value of a person in market rhetoric: “the Value or WORTH of a man, is as of all other things, his Price; that is to say, so much as would be given for the use of his Power.”<sup>17</sup> In Hobbes’s conception, everything about a person that others need, desire, or value is a possession that is priced. The Hobbesian person

fits into the archetype of universal commodification. The Hobbesian conception of the political order likewise conceives of politics in market rhetoric. Modern Hobbesians view political activity as fully describable in terms of “rent seeking” by those who can achieve monetary gain from the capture of portions of Leviathan’s power.<sup>18</sup>

Here is a sample of market rhetoric from Gary Becker: “Children are usually not purchased but are self-produced by each family, using market goods and services and the own time of parents, especially of mothers. Since the cost of own time and household production functions differs among families, the total cost of producing and rearing children also differs.” Continuing in market rhetoric, Becker explains something about what governs people’s desire for children: “The demand for children would depend on the relative price of children and full income. An increase in the relative price of children . . . reduces the demand for children and increases the demand for other commodities (if real income is held constant).” Speculating further about why people want this commodity (children), Becker notes that

[t]he net cost of children is reduced if they contribute to family income by performing household chores, working in the family business, or working in the marketplace. Then an increase in the “earning” potential of children would increase the demand for children. Indeed, I believe that farm families have had more children mainly because children have been considerably more productive on farms than in cities.<sup>19</sup>

For one who is willing to conceive of everything (corns for transplant, sexuality, babies for adoption) in market rhetoric, the only explanation for why some things might be held out of the market is market failure: free riders and holdouts, administrative costs, information costs, and so on. Judge Posner, for example, apparently considers a ban on selling oneself into slavery to be justified by information costs.<sup>20</sup> Finding no apparent market failures that would suggest noncommodification of children, he suggests that a free market in babies would be a good idea.<sup>21</sup> Becker, noting that baby-selling is forbidden by most societies, states that “it is easy to forbid what would be uncommon,” and goes on to reason that baby-selling would be uncommon because “[o]ne could postulate a ‘taste for [one’s] own children’ which is no less (and no more) profound than postulating a



taste for good food or for any other commodity entering utility functions."<sup>22</sup>

Should market rhetoric trouble us? Perhaps you think this economics talk is just a silly metaphor, and nothing to pose a serious social worry. Economics talk does sometimes elicit giggles, but the giggles cover people's discomfort. I think the reason people are uncomfortable about market rhetoric is that it does tend to crystallize a social worry—the worry about inappropriate commodification.

The worry about inappropriate commodification is complex in a number of ways. An important complexity I will explore later is that commodification worries seem to occur only in conjunction with other worries about social wrongs, in particular about subordination and maldistribution of wealth. Cases of contested commodification in the real world are "mixed" and not "pure." When we worry about baby-selling or kidney-selling, for example, concerns about commodification are mixed up with concerns about the effects of poverty, sexism, and racism on the would-be sellers, as well as concerns about harm to innocent third parties (the babies who are sold).

Although the "pure" case of troublesome commodification seems to be only hypothetical, I do not think that means commodification is insignificant and only the other concerns (subordination, maldistribution, third-party effects) deserve attention. My view is that in our culture commodification is intertwined with those other concerns at a deep level, and I will attempt to plumb some of those depths in this book.

## Commensurability and Reductionism

Universal commodification implies that all value can be expressed in terms of price. For those who believe value is not unitary in this way, commodification "reduces" all values to sums of money. Commodification is a reductionist conceptual scheme. Sums of money, in turn, can be compared consistently in a linear way. Commodification is thus also a conceptual scheme that is committed to commensurability of value.

Jeremy Bentham confidently argued, "Of two individuals he who is the richer is the happier or has the greater chance of being so. This is a fact proved by the experience of all the world."<sup>23</sup> For anyone committed to a commodified conceptual scheme, and thereby commit-

ted to commensurability of value, there is no mystery about which of two items is more valuable; it is the one with the higher price tag. Furthermore, for any two items, one of them must be more valuable than the other, or else the two must be equal in value. Moreover, transitivity holds: if A is more valuable than B and B is more valuable than C, then A is more valuable than C. Commodification thus implies a strong form of value commensurability.

