‘Certain modes of valuation are appropriate to certain goods.’ (Sandel, 1998)

Does financial valuation undermine dignity?

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Abstract: Many of us think some things should not be for sale: human organs are one example. Other market exchanges seem innocuous: there seems nothing wrong with buying an orange. But how can we delineate what should be bought and sold and what ought to be distributed some other way?

One view is that markets in some goods undermine human dignity.[1] Paying someone to hand over their organ for transplant, on this view, undermines the dignity of even a consenting seller. Similar arguments are made of prostitution and surrogacy. In this thesis, I seek to provide an understanding of the dignity claim which gives us reason to restrict market transactions in particular commodities. I examine one understanding, in terms of the inter-personal, relational rights of market participants and argue that it imprecisely targets market transactions. I then set out an alternative: the dignity of market transactors is undermined by the presupposition of 'radical fungibility' which is required by such transactions. I argue that this presupposition gives us reason to consider restricting market transactions. I consider the examples of surrogacy and reparations for historical injustice.

[1] Anderson, 1993

It's 6pm on Friday and you are leaving the office, where you have been paid to work since 9am. Walking past a bookshop, your attention is caught by one of the latest titles – the publisher has paid for their book to be front and centre in the window display.[2] It's ok if your attention is caught, even though you are walking along the side of a busy road: your company has insurance policies to protect them from lost labour if you are injured in an accident.[3]

Taking the fast-track lane, you hop straight onto the bus without having to queue.[4] In your haste, you tread upon the toes of the elderly lady in the front seat and handover a few pounds for the pain you caused. The bus passes Apple Stadium and Microsoft University, before reaching your stop – the Shell stop.[5] Scrolling through your phone while waiting for your stop, a stream of adverts appear: what might interest you today? The advertisements are likely to predict it well: data on your previous searches has been sold to advertising agencies.[6] What purchases lie ahead for the weekend?

[2] Sandel, 1998
[3] *Ibid:* Walmart insured its employees such that, upon their death, the company received a pay-out.
[4] Sandel, 2013
[5] Barber, 2007
[6] Veliz, 2020

Perhaps a preferential ranking on a recruitment site. Perhaps you will give in to your daughter's demands and allow her to buy a pet fish[7] with the money you promised if she scored well in her exams *and* read an extra book last month.[8] You would really prefer to get her a human friend – they'd be much less trouble and the cat wouldn't try to climb in the tank… But every time you try, something seems to go wrong.[9] Thinking of your daughter, you recall an article about her school in today's press – she only moved there a few months ago, in search of the best skill set to prepare her for the working world – but a new school has been announced, closer to home and promising data science classes with industry experts.[10] She might be under 10, but you have to start curating work skills early in this brave new world.

Perhaps it's not your daughter you will buy for – the care contracts for your ageing mother are due for renewal. It's time to start looking for the cheapest deal.[11] Thinking about it, perhaps buying a new kidney would save on the dialysis costs.[12] You later discuss this with your sister, making sure to call in the ad break, even though those

[7] Clark and Wilson, 2020
[8] Sandel, 2013
[9] *Ibid*
[10] See Gingrich, 2011: 131
[11] Dowling, 2021
[12] Scheper-Hughes, 2002

five minutes of your attention are bid for live by companies tailoring their marketing to the audience.[13] "I can research the costs of a new kidney," she says, "my new surrogacy agency also deals in human organs."[14] You agree that regardless, it's time to renegotiate the life insurance package – her doctor's reports have been so much more positive recently. You both hope that if the premium gets cheaper, you can spend the money you save on a vote in the upcoming elections[15] or at least on getting out of jury duty.[16]

Settling into bed for the evening, you push aside the bitterness at having foregone purchasing human intimacy[17] for another evening so that your incarcerated husband can have his prison cell upgraded for his birthday week.[18] You're really not sure that taking a loo break while being paid to wait in line for the Jones's next door, to make sure they got front row seats at the public opera, was really worth a prison sentence[19]… but here we are.

Some of these things happen today: publishers pay for premium marketing space, pets can be purchased like food, and, in some parts of the world, sponsorship deals for

[13] Veliz, 2020
[14] Satz, 2010
[15] Barber, 2007
[16] Sandel, 2013
[17] Campagna, 2014
[18] Sandel, 2013
[19] *Ibid*

universities and sports stadia are becoming a commonplace. On the other hand, some of the goods mentioned – especially friendship – do not seem purchasable at all. In a third category, at least some of the transactions described in this short story seem strange. Many of these quasi-commodities, it has been claimed, should not be subject to market transactions at all. (See N.2-19) Moreover, the problem with some of the transactions, for a least some people, is a moral one: we *morally* oughtn't accept a world in which markets are ubiquitous. Many think that markets shouldn't be the means of distributing all goods, or that there should be some goods which cannot be acquired by spending money.

Copious ink has been spilled on making this a principled distinction, delineating what it is permissible to buy and sell from what must be insulated from the pull of market transactions. Michael Sandel thinks that we have slipped into this world unthinkingly: we have, he argues, drifted from "having a market economy" to "being a market society".[20] In the literature, some think that there should be no markets;[21] others that there should be markets in all goods for which a market is possible.[22] The following chapters will likely not convince those at the extremes. Instead, I aim to provide a principled way of delineating permissible and problematic markets for those who wish to find one.

[20] Sandel, 2013
[21] Marx and Engels, 1848
[22] Brennan and Jaworski, 2015

In Chapter I, I situate my question in its context. I show that there are different senses in which a market transaction might be restricted and that an argument for one kind of restriction is not an argument for all kinds of restriction: an argument for restricting markets in some sense, is not an argument that there should be no market distribution in a particular good. By the end of this chapter, I narrow down the kind of market that I address in the rest of this thesis. In Chapter II, I address Elizabeth Anderson's objection that some transactions undermine human dignity by denying market participants some rights.[23] I argue that this objection imprecisely targets market transactions because it (a) applies to non-market distributions and (b) fails to apply to all market transactions. In Chapter III, I provide an alternative understanding of the dignity claim, and hence an alternative reason to consider restricting market transactions in particular goods. I argue that if there is a protected category of goods which are not fungible with other goods, and I provide three reasons to think that there is, then there is reason to restrict market transactions. By applying a parallel for speech act theory, I argue that such transactions involve both false and harmful assertions. In Chapter IV, I address the test case of reparations to defend my argument from an objection. I demonstrate that although the argument of III might seem to overgeneralise to non-market payments, the case of reparations shows this to be false. I conclude that financial valuation undermines human dignity in cases where presupposing that the goods being financially valued are radically fungible with all other goods valued in these terms is false and/or harmful. The dignity of participants in particular markets is undermined because some transactions involve degrading

[23] Anderson, 1993

market participants and their goods, and ranking participants as subordinate to those who are not valued in financial terms.

I: What is a market?

The literature on the moral limit of market transactions is wide-ranging, at times addressing importantly different questions as scholars import different understandings of what a 'market' is. In I.1, I examine some of the understandings of market transactions in the literature. In I.2, I defend an account of the characteristics of markets which I address in the following chapters. First, my argument should be considered in isolation from the injustices of contemporary society. Second, I suggest that anti-market theorists should argue against the most fundamental kind of market if their argument is to be a case for blocking market transactions and not merely regulating them. In I.3, I set out the practical applicability of my arguments in the real world.

I.1: Markets are heterogenous in type as well as in commodity

When the literature addresses the moral limit of market transactions, it means different things by its appeal to the 'market' and 'marketisation'. The following quotations are taken from scholars who argue that there should be a moral limit to market transactions. Each of them claims that it is a different feature of market transactions which makes markets an inappropriate distribution for the commodity they discuss. As we will see, the features that ground their objections to market

transactions are not common to all markets. This is a small sample of the existing literature – other authors address many other features of markets.[24]

> "Contracts encrypt the purchaser's mandate to 'disappear' the unsightly prosthesis [i.e., a surrogate] from the happy natal scene, as though she were never there."[25]

> "The care of some of the most frail and vulnerable in our society is in the hands of hedge funds and private equity companies whose sole purpose is to maximise profit."[26]

> "Private market systems […] not only deprive men of their freedom to choose to give or not to give [blood] but, by doing so, escalate other coercive forces in the social system which lead to the denial of other freedoms."[27]

[24] Some of the quotations are descriptive. Situated back into their context, they are used to motivate restricting market transactions.
[25] Lewis, 2019: §2
[26] Dowling, 2021: 129
[27] Titmuss, 1970: 204

> "Late consumer capitalism is hard either to resist or to change because it creates an illusion of private liberty that renders informal coercion invisible and makes the exercise of public liberty more difficult."[28]

> "Many markets are rightly celebrated as mechanisms of freedom and efficiency, yet some markets […] deepen objectionable hierarchies of class and privilege."[29]

In the first quotation, Sophie Lewis argues for a changed vision of surrogacy, which she considers incompatible with markets today; in the second, Emma Dowling objects to making a profit from care work; in the third, Richard Titmuss argues against paying blood donors; in the fourth, Benjamin Barber objects to the volume of advertising which he thinks accompany twenty-first century markets; and in the final, Debra Satz argues that we should restrict market transactions when they exploit the vulnerable or weaken their agency.