In this book I deny that all values are commensurable in this way. This denial is central to my critiques of universal commodification: it cannot capture—and may debase—the way humans value things important to human personhood. So something must be said here about what it means to be committed instead to value incommensurability. This is a murky subject, and I mean to keep the discussion brief.

I believe by and large that philosophical argument, such as it is, cannot force those who are committed to commensurability to change their minds.<sup>24</sup> There aren't any knock-down logical arguments that compel people to recognize incommensurability. (At least I haven't found any, and don't know how such an argument might be structured.) Those who are committed to commensurability can always—from their point of view—"translate" value incommensurabilities into their conceptual scheme. (See Chapter 8.) Rather, I want to show that many of us do have implicit unrecognized commitments to incommensurability. I want to make them explicit and show why incommensurability is important, and how it connects up with questions of contested commodification like sale of reproductive services.

Philosophers have puzzled over a problem named "incommensurability" in various contexts. In each of them, the problem is whether incommensurability exists. Although it goes by the same name, I am not sure to what extent incommensurability is usefully regarded as the same problem in all contexts. One context is a debate over relativism.<sup>25</sup> There a commitment to the existence of incommensurability signifies a commitment to radical untranslatability between different cultural groups or different historical periods. That commitment supports relativism. If the language, conventions, and forms of life of one group cannot be made at all intelligible in terms of the language, conventions, and forms of life of another, then it is thought that there is nothing to be said about which practices are better. They are incommensurable.



Another context, which appears to be subsumed by the broader debate about relativism, is a debate about ~~Kuhnian~~ paradigms in the philosophy of science. Thomas Kuhn argued that successive paradigms are incommensurable, inhabiting different worldviews, such that statements in one cannot be translated into statements in the other.<sup>26</sup> He thought it "illusory in principle"<sup>27</sup> to suppose that successive paradigms are coming closer and closer to some fixed reality existing independent of any paradigm. When his critics taxed him with relativism, he denied it by saying that paradigms could be judged better or worse by their success at puzzle-solving, and that it was characteristic of later paradigms to be better at puzzle-solving.<sup>28</sup>

Donald Davidson argued forcefully against the possibility of incommensurability, understood as radical untranslatability between cultural groups or historical periods.<sup>29</sup> Hilary Putnam did the same thing for the Kuhnian subcategory.<sup>30</sup> I cannot do justice here to these elegant and complex arguments, but their core is simple: The notion that we would be able to know such incommensurability when we saw it, much less proceed to talk about it, is conceptually incoherent. If we couldn't make intelligible *anything* that some other group of human beings does, we would have no basis for identifying them as human beings in the first place.

Another context in which an argument about incommensurability comes up is debates in ethics about whether values can be summed. This is the kind of incommensurability I think relevant to the questions about commodification I am exploring.<sup>31</sup> This notion of incommensurability is a broad strategy for attacking utilitarianism.<sup>32</sup>

It appears that a utilitarian injunction to maximize the sum of values implies either a reductionist or a scalar claim, or both. The (reductionist) claim is that there is one "stuff" of value to which all other values can be reduced, and this "stuff" is what we sum when we maximize. The (scalar) claim is that all values and packages of values can be arrayed in order from least valuable to most valuable on a continuous curve, so that we can maximize value by picking the highest package on the curve.

The notion of incommensurability, in arguments about ethics, is meant to deny one or both of these claims. If incommensurability is put forward to deny the reductionist claim, then the claim that values are incommensurable means that there is no "stuff" that we can substitute equivalent amounts of when we try to sum values. If incom-

mensurability is put forward to deny the scalar claim, then the claim that values are incommensurable means that there is no scale along which all values can be arrayed in order so that for any value or package of values we can say definitively that it has more or less value than some other.

Either of these claims can be made partial. It need not be the case that either all values are reducible or scalable, or none are. A utilitarian may claim that many values reduce to some "stuff" even if not all of them do; an opponent may claim that a few values may reduce to some "stuff" but most of them do not. A utilitarian may claim that many values can be arrayed on a scale, or on a number of scales, even if pockets of incommensurability exist; an opponent may claim that some values can be arrayed on a scale or scales but that there are large or significant areas of incommensurability.