One obvious difference between these scholars is that they advocate restricting markets in different commodities.[30] They do not claim that their arguments address other commodities, and in this regard, their arguments are tightly focused.[31]

[28] Barber, 2007: 54
[29] Satz, 2010: 112
[30] Barber and Satz address markets generally, but they still consider examples.
[31] Dowling argues that other social goods have been opened up to the market as part of "the search for new investment opportunities" (193) but she does not claim that her arguments apply to those goods.

However, they also address very different kinds of market and they do not so obviously state the limits of their argument in this regard: their comments about what kind of market they think should be restricted – and, therefore, what kind of restrictions there should be – are much less clear. For example, Dowling would not claim that we oughtn't pay for care work at all. Instead, her argument is that care work should not be a source of profit or at least not such a large source of profit for the financial entities which arrange but do not provide the care.[32] This is a very particular kind of market: care work could be paid, and in that sense treated as a market, without large profits accruing to the owning entity, i.e., without the features that Dowling takes issue with.[33] By contrast, Lewis is arguing against payments and paid contracts as a whole. She argues that any contract for paid surrogacy has an unacceptable impact on the individual woman involved, by treating her as a "prosthesis", and this gives us reason to block such contracts. In this case, the contracts entered into by surrogates need not result in profits being handed over to the financial owners of some agency that the surrogate belongs to. Hence, her objection to 'marketisation' concerns a very different kind of market.[34]

There are reasons to be worried about the literature addressing multiple kinds of market. It is not simply that scholars are grounding their argument that transactions

[32] Dowling might concede that care could be a source of profit, but not of large profit, of the returns expected by private equity houses because this compromises the quality of care.
[33] Jane Gingrich (2011) provides the beginning of a taxonomy of the kind of markets which might be involved in paying for the welfare state.
[34] Profit-driven entities might enter a market only after some "proof of concept" with less developed markets and individual contracts. In that regard, Lewis's marketisation might be more fundamental than Dowling's.

should be restricted in terms of different features which are common to all markets. This would only be a possible reading if all markets had the features that they object to, which they do not. Hence, this risks leading to conclusions which are not warranted: it will not be legitimate, for example, for Dowling to show that there are problems with handing over the provision of care to hedge funds and private equity houses and to conclude from this that there should not be any kind of 'market' in care. At least, that conclusion will not be licensed without giving further arguments. The only warranted conclusion, if we accept Dowling's argument, will be that markets which engage actors who are primarily focused on profit will not be permissible. Failure to acknowledge that markets are heterogenous in terms of the infrastructure provided for and the nature of the trades which constitute them, risks leading to conclusions which are not completely substantiated by the arguments given for them.

I have framed this observation in terms of 'risks'. I am not levelling an objection that any scholars have in fact made these unjustified steps in their arguments.[35] For example, it is surely not Dowling's intention to argue that there should be no payment made for care work – she is not objecting to 'marketisation' in the same sense that Lewis is. Instead, my aim is more restricted: while each author is clear that their argument is potent only against markets which have the particular characteristic that they object to, when these arguments are agglomerated, we risk blurring the distinctions between different types of markets and concluding from an argument against neoliberal markets in some goods (e.g., Dowling) that there should not be

[35] I will transpose this confusion about markets' essential features into an objection in II.

markets of any kind in those goods. In this sense, there is a lack of clarity in the literature about exactly what is meant by 'markets' and 'marketisation'. We must refine the focus of our arguments to be clear about the kinds of market we object to.

There is an objection to this idea that we need to separate out different kinds of market. We might instead think that these objections are to markets at different stages in development, but they are nonetheless a singular kind of 'market'. The objection says that we shouldn't worry about different kinds of market, because marketisation only goes in one direction and all markets will eventually acquire all of the characteristics that are sometimes deemed problematic. Hence, there is reason to restrict even markets which do not yet have the characteristics the literature objects to, because they will eventually acquire them. A concept in the literature makes this clearer: Margaret Radin suggests that there might be a "slippery slope" for marketisation.[36] This "Domino Theory", as she calls it, has been variously constructed. One view is that once there are markets in some things, there will be markets in all goods; another is that once there is a market in any commodity, markets will become the predominant mode of distribution.[37] A slippery slope could also be constructed between different kinds of markets that I am trying to distinguish: once there are individual transactions, there will inevitably follow large profits and advertising. This would make it benign to collapse the distinctions between different kinds of markets because, even if they are found at different points in the process of marketisation, all markets end up with

[36] Radin, 1996: 95f.
[37] Radin (1996: 95) attributes this to Lukacs.

the same characteristics, e.g., being profit-driven and overexposing citizens to marketing.

However, Domino Theory is contentious in all of its formulations – Radin notes that it requires assuming that commodification comes "naturally" to us, if it is to be such a dominating force as the Domino Theory requires.[38] By way of further response, I motivate in the next section that regulation can be used to restrict many features of markets which philosophers have considered problematic. Therefore, it is important to delineate the type of market that we are imagining when we discuss the moral limit of transactions, since an argument against one kind of marketisation will not be an argument that there is no suitable kind of marketisation.

I.2: Regulation narrows our definitions of 'markets'

I have argued that we must make clearer what kind of market we are discussing. The most obvious, and best acknowledged, instance of such clarity in the literature is the question of exploitation in market transactions which involve the global poor. For example, Satz argues that markets will be noxious if they exploit underlying vulnerabilities.[39] She argues that, for some, human kidneys are seen as the "organ of

[38] *Ibid*, 101
[39] Satz, 2010: §1

last resort", i.e., when the poor have nothing else to sell and desperately need money, they take their 'spare' kidney to be something with which they can legitimately part. Like the ultimate insurance policy against destitution, providing one hasn't been so desperate before, there will always be a kidney to sell. Clearly such markets exploit underlying vulnerabilities: those who sell a kidney because they have such extreme need of money are coerced into the sale by their economic situation. In the absence of the support which ought to be provided to them, they are compelled to sell their organs as the only way of preserving themselves.

Of course, this is a sense in which markets should be restricted. Any society which allows the exploitation of its most vulnerable in the marketplace cannot be considered just. However, firstly, the morally right response is surely not to restrict market transactions, but to prevent destitution in the first place.[40] Secondly, and as Satz acknowledges, pro-market theorists will argue that this justifies stronger regulation, but not the restriction of all transactions. A defender of the market in organs, as unable to accept the consequence of exploitation as the anti-market theorist, will claim that regulation can block the destitute from entering into exploitative transactions, eroding the idea that they have an "organ of last resort".[41] This seems obviously correct. Indeed, it is what activists call for now: human organs are still bought and sold, even though such markets are currently illegal, and activists call upon policymakers to

[40] See below on Radin's 'Double Bind'.

[41] Satz, 2019: §9. Even donating organs may be exploitative by redistributing organs from the global south to the wealthy. See Scheper-Hughes, 2002.

protect the vulnerable from these illegal transactions.[42] When the markets already are illegal, activists call for regulation; this regulation could just as well be used to block exploitative transactions within legal markets.

Such regulation is a risk-reduction mechanism, reducing the risk of exploitation. Regulation is particularly good at this when it comes to protecting things that regulators consider valuable. Financial institutions perform due diligence checks before extending a line of credit to a consumer on the basis that extending credit poses a risk to the stability of the financial system. It must be similarly possible to perform checks on those making sales in human organs to remove the risk of exploitation. An argument for restricting market transactions on the basis that markets can be exploitative, therefore, will not be an argument for restricting market transactions in the broadest sense, but only for strengthening regulation. The first clarification ahead of the following chapters is, therefore, that to argue against markets themselves, we must acknowledge that while markets which exploit underlying vulnerabilities ought to be better regulated, the possibility of such exploitation is not sufficient to block these markets completely.

More interesting, however, are the elements of market transactions that Dowling and Barber refer to. Although the regulation argument has gained significant ground against the exploitation argument, its potential to address other problematic features

[42] Columb, 2020

of market transactions has been under-explored. Regulation may be able to address other features of market transactions to which scholars object. For example, regulation already controls excessive advertising. Continue with the previous example of financial services, an industry with strong regulation. Banking salespeople are heavily regulated in their contact with customers. They may only call clients at particular times of day, and they must confirm their interlocutor's willingness to take a call before beginning any discussion. Paper and digital advertisements for complex financial products are restricted and, even for simple products, there are strict rules on the information that adverts must contain. A 'capital at risk' warning is just one example. Since regulation can be this strict, there is no reason to think that an objection like Barber's, which addresses the problem of marketisation by its encroachment into civil life, really motivates restricting market transactions wholesale. Rather, it motivates regulating the advertisements which are allowed to accompany such markets. The scope of regulation can be broadened to address Barber's worry.