This last debate, about the extent or significance of incommensurability, seems to come down to deeply held conflicting intuitions. Some writers, such as James Griffin,<sup>33</sup> find that incommensurability is not an important problem. Others, for example Joseph Raz,<sup>34</sup> find that it is. Much of their disagreement seems to amount to different intuitions about how to characterize certain kinds of commonplace actions and interactions. In particular, how do we interpret the evidence of an actor's choices? May we infer commensurability to the extent that the actor actually does choose one thing over the other? (Should choices between values be read as "trade-offs"?)

In an example patterned on one of Raz's, suppose that a man is faced with the choice whether to take a job in a distant city that pays \$100,000 more than his present job, but if he takes it he will forgo the company of his spouse.<sup>35</sup> If he takes the job, are we entitled to infer that he values the company of his spouse less than he values \$100,000? (This is to infer commensurability.) It assumes the two values can be placed on the same scale, from which we can read off that one thing is more valuable than the other. Company is "traded off" for dollars. Those who make the inference find the language of "revealed preference" apposite. By making the "trade-off" of his spouse's company in return for \$100,000, the man "reveals" that the dollar value he places on his spouse's company is less than \$100,000.

Writers like Griffin think the inference of commensurability is obviously correct;<sup>36</sup> if we see people making choices among things



they value, there must be a scale on which those things can be arrayed. But writers like Raz think the inference is an obvious non sequitur:<sup>37</sup> from the fact of choice nothing about the commensurability of values can be inferred. The nature of an action, its meaning, is simply the conventional understanding of it, and people in our culture do not conceive of these kinds of choices as "trades."

Many people think choices like this "must" imply commensurability, and many think the fact of choice implies nothing at all about commensurability. The intuitions prove stubborn; there do not seem to be arguments that change people's minds about this. People seem to be deeply committed to values' being orderly in this way, or deeply committed to their not being so. My own intuitions are with Raz. Someone who says there "must" be a scale, "behind" or "underlying" people's choices, is like one of Wittgenstein's interlocutors who says there "must" be something common to all games.<sup>38</sup> There is no "must" about it—unless our socially shared understanding of these choices (whoever "we" might be in this context) includes such a "must." The meaning of choices is how they are socially understood. There is no mysterious something that "underlies" such conventions of language and practice.

That people's intuitions are stubbornly diverse about how to interpret actions that could be read as "trades" carries through, I think, to a conflicted response to market rhetoric such as Posner's or Becker's. Those who readily read human actions as "trades" are unfazed by market rhetoric. They are genuinely mystified by the gut feelings of horror and dismay such rhetoric arouses in those who do not read human actions as "trades."

### Linking Actual Trades and Market Rhetoric

There are narrow and broad senses of commodification. Commodification in the narrowest sense describes events in literal laissez-faire markets, in which material goods and economic services are literally bought and sold. This narrow, literal sense of commodification flows into broader senses. One way it does this is through the ideology that anchors such literal laissez-faire markets. As I will review in Chapter 3, much of the history of liberal thought involves the philosophical elaboration of the underpinning of the laissez-faire market: private property plus free contract.

A broad understanding of commodification encompasses market rhetoric. In market rhetoric, the discourse of commodification, one conceives of human attributes (properties of persons) as fungible owned objects (the property of persons).<sup>39</sup> One conceives of human interactions as "sales" with "prices" even where no money literally changes hands. Private property plus free contract covers the universe of human voluntary interaction. Thus, in the passage quoted earlier, Becker referred to children as a commodity with a price and a demand function. In discussing the possibility of a market in babies, Becker posited a limited scope for that market on the ground that parents would try to unload their "lemon" children, keeping the superior children for themselves, if "buyers were not readily able to determine quality." And he assumed that "all children in the same family have the same quality" in deriving the utility function that "distinguishes the quality of children from other commodities."<sup>40</sup> In his discussion of the effect of the decline in the infant mortality rate, he considered children as fungible commodities; in a decision about how many grown children are desired, one child is perfectly substitutable for another.