Similarly, not all markets must result in large profits for investors. Contracts for care work need not line the pockets of investors, instead they can put food on the tables of those who work to provide the care. Allowing payments for particular goods does not necessitate that those removed from the activity are enriched by a financial connection. To object to a market in care on these grounds is a parallel for arguing against prostitution on the grounds that those who run the agencies sex workers are

contracted by make a profit from their activities.[43] This might be a particularly objectionable part of the market in sex, but an objection to it does not give us reason to restrict sales of sex altogether because restrictions are (theoretically, at least) able to eliminate the former while preserving the latter.[44] An argument for restricting markets in particular goods on the grounds that third parties will benefit is not an argument for restricting all sales of that good.

If the ambition of anti-market theorists is to demonstrate that there are some things that should not be bought and sold, which I think it ought to be, we cannot rely on these contingent factors of markets which can be addressed by regulation. Having written exploitation out of the background of market transactions, on the basis that similar regulation could be used to resist the various elements of markets which scholars have since objected to, I likewise exclude arguments based in profit or other accessories to markets. I instead understand marketisation as financial valuation, payments, and contractual relationships which market participants enter into. This is a more limited understanding of markets, and it limits the kinds of argument which can be pushed against markets. However, it also entails that any conclusions which can be drawn from the following chapters are less susceptible to the response from pro-market theorists that regulation can resolve the matter. This understanding of market transactions sets the bar for arguments against market transactions higher: it

[43] This reflects British law: selling sex is legal but activities linked with prostitution, e.g., facilitating sex work, are criminalised. See Smith and Mac, 2019: 87f.

[44] Smith and Mac (2019: 110) note that even among those who seek the decriminalisation of prostitution, many advocate restrictions on third party involvement.

will be more difficult to construct arguments against these fundamental characteristics of markets but, if they can be provided, the arguments will be all the more powerful.

I.3: A reason to restrict transactions is neither overriding reason, nor a guidebook

One might object to this redefinition of the question. I have cut out crucial elements of the real world which, the objector contends, makes the following chapters irrelevant to our context. Allowing markets which risk exploitation but are otherwise innocuous in a world where we do not have particularly strong regulation across markets might pose a moral danger: since we do not have the regulatory infrastructure to moderate such markets, allowing them opens up the vulnerable to exploitation. To avoid this, we must acknowledge that the applicability of the following arguments to contemporary societies is limited.

There is also danger on the other side: I will argue that we have reason to restrict some markets, even where regulation can remove exploitation. This provides another path for the same objection: advocating market restrictions might be even more dangerous than allowing markets. Many people, perhaps unfortunately, rely on the markets that I will suggest ought to be blocked. Without providing an alternative, and whatever else restrictions achieve, blocking some markets would push many (often women, given the goods I will discuss) into poverty. Criminalising the actions of those who rely on the payment that comes from those actions without providing them with an alternative means of survival makes such criminalisation dangerous. If we are to plug

the arguments of the following chapters back into the real world, we must be aware of what Radin calls "the double bind".[45] If we are concerned about those who engage in sales out of desperation, "we do not cure the desperation by banning sales".[46] She suggests that we should be more concerned to address the desperation than to ban the markets which keep the desperate alive. Ceyenne Doroshow encapsulates the sentiment: "if you don't want sex workers doing the work, sweetie, employ them! Employ them, have a solution".[47] It would be dangerous to extract the means of survival from those who rely on problematic markets. Hence, the claim of the following chapters is that we have *a* reason, but we may not have overriding reason, to prevent people from buying and selling particular goods. The following chapters establish one reason, which at the level of policy must be balanced against competing reasons to allow the same markets.

There is a second route of concern about criminalisation. Smith and Mac draw on the Black Feminist tradition, especially Angela Davis's work, which argues that those who call upon the carceral state to assuage their ideological concerns are most often those who have the least interaction with the means of that carceral state: "the police appear as the most benevolent protectors in the minds of those who encounter them least".[48] The argument for restricting market transactions might seem to rely on the idea of enforcement: if we have reason to restrict market transactions, we will have reason to

[45] Radin, 1996: 123f.
[46] *Ibid,* 125
[47] Smith and Mac, 2019: 2
[48] *Ibid,* 16. Smith and Mac (2018: 118-120) catalogue instances of police violence upon uncovering prostitution.

make them illegal, and this involves enforcement. If this is true, we face the objection that we rely on the carceral state to implement ideological restrictions and this risks causing more harm than the markets we seek to eliminate.[49] However, this overstretches the argument. Although I will argue that we have reason to restrict market transactions, I will not give an account of how we ought to do so. Finding ways to restrict market transactions in particular goods with empathy and care, which may or may not include an appeal to traditional mechanisms of criminalisation, is an important but separate question to those addressed here. The argument that there is a reason to restrict markets in particular goods, just as it is not overriding reason, also does not provide a guidebook on *how* to enforce those restrictions.

The idea in all of these complaints is the same: in the real world, with all its exploitation, it is not enough to ban market transactions from our libraries and offices. Proclamations from the infamous ivory tower that markets should be banned has the potential to harm, just as some markets themselves do. Moreover, as has long been recognised, outlawing things that we wish did not happen neither stops them from happening nor helps those who are forced, by whatever means, to perform those acts. In sum, then, the next chapters do not talk about the real world and they do not tell us how their conclusions ought to be implemented. They consider where markets might be able to fit into an ideally just world. They should be read as a contribution to the millennia-old debate of what we should and shouldn't buy. First, further arguments must balance my argument to restrict certain markets with reasons not to, which

[49] See Smith and Mac (2019) on the harms of criminalisation.

emerge from the world today; second, consideration must be given to the means of implementing such restrictions.

II. Dignity in the Market, and Dignity in Society

> *Capitalism, Baby*. It is the year 3000 and paid surrogacy has become the dominant method of reproduction. Schoolgirls can select the career path of surrogacy, which is deemed a legitimate way to spend their working life. Biological ties have come to mean nothing, and a child's legal parents will be recorded as those who sponsored the surrogacy.

> *The Fertility Commune.* It is the year 3000 and a referendum has unanimously concluded that reproduction should be handed over to a class of willing women. No money changes hands, but a class of women are maintained by the state to produce future generations. Once gestated, the state determines to which parents the children are given. Biological ties have come to mean nothing, and a child's legal parents will be recorded as those whom the state appoints.

Each of these descriptions sounds troubling, perhaps even comedic, to our twenty-first century ears, but they do not depict a world from science-fiction. The arguments for restricting market transactions do not consider these a far-off world governed by strange laws. Instead, marginal changes to today's society are supposed to risk leading to the world they depict. The philosophical literature is highly critical of *Capitalism, Baby*, while any worries about *The Fertility Commune* have, in contemporary

philosophy at least, received little attention. The similarities between the two have scarcely been observed. However, there are pertinent similarities in both our reaction and what grounds that reaction. This chapter is the beginning of a remedy.

One way to understand our reaction to these thought experiments is that in both, women are degraded by being reduced to their reproductive capacity. According to this claim, the dignity of market participants is undermined by engaging in particular markets and, by allowing such markets, society allows this. Call this *the dignity claim*. It has been levelled as an objection to paid surrogacy,[50] as in our illustration, but also prostitution[51] and organ sales.[52] According to some interpretations, this is a semiotic objection:[53] it is not only the dignity of those who engage in such markets which is undermined, but the dignity of us all because markets undermine human dignity by their expressive force. On this interpretation, markets say something about all people, including market participants, which undermines human dignity across society. In our example: the dignity of all women is undermined by paid surrogacy.

Arguments grounded in the dignity claim are also pushed against prostitution: the prostitute is denied dignity, so the argument goes, because such market transactions involve selling herself and, by entering into such transactions, she is no longer thought

[50] Anderson, 1993
[51] Campagna, 2014
[52] Cataloguing work by Organs Watch, Scheper-Hughes (2002) announces that the problem with markets is that they reduce the goods that are traded to commodities, taking the market in human organs as a paradigm example of "the integrity of the body and human dignity" becoming secondary to the ethos of marketisation.
[53] Brennan and Jaworski, 2015

of as a person but is reduced to the object of her client's pleasure, being contractually obliged to perform in a certain way.[54] Similarly, in cases of organ sales, the seller is denied the status of 'person' – and this denies them their dignity. By engaging in market transactions, they cross the Kantian divide to become an 'object' which can be divided into parts for sale.[55] In each case, market transactions express something which denies market participants, particularly sellers, human dignity.

Dignity is itself a thick concept. Anderson's comments on paid surrogacy provide one way to make sense of the dignity claim. She argues that the market undermines women's ability to form gestational ties with their offspring and to make sense of their labour as they choose.[56] This undermines the dignity of women because they are denied rights that they ought to be afforded. In semiotic terms, the market in contract pregnancy expresses a false 'fact' about women, namely that their opinion of their labour is irrelevant, and their relationship with their offspring, namely that gestational ties are unimportant. Each of these deprivations serves to undermine the dignity of all women by its expressive force.

In this chapter, I examine Anderson's argument. (II.1) I argue that market participants are stripped of their dignity in Anderson's sense when the goods they sell become 'socialised' (in a sense to be explained) whether that is through market transactions or

[54] See Radin, 1996: 135
[55] See III on this Kantian argument and its critique.
[56] Anderson, 1993, 175ff.

not. (II.2) I use the term 'socialised' not to mean that goods are collectively owned, but that goods are taken from the producer and distributed to others for ownership by some overarching authority, e.g., a market or the state. I add to this the claim that individual sales and payments do not necessarily deprive participants of particular rights: market transactions only deprive sellers of such rights when the market provides universal, on-demand access to the seller's wares, and this does not characterise all possible market transactions. (II.3) Hence, it is the socialised distribution of goods which involves stripping the sellers of their rights and dignity, while market transactions, since they need not involve this socialised distribution, only contingently involve such a denial. Anderson's interpretation of the dignity claim imprecisely targets market transactions. Although II.1-3 is *ad hominem* to Anderson, I show that this argument generalises to other scholars' work and to other commodities. (II.4) I conclude that the dignity claim understood in terms of the denial of some rights does not precisely target market transactions. (II.5) This understanding only gives us reason to restrict socialised distributions, which includes some, but not all, markets alongside non-market distributions which similarly socialise goods. Hence, a different account of the dignity claim is required to allow it to precisely target market transactions and motivate restricting only them.

II.1: Anderson: Against Contract Pregnancies

For Anderson, contract pregnancies instantiate a market in women's labour.[57] She argues that such a market degrades the women involved because the contracts signed in surrogacy arrangements prohibit the surrogate from forming emotional ties with their offspring, which expectant mothers ought to be permitted.[58] Moreover, she argues that such contracts deny women the right to determine the significance of their reproductive labour for themselves.[59] There are two ways to interpret what Anderson is saying: either the individual surrogate involved in the transaction is degraded by virtue of the transaction, or any woman who bears children is degraded, because she is similarly denied such rights by the possibility of such transactions. Elsewhere, Anderson indicates that she means the latter: contract pregnancy, according to Anderson, reinforces gender inequality by failing to provide the social conditions required for women's autonomy, i.e., women as a class are denied the conditions required for their autonomy.[60] The socialised reading is therefore legitimate: women as a class are denied the right to develop a perspective on their offspring. Denying these rights, as the conditions of her autonomy, to a surrogate involves denying them to all women.[61] Hence, surrogacy affects all women including pregnancies, births, and child-rearing which happens independently of it.

[57] Surrogacy might also be a market in children. I set aside this definitional problem since it does not affect the discussion here.
[58] Anderson, 1993: 175
[59] *Ibid*
[60] *Ibid*
[61] That this reading is Anderson's intention derives further support from her third argument against surrogacy that all children, not only the offspring of surrogates, are harmed by such a market. She claims that *all* children would come to be afraid that they too could be sold.

Anderson's is therefore an example of a "semiotic objection".[62] Market transactions achieve this unilateral degradation and denial of dignity by virtue of their expressive function. In Anderson's case, a market in contract pregnancies expresses harmful claims about women because it denies them rights which they ought to have. This species of objection is not confined to feminist work. Richard Titmuss poses similar semiotic objections to the market in blood, arguing that the expressive function of a market in blood undermines altruism by changing the meaning of donated blood.[63]

II.2: Anderson's objection applies to all methods of socialised distribution[64]

It is the erosion of personal ties which is doing the work of Anderson's argument; such erosion, she claims, is a consequence of the market, and it undermines the dignity of women because it denies them the twin rights outlined in the previous section. Women are denied the proper relationship with themselves, in their ability to make autonomous decisions about the nature of their reproductive labour, and with their offspring, in their ability to form gestational ties as they choose. However, grounding

[62] Brennan and Jaworski, 2015
[63] Titmuss, 1970
[64] Sophie Lewis (2019) makes a similar observation, though set to different ends. Lewis imagines that *The Fertility Commune* would be a positive development in childbearing, arguing that surrogacy could collectivise children and, therefore, society. She builds on Angela Davis' work, which similarly calls for relocating children, and the labour that produces them, to the public sphere.

her objection in the erosion of personal ties entails that Anderson's argument does not address a feature unique to markets: her argument imprecisely targets the object that she intends. In this section, I argue that the erosion of personal ties is not a necessary feature of market transactions, nor is it only found in market transactions.

The personal relationships, or gestational ties, which are formed between women and their offspring, are eroded not by the introduction of payment into childbearing, but by the socialised distribution of children. The personal ties to which Anderson appeals would be eroded by a multiplicity of systems, some involving payment, others not. Even if the introduction of money into the relationship between surrogates and sponsor families does undermine a surrogate's right to form gestational ties with her offspring, it is not clear that the payment is doing any work. Consider *the Fertility Commune:* the birthing mother is required to handover her offspring irrespective of whether she has formed a relationship with them. This is a direct parallel for what Anderson objects to about paid contracts for surrogacy, but no cash is handed over in the exchange. A surrogate is denied the right to form personal ties during the gestation of her offspring, whether she is paid or not. It is the fact that the birthing mother will be compelled to hand over her offspring which denies her the right to form the gestational ties to which she is entitled. Whether she is paid is incidental.

The case might seem theoretical, but we do not need to imagine that this is how an unpaid surrogate might be treated. We can appeal to contemporary society. In British

law, surrogacy is legal so long as the surrogate is not paid. There are no legal provisions for paid surrogacy and contracts for surrogacy services will not be upheld. The UK is, therefore, a society without a market in contract pregnancies. However, the law will still not protect the right of women to form gestational ties with their offspring, even in legal arrangements where the surrogate is not paid. Surrogacy law extends only as far as the best interests of the child. This is illustrated by recent legal cases: in 2016, UK courts judged that a surrogate who "was no longer willing to consent to the child being handed over" could keep her offspring. However, the reasoning of the Justice does not support Anderson's appeal to the rights of gestating mothers.[65] The child stayed with the surrogate because "[the surrogate was] better placed to meet [the child's] emotional needs". Hence, before the law, even where there is no payment for bearing a child, a surrogate is not at liberty to conceive of her labour as she chooses, nor to form any gestational ties. A child will continue to live with the surrogate rather than the sponsoring family only when the surrogate is better placed to care for the child: only an analysis of the surrogate and sponsor's competing abilities to care for the child determines whether the surrogate keeps her offspring or must hand them over to the intended parents.[66] The right of a surrogate to form a relationship with her offspring is not the interest of the court.[67,68] Anderson's first objection to a market in surrogacy, therefore, is potent only in so far as it objects to the social distribution of children: it does not isolate a particular problem with market

[65] In the Matter of the Human Fertilization and Embryology Act 2008, In the Matter of the Children Act, 1989 and in the Matter of Z (2016), The Family Court at the Royal Court of Justice, ZC15P00907

[66] Matter of the Children Act, 1989

[67] A 2017 case, *in re* baby H, notes that the only legal principle which applies in cases of disputes following surrogacy arrangements is an assessment of which party can best support the needs of the child.

[68] Anderson will reply that British law may not currently be concerned with the rights of women, but it ought to be. See p. 34f. for discussion.

transactions, only with the socialised, universal-availability characteristics that markets, in common with other methods of distribution, may have.

This addresses Anderson's appeal to the right of women to form gestational ties. Another element of contemporary society demonstrates that women's right to conceive of their labour as they choose is not uniquely undermined by a market in surrogacy contracts. Plenty of feminist scholarship establishes that women in contemporary (Western) society are not able to make sense of their labour as they choose. The most recent example is Lyz Lenz' book, *Belaboured:* she argues that "to become a mother is to become a myth":[69] i.e., in becoming a mother, a woman has an idealised version of femininity and motherhood thrust upon her. Specifically, Lenz notes that women's bodies become socialised objects. To become a mother is "to occupy a political space where your body is fought over, and you feel powerless to control the conversation that rages around you".[70] While Lenz uses this to establish that contemporary motherhood excludes queer, disabled, incarcerated and many other women from the term's application, her argument is applicable here. Women who give birth to their own children are reclassified into the category of 'mother' and the burden this brings.[71] This is equivalent to the claim that women are not free to make sense of their labour as they choose. The powerlessness to which Lenz refers is emblematic of what Anderson is drawing attention to: mothers are unable to give their labour the meaning that they choose because the meaning of giving birth and

[69] Lenz, 2020
[70] *Ibid*
[71] Arguably this happens even before birth, with pregnant bodies similarly socialised.

motherhood is thrust upon women from without.[72] Because women's bodies as they become mothers come to occupy a political space, women are not at liberty to make sense of their labour as they choose, even in societies with no paid surrogacy. Anderson's vision of gestation outside of paid surrogacy arrangements is an idealised view of what is normal: Lenz's work shows that there is no norm of the type that Anderson thinks markets degrade. The socialising of women's bodies, not market transactions, prohibits women from conceiving of their reproductive labour as they choose.