Insofar as Becker was not engaging in any literal transactions involving children or even advocating that children be literally bought and sold, his market rhetoric reflects the broad or metaphorical sense of commodification but not its narrow or literal sense. My discussion of the archetype of universal commodification has assumed that the two senses are connected. But just how? The nature of the connection is a complex issue that will ~~recur in many guises~~ in this book.

The reason people are troubled by "mere" market rhetoric, when applied in ways they think inappropriate, is that they think it will be contagious and will lead to literal commodification. They think that someone who thinks like Becker or Posner will end up advocating that indeed we should exchange children for money.<sup>41</sup> They think that the rhetoric will proliferate of its own accord, and that one advocate will encourage others. They think that if enough people conceive of children in market rhetoric and advocate that we exchange children for money, then literal buying and selling of children will result.

Of course, if market rhetoric took over the world to such an extent that there was no other way available to us in which to conceive of children, then there would be no reason left to avoid trading them as commodities. In such a world the prediction that such a trade would



spring up would no doubt be accurate, and in that world we might no longer have the conceptual tools to be worried about it. But our world is more complex. Market and nonmarket conceptualizations of various interactions seem often to coexist as opposing rhetorical crosscurrents.

In this book I take a pragmatic view: the likelihood that pervasive use of market rhetoric will result in literal markets must be evaluated contextually. Because of the coexisting crosscurrents of nonmarket conceptualization, I believe that most of the time Chicago-style market rhetoric does not of itself operate to bring on literal markets. How the rhetoric might proliferate, and how it might be connected with the advent of literal markets are both issues that need investigation.

But even if there is no slippery slope inevitably linking metaphorical with literal markets, I think it is important to realize that metaphorical markets cannot be placed beyond the scope of concern by defining them as "mere" discourse as opposed to action. The reason that people are troubled by literal commodification is not divorced from "mere" commodification in rhetoric. That money travels from John to Jane, and a child travels from Jane to John, isn't evil in itself, outside of our conceptualization of the interaction. Simply put, there is no sharp distinction between the nature of an interaction and the terms in which we conceive of it. (This point will be elaborated in Chapter 6.) Whenever we can perceive a harm to persons, our perception is mediated through a conceptual structure or structures; conceptualization makes it possible for us to see harm as harm.

Nevertheless, identifying the salient conceptual structure connected with our perception of a relationship as bad or harmful is not always simple. Slavery is wrong. But is the conceptual structure connected with our ability to see the wrongness primarily a concept of freedom? or a concept of power? Or is the concept of commodification the salient one? Or are they interdependent? Not all cultures where slavery is present connect it with property and markets. But American slaveholding did. As I will argue in Chapter 11, in our culture the conceptual structures of (un)freedom, (dis)empowerment, and commodification are linked. Indeed, in our culture echoes of the buying and selling that characterized slavery contribute to the way we problematize baby-selling.<sup>42</sup>

Where commodification is the appropriate conceptual structure to identify as implicated in the wrongness of an interaction, the

wrongness is not separate from the market rhetoric in which we conceive of the interaction. So, if literal commodification of persons is worse than "mere" commodification of them in rhetoric, the reason it is worse is not that (in some unexplained sense) it treats people in a way unworthy of their status as persons in "action" rather than just in "thought." Instead, as I will argue in Chapter 12, the reason literal commodification is worse—if it is—would have to be a finding that it tends even more strongly than "mere" commodification in rhetoric to undermine personhood by engendering inferior understandings—conceptualizations—of what a person is. These inferior conceptualizations that are evoked are the reason we are able to understand the "actual" bad treatment (for example, the exchange of dollars for a child) as bad.

I will have more to say in Chapter 10 on how we might think about baby-selling. Before returning to that and other specific instances of contested commodification, I want to consider some of the structural and historical features both of commodification and of an opposing worldview I call noncommodification. One of the earmarks of commodification, perhaps its central one, is that of sale; so commodification is undercut when things are thought of as, or declared to be, not capable of sale. Thus I turn first, in the next chapter, to nonsalability, which I call market-inalienability.