The same conclusion can be motivated by appeal to the philosophical tradition. Plato describes a state in which women are had in common, used for the creation of children before their offspring are taken from them.[73] This is another site of Anderson's objection to the market in pregnancy contracts. In Plato's ideal state, the rights of motherhood are undermined; in Anderson's terms, women are denied the right to form gestational ties with their offspring, because their offspring will be taken from them after birth. Gestational ties, and the rights of women to form them, are not respected any more in Plato's ideal state than they are in Anderson's imagined market. Yet there is no financial payment for Plato's women. The only similarity between Plato's state and market transactions is that both involve socialising the creation of children. The objection that Anderson levels against a market in contract pregnancy is

[72] Beyond scholarship, the reclassification of women becoming mothers is discussed in contemporary fiction.
[73] *Rep*. V. 457c-d: Women and children shall be had in common among the men. 460c: They will take the children of good parents to the nurses in charge of the rearing pen in a separate part of the city. 461d: A man will call all the children born in the seventh or tenth month after his wedding his son, if they are male, and his daughter, if they are female. (Translations adapted from Grube)

really an objection to any socialised distribution of women's labour and of children. Her argument encompasses market allocation and other socialised distributions.

II.3: Anderson's objection applies only to markets which involve socialised distribution

My objection has a second prong. It is not simply that market allocations and socialised distributions both deny particular rights. Rather, markets face Anderson's objection only in so far as they are an instance of socialised distribution: it is only because the market that Anderson imagines involves handing the surrogate's offspring to a sponsoring family, known only through the transaction and never to be seen again, that it involves severing the gestational ties that the surrogate might have formed, hence undermining her right to form them. But this is a contingent element of market transactions.[74] Only universal, on-demand markets, which have matured beyond transactions between individuals and have systematised brokerage systems providing universal-availability markets, will have the relevant dimension. It is not because there is payment involved that the market instantiates socialised distribution, but because the market and its supporting infrastructure provides such availability that surrogates and sponsoring families, once strangers, can always find one another. Hence, not only does Anderson's argument object to methods of commodity distribution over and above market allocation, but it will only be a legitimate objection

[74] Building on the argument of I: if such 'socialisation' is contingent, regulation might block socialised transactions.

to a subset of possible markets, namely those markets which provide on-demand, universal availability.[75] There will be some market transactions, devoid of this socialised element, which are not the proper target of Anderson's attack.

A third thought experiment demonstrates that there is logical space within 'markets' for a system which involves financial payment for surrogacy, but which does not face Anderson's objections. Indeed, the following thought experiment might be thought to describe many informal (and legally unenforceable) contracts today.

> *The Crony Contract.* Paid surrogacy contracts have become a commonplace in society and they are legally enforceable. Commissioning families contract women who will become an 'honorary aunt', involved in the life of the child, having as much or as little contact with and input into the raising of the child as she chooses to. Disputes will be resolved between the three of them as they would between two parents: by discussion and compromise, not by turning to a contract. Commissioning families also offer their surrogate payment for producing a child, over and above the expenses that she will incur in, e.g., healthcare and maternity leave from work.[76]

[75] Similarly, Fabre (2006: 190f.) suggests that there could be paid surrogacy without treating a child like a commodity; the surrogate does not have to sell the child to the highest bidder, for example.

[76] Anderson might deny the possibility of this case: she notes that in *any* exchange in which money is involved "the commercial norms underwriting her subordination still apply". (187) This is opposed to the intuition elicited by this thought experiment.

> Hundreds of arrangements are made between families and surrogates each week, all on the same terms.

Here, the surrogate is able to form any ties with her offspring that she would like; they are not severed in the way that Anderson argues that they must by any market transaction. The arrangement respects and facilitates the right of the gestating mother to form a relationship with her offspring. Moreover, set to background conditions which do not force a particular version of motherhood upon her, she will be able to conceive of her labour as she chooses to the same extent as if she gave birth in a traditional family context. This is achieved by turning the surrogate-sponsor relationship into a caring, mutually beneficial partnership. Yet there is also financial payment. If such arrangements are possible, and I see no reason to think that they are not, Anderson's argument cannot apply to all possible market transactions. There is this second sense in which Anderson is imprecise in targeting market transactions: there could be market transactions which do not face Anderson's rights objections.

We have seen that Anderson's argument applies to some markets some of the time, as well as applying to other methods of distribution some of the time. In each of these senses, her argument is imprecise in targeting market transactions. Anderson herself recognises the second part of this, commenting that a state-run surrogacy agency, i.e., an agency mediating the unpaid, socialised distribution of children like in *the Fertility Commune*, would adopt what she calls "a patriarchal […] perspective" which she sees

as a parallel for the approach of the market.[77] Where Anderson has argued that market transactions in surrogacy contracts deny women rights in gestating a child – namely the right to form gestational ties with her offspring and to conceive of her labour as she chooses – Anderson considers that a state-run agency would similarly deny women these rights. In this regard, the two methods of distributing women's reproductive labour would be similarly "patriarchal".

This provides an initial objection. Anderson might object to the appeal that I have made to contemporary British law and society in arguing that her objection imprecisely targets market transactions. British law has a history of denying women their rights and hence it should be no surprise that women are denied the same rights under British law as they are in market transactions. Since her argument for restricting market transactions is that they are patriarchal in denying women rights, other patriarchal regimes should also fall victim to it. Anderson could further note that her argument appeals to rights that women *ought* to have, which are denied by the market, not which they actually have. I have confused, according to this objection, Anderson's appeal to moral rights with an appeal to legal rights.

First, this is simply to accept my objection: to argue that contemporary law denies women the same rights as Anderson's markets is to accept my contention that her argument does not precisely target markets and, therefore, is not a reason to restrict

[77] Anderson, 1993: 187

them. On this interpretation, her argument becomes that we ought to treat pregnancy differently than we do now, not that we oughtn't to marketize it. To force the conclusion that we ought to restrict markets, Anderson requires the (contentious) corollary that these features of society could be changed, so long as there were not markets. Further, I have not claimed that British law treats reproductive labour how it ought to, only that Anderson's argument does not give us reason to restrict markets in particular. Second, this imagined objection would be valuable if my argument were only that there are parallel problems for the market in women's labour and in our contemporary, non-marketized world. However, my objection goes further. I have argued that the problems Anderson sets out for the market in women's labour constitute a genuine objection only *insofar as* the market involves the social distribution of children. We can construct a market which does not deny expectant mothers, and women more broadly, the set of rights that she argues any market must. Hence, the reply to my argument that these similarities are mere coincidence or a function of their patriarchal progenitor is potent if only the first half of my argument stands, namely that socialised distribution also faces the problems that Anderson finds with market transactions. Since a market is also not sufficient for the denial of such rights, i.e., there can be market exchanges which do not deny any rights, Anderson's imagined reply cannot overcome the socialisation objection.

With this objection surmounted, the argument can be summarised into premises:

(i) There is a category of objection to contract pregnancies grounded in *the dignity claim*, i.e., some markets deny transactors their dignity.

(ii) In the case of surrogacy markets, one way to understand *the dignity claim* is that the rights of the women to form gestational ties with their offspring and to conceive of their reproductive labour as they choose are denied.

(iii) Women who engage in unpaid surrogacy arrangements where their labour is socialised are also denied the right to form gestational ties with their offspring and to conceive of their reproductive labour as they choose.

(iv) Women who become pregnant in the traditional context of bearing children for their own families, due to the socialising of their pregnant bodies, are also denied the right to conceive of their labour as they choose.

(v) Women could enter into paid surrogacy contracts without being denied the rights that Anderson claims they must be.

(vi) Conclusion 1: Therefore, Anderson imprecisely targets the market in contract pregnancy by appealing to these rights, instead she targets any and only socialised distributions (*the socialisation objection*).

(vii) Conclusion 2: Therefore, either the dignity claim is false, or there is an alternative understanding of it, which is not grounded in the rights that Anderson suggests.

Everything I have said so far is *ad hominem* to Anderson. It remains to establish that this objection can be advanced against arguments to restrict other markets.

II.4: Socialising Additional 'Contested Commodities'

My objection can be generalised in two senses. First, it applies to others' arguments for restrictions on markets in contract pregnancy. Second, it can be pushed against other commodities.

Take the first of those. Satz argues that the problem with a market in contract pregnancy is that, in contemporary society, it would be set to the backdrop of gender inequality. She argues that a market in contract pregnancies could be acceptable, if there were not a history of gender inequality. She motivates this on the grounds that such a market advances gender inequality in three ways, by: (a) denying women access and control over their own bodies, (b) reinforcing negative stereotypes of women as baby-machines, and (c) making the role of men and women in gestation equivalent.[78] As with Anderson's arguments, we should interpret Satz' as the social claim that all women, and not just those who engage in paid surrogacy, are put at risk by these market transactions. It would be difficult to establish that only the individual women involved in contract pregnancies were harmed by gender inequality.

However, because this argument is also grounded in rights which can be denied by non-market distributions, what I have said to Anderson's argument also applies to

[78] Satz, 2010: I will return to Satz' (c) in III.

Satz'. According to their arguments, the point at which gender inequality is entrenched and further encouraged is not when money changes hands but in the socialisation of women's reproductive labour. Satz' appeal to women's control over their own bodies in (a) is very close to the language of Anderson's rights, which we saw that she thinks are deprived by a market in contract pregnancy. Moreover, in the socialised distribution of women's labour that I illustrated by reference to Plato's kallipolis, women are literally contracted as baby machines, even though they are not paid. In both cases, it is the socialising of women's reproductive labour and not the fact that she is paid that entrenches the view that women are 'for' producing children.[79] Hence, to the extent that this is a potent objection to contract pregnancies, it is potent only against markets which involve socialisation, i.e., on-demand, universal-availability markets, and any other distribution mechanism which likewise socialises women's reproductive labour. The argument that I have set out, therefore, is not *ad hominem* to Anderson; this provides a template for deploying my objection against any argument for restricting market transactions grounded in undermining inter-personal rights.

The socialisation objection can be generalised in the second sense by addressing arguments for restricting markets in other commodities made in the same terms as Anderson's argument. Arguments against prostitution frequently ground their anti-

[79] We could push this further: paying the surrogate counteracts the view that women are baby machines. We do not pay machines to do things for us, because they have no need of money; we replace human labour with machines exactly because they do not need paying. *Contra* Satz, payment might be an acknowledgement that the surrogate is *not* a baby machine.

market sentiment in the claim that women selling sex are denied their dignity. Moreover, the literature extends this to the same claim as we saw with Anderson and Satz: the dignity of all women is supposed to be undermined by a market in sex work. There is a direct parallel for the argument against surrogacy that Anderson advances: prostitution undermines women's dignity because it similarly denies them the right to conceive of their (intimate, rather than reproductive) labour as they choose.[80] Indeed, Anderson's paper is titled 'Is Women's Labour a Commodity?' and although she only examines the example of surrogacy, we might read her paper as also applying to prostitution: "women's labour", in her paper, might be considered broader than only their reproductive labour, to include all gendered labour. This appeal to the same rights as the surrogacy case will obviously fall victim to the socialisation objection.

Other scholars have appealed to the denial of rights in the discussion of prostitution: Margaret Radin argues that prostitution denies women the right to bodily integrity.[81] This is supposed to make a market in sex work unacceptable because it undermines the dignity of women as a class. However, as in Anderson's surrogacy cases, the site of the denial of prostitute's dignity is not the payment, but the socialising of her body. If the dignity of women is undermined by the legalisation of prostitution because they lose the right to bodily integrity, it is only to the extent that this involves opening

[80] One concern is that sex workers cannot withdraw consent once the transaction is agreed. By commercialising the arrangement and codifying it a contract, they sign away rights that they should not. Radin (1996: 135) describes how "forcing performance [of prostitutes] smacks of slavery".
[81] Radin, 1996: 135

women's bodies up to society.[82] Parallel thought experiments to *Capitalism, Baby* and *the Fertile Commune* could be constructed with sex being shared in common instead of pregnancy, and we would again see that the right to bodily integrity is denied by particular distributions of women's labour, whether or not there is a payment.

We can appeal again to Plato's ideal state. It is not only children which are produced by women and shared out among society; sexual relationships are also shared and personal ties between partners, like those between families, are eroded.[83] The literature in response to Plato's ideal state acknowledges that it requires denying women the conditions of their autonomy.[84] We don't need to take a philosophical view on whether eroding personal ties as in the *kallipolis* really denies women the conditions of their autonomy. Instead, we can see from this example that our reaction to a world in which women are had in common for sex, as Plato imagines, is the same objection as against a market in sex: we think that women are denied their dignity when their sexual labour is had in common, paid or not. The similarity of our response to the market and the *kallipolis* underscores my claim that it is a legitimate objection to a market in sex work that such transactions undermine women's dignity only to the extent that women's bodies become socialised by such market transactions.

[82] The Comfort Women of the Second World War are an example of the socialised distribution of sex: no payment was made to these women, but they were still socialised among military men. Their socialisation undermines their dignity, even though they are not paid. We might push this even further – it would perhaps have been better if they had been paid.
[83] Plato, *Rep.* V. 458d ff.
[84] E.g., Pomeroy, 1974

That our reaction concerns the socialised distribution of women is not confined to the history books. Translated into fiction, Plato's world order appears in Aldous Huxley's *Brave New World* later transported to the screen for viewers in 2020. The recent series drew strong reactions from critics: Lucy Mangan saw in the series the needless exploitation of the female form.[85] But this was no perverted directorial decision: bringing Huxley's world, or Plato's state, in which women are shared and intimacy between sexual partners is eroded, to the screen practically demands the volume of detached sexual encounters which has Mangan not-so-affectionately brand the series "Brave Nude World". This is not a segue into cultural criticism: Mangan's reaction encapsulates the same sentiment as the anti-prostitution argument. The social distribution of sexual labour, and the erosion of personal ties necessarily bound up with it, undermines the dignity and denies the rights of those who partake in such liaisons. That her, and others', reaction to such a social system is the same as the anti-prostitution argument's claim that the dignity of market participants is undermined, illustrates that if the rights-based dignity claim applies to markets for sex work, it will apply to any socialised distribution of sex.[86]

This only establishes that the dignity claim, understood in terms of rights, applies to forms of allocation beyond the market in the case of prostitution; it remains to show that the dignity claim does not apply to all market transactions in sex. An example is helpful. Brennan and Jaworski highlight that considering financial payment after sex

[85] Mangan, 2020

[86] I have said nothing about whether socialised distributions are permissible and hence, nothing about whether this claim is reason to ban particular markets along with other forms of socialised distribution. See p.45f.

to undermine the dignity of the person being paid is a culturally subjective quirk of the Western ideologies. They describe a custom whereby Merina men, an ethnic group on the island of Madagascar, give money to their wives after sex.[87] This is interpreted by the Merina people as a sign of respect. The practice predates patriarchal notions of sex. This is an example of money changing hands, ostensibly for the purchase of sex, without any rights being denied. Brennan and Jaworski take this to be an example of a market transaction.[88] The example, in which there is payment without any denial of rights, establishes that prostitution denies market participants some rights not on account of the exchange of cash for sex but in socialising the woman's body.

The same two arms of the socialisation objection can therefore be made of prostitution as they were made of surrogacy contracts: if women are denied particular rights by a market in sex, they are also denied them by the socialised distribution of sex where there is no payment. Moreover, there could be instances of payments in a market for sex work which have no impact on the rights of women. The socialisation objection therefore fully applies to anti-prostitution arguments.

The right to bodily integrity is salient in another market: sales of human organs. The claim is often made that there should not be a market in organs or human tissue because such a market would open the human body up to indignity. Nancy Scheper-Hughes cashes out the dignity claim in terms of the right to 'bodily integrity', making

[87] Brennan and Jaworski, 2015
[88] See IV for a detailed discussion of off-market transactions.

this a parallel for the prostitution case of the previous paragraphs. The argument goes that it is unacceptable to violate the bodily integrity of another person to extract an organ which to give to a purchaser. However, it can be no greater a violation of bodily integrity to extract an organ which will be sold than it is to extract an organ for donation: there is no surgical procedure reserved only for cases where the donator can prove their altruistic motives. While there is an obvious distinction between cases of coercion and cases of donation – in the former, bodily integrity is more obviously breached because the donator does not provide their consent to some procedure – the distinction between a consenting donor and a consenting seller is certainly not obvious. The bodily integrity of the donator is violated as much as that of the willing seller.[89] The right to bodily integrity is not denied by the cash payment but by the procedure to remove the organ – donated or sold.

Again, the argument against market transactions which sees them as violating the rights of the seller does not precisely target the market elements of these exchanges. By grounding the argument that the market in organs is unacceptable in the claim that such a market undermines human dignity because it denies the seller the right to bodily integrity, the anti-market theorist does not precisely target markets in organs. The dignity claim understood in terms of a rights violation only addresses markets in

[89] One might think that bodily integrity is violated by neither sale nor donation of an organ. That is not an objection to my claim that the rights argument is imprecisely targeted; instead, it is an objection to deploying the rights-based argument of organ sales at all.

human organs in so far as such markets instantiate the socialisation of human organs and open up the individual body to society.

Of previous markets, I have also argued that not all market exchanges undermine particular rights. I illustrated this with *The Crony Contract* in the case of surrogacy and the Merina tribe example in the case of prostitution. In the case of organ markets, this is more contentious. To establish this, we would need to claim that the violation of bodily integrity could be compensated by monetary payment, or perhaps even that the payment received for selling a kidney restored bodily integrity. We might think that the money paid to the seller could be used to fund healthcare beyond what would be provided as a matter of course – for example, counselling, if the seller had found the event unexpectedly traumatic. However, this does not seem capable of restoring bodily integrity. Therefore, I am not convinced that this second element of the argument applies to selling human organs.

One might question why this second arm of the argument applied to prostitution but not human organs even though both transactions appealed to the same right – namely, the right to bodily integrity. Answering this challenge reveals why the second arm of the socialisation objection does not apply to markets in human organs. The market in human organs undermines the right to bodily integrity because bodily integrity is compromised by any transfer of organs or tissue between two people. Even in cases of donation, bodily integrity is compromised. However, compromising bodily

integrity is not obviously a necessary component of sex – it is only a component of socialising bodies. Hence, the second arm of the socialisation objection can apply to prostitution but not to organ sales, even though both appeal to the same particular right. More importantly, however, even without this second arm of the socialisation argument for this particular market, we can still accept the conclusion that organ markets are another example of an imprecisely targeted dignity claim understood in terms of rights: the claim that such markets deny rights to participants is true only insofar as they instantiate the socialised distribution of human organs.

We can now restate the argument in its generalised form:

(i) There is a category of objection to market transactions grounded in *the dignity claim*, i.e., some markets deny transactors their dignity.

(ii) *The dignity claim* may be established by appeal to the deprivation of some rights that the transactor ought to have.

(iii) The rights to which anti-market scholars appeal imprecisely target market transactions because they are also undermined by non-market socialised distributions.

(iv) Of at least some markets, there could be market transactions which did not undermine those rights.

(v) Conclusion 1: Therefore, anti-market scholars imprecisely target the markets they aim to address by appealing to these rights; instead, they target any and only socialised distributions (*the socialisation objection*).

(vi) Conclusion 2: Therefore, either the dignity claim is false, or there is an alternative understanding of it which is not grounded in these rights.[90]

One might object that the socialised distribution of goods is a necessary part of the market: the kind of transaction that I have appealed to, for instance in the case of *the Crony Contract*, may not be a market transaction at all.[91] In other words, an exchange between two people which does not come from an organised marketplace in which there is on-demand, universal availability mightn't be a market transaction at all. However, this is a contentious objection for multiple reasons: first, defining what counts as a market to ensure that the objection applies renders the argument *ad hoc*. Moreover, when scholars introduce the question of marketisation, they are not only concerned with on-demand, universal availability markets. For example, Sandel opened his Tanner lectures with the anecdote of tipping a tutor and the example of paying for advertising space in bookshops.[92] If the examples are to draw out a common feature of markets, he cannot only target on-demand, universal availability markets, since his anecdotes do not depict this kind of market. To now establish that only on-demand, universal-availability markets count as markets to avoid the

[90] The argument does not substantiate the view that the dignity claim cannot be grounded in *any* rights. One might ask what kind of rights are not suitable. I have not provided a list, but it seems any relational rights will be victim to the socialisation objection – i.e., any rights grounded in one person's relationship with another.

[91] Similarly, the Merina men of Madagascar might be considered an off-market payment rather than a market transaction.

[92] Sandel, 1998

socialisation objection would be to move the goalposts on the nature of the problem being discussed. Further, building a thicker concept of the market such that a method of allocation is only a market if there is sufficient liquidity to ensure socialised distribution renders the anti-market conclusion trivial: if the market entails socialised distribution, and if socialised distributions are impermissible in particular goods, then it is trivially true that markets will also be impermissible.

I noted above (see N.86) that I intended to remain neutral on the moral status of socialised distributions because this is a rich question in its own right.[93] However, the argument that the dignity claim does not precisely target market transactions would be stronger if I could also suggest that the socialised distributions to which it also applies are morally permissible. This would be stronger because it would demonstrate that the dignity objection to markets, understood in terms of the rights of market participants, also applies to permissible distributions. Therefore, denying some rights could not give us a reason to restrict market transactions.

For some of the markets discussed, there may be reason to take this extra step: for instance, there may be reason to think that bodily organs should be socialised to maximise the number of people living minimally flourishing lives. Cecile Fabre makes this argument, claiming that if the economically needy have a claim on us for

[93] The conclusion that the problem some identify for markets is also a problem for socialised distribution may be puzzling because marketisation and socialisation are frequently taken to be antithetical e.g., in discussions of healthcare.

cash, i.e., if redistribution of funds through the tax system is legitimate, then the medically needy have a legitimate claim against us for use of our (surplus) organs.[94] That is, if donating a 'spare' kidney could give someone a minimally flourishing life, then she who requires the kidney has a claim against the healthy to provide it. Here, the socialised distribution is not only morally permissible but required.

However, for other commodities, this argument does not go through: when it comes to bearing children, a contract for surrogacy cannot be meaningfully understood as a woman handing over a surplus of something that she has. Rather, she will use her (admittedly surplus[95]) abilities to generate a child. The relevant analogy, however, would be that the needy had a claim against taxpayers to deploy the full extent of their abilities – into the highest paying jobs and/or into working the most possible hours.[96] This is much less easy to justify, and so the socialised distribution cannot be morally required. Moreover, throughout this chapter I have elicited the intuition that the socialised distribution is morally impermissible by drawing out the same intuitions that we have of the impermissibility of market transactions of socialised distributions.

It is necessary, therefore, to deny what might have been a corollary to the argument of this chapter and to remain neutral on the moral status of socialised distribution. When a market instantiates the socialised distribution of some goods, this may be

[94] Fabre, 2006: e.g., §4

[95] Many women are able to produce more children than they could practically care for in their lifetime.

[96] An effective altruist might consider this the best way to live, but there is little to commend the assertion that the needy have a claim against the well-off to deploy their faculties for maximum gain.

either objectionable or not, depending on whether the good being distributed is apt to be socialised. My conclusion is more limited: the dignity claim, understood in terms of the rights of market participants, is imprecise in targeting market transactions.

II.5: Conclusion

I have argued that the dignity claim, understood in terms of rights violations, is potent against markets only insofar as they are an instance of socialised distribution. I have demonstrated this of three key markets: contract pregnancy, prostitution, and human organ sales. Hence, another understanding of the dignity claim is required to ground the argument for restricting market transactions in this appeal to dignity. I have not argued for the dignity claim; hence if a compelling account of it cannot be found, it must be rejected. It is the work of the next chapter to provide such an account.

III. "Money Talks," but what does it say?

We saw in the previous chapter that an understanding of the dignity claim in terms of the rights of market participants – that some markets ought to be restricted because they undermine human dignity by denying transactors their rights – did not precisely target market transactions. This understanding of the dignity claim left it vulnerable to the socialisation objection: the rights which were supposedly denied to market participants by particular markets were (a) denied by other methods of distribution which also involved the socialisation of particular goods, and (b) only denied by particular kinds of market, namely those that involved socialisation. I concluded that an alternative understanding of the dignity claim was required if it was to motivate restricting markets in particular commodities. Providing an understanding of the dignity claim which is independently plausible and not vulnerable to the socialisation objection, is the aim of this chapter.

I previously described the dignity claim as a 'semiotic objection' which, in the case of surrogacy markets, expresses a 'false fact' about women. The rights account said that this operated by making false claims about the rights that women (ought to) have. My account retains the idea of expressing a 'false fact': it is also a semiotic objection which understands the dignity claim in terms of what the market says about women. Indeed, it takes the expressive nature of semiotic objections even more seriously. I propose that, since the medium of exchange in market transactions is money, an essential

feature of them is the 'presupposition' (in a sense to be explained) that all goods traded on the market are 'radically fungible' (also in a sense to be explained) (III.1). I argue that if a category of goods which are not radically fungible with other goods can be established, which I give us reasons to think that it can (III.2a), there are two reasons to restrict market transactions. By applying a parallel for speech act analysis, I suggest that presupposing radical fungibility of commodities in this category is false (III.2b) and/or harmful (III.2c). This gives us reason to consider restricting market transactions in particular goods. I demonstrate that the socialisation objection of the previous chapter does not apply to this argument (III.3). I conclude that if a category of non-fungible goods can be established, an argument for restricting markets to exclude those commodities should be grounded in the epistemic flaw of a false presupposition and the moral flaw of a harmful presupposition. I conclude that we should therefore understand the dignity claim in terms of this presupposition of radical fungibility.

III.1: Market transactions 'presuppose' that goods exchanged are 'radically fungible'

It is an essential feature of market transactions that goods and monetary payment change hands.[97] Money is the tool of exchange and market participants use financial valuation to determine how much has to be handed over in return for a particular commodity. Financial valuation removes the need for market participants with a

[97] On the barter economy see N. 149

commodity that they want to sell to find a willing transactor who has both a desire to purchase the commodity they have and a commodity which the seller wants to acquire. Instead, money acts as an intermediary such that market participants can sell to and buy from anyone else, providing their counterparty in a trade has sufficient access to capital. In Walzer's terms, money is the facilitator of markets: "free exchange creates a market within which all goods are convertible into all other goods through the neutral medium of money".[98] This is the chief benefit of using money to broker transactions: it becomes easier for market participants to transact. [99]

What does it mean to be radically fungible?

By using money, markets presuppose that financial valuation is an appropriate method of valuation for the goods being exchanged. Market participants must also presuppose that all goods which can be bought and sold in market transactions, using money as the medium of exchange, are and ought to be intersubstitutable with one another. In other words, sellers must accept money for the purchase of their wares regardless of the commodities which were converted into money by the buyer.[100] Engaging in market transactions requires market participants to presuppose that all goods which are exchanged for money are 'radically fungible'. Martha Nussbaum

[98] Walzer, 1983: 21

[99] Graeber (2011) is sceptical about this account of how markets developed. However, I am not making the anthropological claim that this is how markets developed, only that this is a description of markets today.

[100] There are exceptions – "we don't want your money here", for example. However, these are usually objections to trading with a particular person, rather than an objection to where the money that they would hand over came from. Another exception is money laundering – sellers are not just permitted but required to reject cash they have reason to believe has been derived from criminal activity.

outlines two different kinds of fungibility: fungibility may be understood as either (a) substituting a good of kind X for another good of the same kind, X, or (b) substituting a good of kind X for a good of a different kind, Y.[101] Nussbaum's definition is problematic since there is no good account of what constitutes a kind. Without an account of the term 'kind', it is impossible to know whether an instance of fungibility is basic, as in (a), or radical, as in (b). This difficulty indicates that there may be a range of fungibilities rather than the binary I rely on. However, her account still demonstrates that there is a type of fungibility which is less than radical fungibility. Within the spectrum, there may be completely restricted fungibility, where only (qualitatively) identical goods are intersubstitutable[102] and completely unrestricted fungibility where all goods are intersubstitutable with all other goods. Even if there is a spectrum between these two species of fungibility, each of these will nonetheless be a limit case. By 'radical fungibility' I mean the latter: items of the same monetary value are intersubstitutable no matter the good that they are. [103] An orange can be exchanged, using money to broker the transaction, for a chocolate bar just as well as it can be exchanged for a train ticket.[104] From the presupposition that an orange can be bought and sold using money, a universal medium of exchange for markets, it follows that oranges are presupposed to be radically fungible with any other

[101] Nussbaum, 1995: 257

[102] A complete restriction might require that nothing, not even qualitatively identical goods, can be exchanged. I leave this open – what matters is that there is a limit case at this end of the spectrum, not exactly what this limit case is.

[103] It remains an open question whether basic fungibility, i.e., fungibility within rather than between a category of goods could replace radical fungibility while preserving the argument. We can certainly imagine cases in which it is false and/or harmful to say that some X could have been swapped for another X, e.g., to claim that some gestational labour or intimacy could have been swapped for that of another. Some arguments along these lines have been offered (e.g., Marshall, 1999). I do not argue for this.

[104] The only difference will be the number of oranges that the market participant has to sell to release capital to buy a chocolate bar vs. to buy a train ticket.

commodity which can also be purchased with money. Since money brokers transactions between market participants, markets presuppose that the goods traded are radically fungible with all other goods which can also be acquired in market transactions.

There is one clarification. I used a quotation from Michael Walzer to support this appeal to radical fungibility, however my argument goes beyond his claims about distributive justice. Walzer argues that justice requires multiple modes of distribution which govern different goods.[105] Each mode of exchange has its place in a just society. For example, distributing political power to those with the most money would be an instance of "domination" which is impermissible at the bar of justice, but distributing luxury goods according to those who had the most power would also be unjust.[106] Hence, a just society requires multiple methods of distribution, which will be used for different goods. Further, Walzer delineates which goods are apt for a particular distribution on the basis of the (historically determined and mutable) social meaning of a particular good.[107] He argues that the right way to distribute a good is determined by its social meaning because social goods have their own spheres of operation which are not interoperable.

[105] Walzer, 1983: 4-5
[106] *Ibid*, 22
[107] *Ibid*, 7-9

The appeal to radical fungibility might be thought a rehashing of Walzer's argument. However, where Walzer argues that it is something intrinsic to the social meaning of the good which determines the correct method of distribution, my argument is intentionally compatible with the idea that the appropriate method of distribution is entirely independent of any account of the social good. Where Walzer thinks that there is something about the kind of good, e.g., a surrogacy contract, is, which means that it should not be distributed by market transactions, the argument from radical fungibility is the claim that the method of distribution that we choose is independent of any account of the social good. What makes a particular good unsuitable for distribution by market transactions is not that there is some particular meaning to, e.g., surrogacy contracts, social or otherwise, but that surrogacy contracts should not become fungible with other commodities, for reasons that we will see in the next section. What makes market distributions unsuitable for particular goods is the other commodities which are distributed in that way.

On my argument, paid surrogacy contracts could be morally permissible if we remove certain other kinds of commodity – like oranges and chocolate bars – from the same method of distribution.[108] Monetary payment could permissibly become the norm for distributing women's labour and the children they bear, if the category of things also distributed by monetary payment ceased to include commodities with which

[108] On this argument, maternal labour can permissibly be included in non-market exchanges. For example, it could be included in pre-nuptial arrangements requiring a woman to produce a certain number of children in return for some commitments from her husband. It may be impermissible to make such exchanges for other reasons, but not for the moral limit of the market.

fungibility claims were either false or harmful.[109] *Contra* Walzer, it is not the social meaning of a particular good which makes it impermissible to distribute it in market transactions. Rather, it is the other things which are distributed in that way which lead such transactions to make false or harmful assertions. This is the difference between Walzer's category argument and my appeal to radical fungibility.[110]

What does it mean for market transactions to presuppose something?

Market transactions presuppose radical fungibility in the sense that this presupposition enters the common ground of market transactions. The act of paying, or of offering money, presupposes radical fungibility in the sense that it allows this into the common ground of subsequent conversation. To unpack this, consider:

> *Susan's Antique Store.* On Sundays, David goes into town to visit a local antique shop. He is a lifelong collector of artwork and, each week, he wants to see what the owner of the shop, Susan, has on offer. When he arrives one particular Sunday, his friend Michael, a self-confessed philistine, is surveying Susan's wares. He has his

[109] It is compatible with this argument to claim that there is nothing with which surrogacy contracts could ever be fungible, i.e., they could never share any means of distribution with any other goods, being in a category of their own.

[110] Although I argued in I that we should consider the moral limit of market transactions without background conditions of exploitation, the appeal to radical fungibility might account for the exploitation problem too. If the cash paid to a surrogate was not fungible with food or shelter, selling labour in surrogacy contracts would not address a woman's destitution. Hence, women would not enter into these transactions for reasons of destitution, and the markets may not be exploitative.

> eye on a landscape painting and when he sees David approaching, he offers Susan fifty pounds for it. David immediately counters his offer, placing a hundred pounds on the counter.

This is an uncomplicated example of a market transaction in which two potential transactors bid for a commodity. When Michael and David put their money on the shopkeeper's counter, they presuppose that financial valuation is an appropriate method of valuation for the painting they would like to own. The statements that they make are variously, "I'll give you fifty pounds for it," and "I'll give you double," but, according to the view that I am proposing here, a presupposition sits behind their statements. In particular, they presuppose that the artwork can be valued in financial terms[111] and, therefore, that the landscape painting they bid for is radically fungible not just with other paintings, but with other kinds of good which can also be purchased with money – from our previous examples: oranges, chocolate bars, and train tickets. David and Michael must make these presuppositions to engage in the bidding; without them, they would not offer monetary payment.

This is only evidence that they make the presupposition, it does not give us an account of what it means to 'enter the common ground', as I described presupposition above. First and pretheoretically, presupposition does not concern the explicit content of an assertion: presupposed content may be required to make sense of the assertion

[111] This does not preclude presupposing that the artwork could also be valued in other terms – e.g., for its aesthetic value, or for being just the right size to cover a stain on the wall. See P. 58.

without itself being spoken. For example, the utterance "don't forget your umbrella, it's raining" presupposes that nobody wants to be caught in the rain, or the utterance "Sarah is feeling better now" presupposes that Sarah was once ill. In each of these cases, something is communicated which is not part of the explicit assertion. The presupposition of market transactions similarly is not something that market participants say, but something that they must presuppose to enter into market transactions. Moreover, it is not only assertions that can presuppose. Actions presuppose too: if I throw an apple into the bushes next to a "no littering" sign, I presuppose that the apple will decompose naturally and will not count as "litter".

This is all true of theoretical models of presupposition, too. Presupposition is as an unspoken assertion adding not-at-issue content to the common ground of a conversation.[112] This model of presupposition has been used to outline the harm of pornography[113] and the mechanism of propaganda.[114] Even though it may be familiar, the terms of this model require definition.

The 'common ground' describes the information that participants have, or presume one another to have, in common at the beginning of a conversation; a body of propositions against which utterances made as part of the conversation will be tested.[115] If a proposition is accepted by participants, it is added to the common

[112] Stanley, 2015: 125ff.
[113] Langton, 1993
[114] Stanley, 2015: §4
[115] Stalnaker, 1999

ground.[116] Take an example. Sarah and Eleanor are discussing what colour to paint their front door: Sarah asserts that white front doors get dirty more quickly. In this utterance, she proposes adding to the common ground of the conversation that white front doors are unfavourable because they require cleaning or painting often. Eleanor must either accept or reject this addition: if she agrees, it will be added to the common ground of the conversation as they flip through colour charts, but she may well reject it if, for instance, she has found some stain-resistant white paint. Assertions will also be rejected if they are incompatible with the existing common ground of discussion. The common ground of a conversation therefore functions as the set of propositions against which utterances in the conversation are tested and into which they are considered for inclusion.

Debate followed by acceptance is, however, only one way in which assertions can be added to the common ground. Christopher Potts draws a distinction between the at-issue content of an assertion and the not-at-issue (NAI) content.[117] He suggests that when a speaker utters an assertion, there is the main content of the assertion which may be accompanied by secondary content. Suppose that later in their conversation Eleanor says: "let's paint the front door red; that's my favourite colour". Here, the at-issue content is the proposal to paint the front door red, but the fact that red is Eleanor's favourite colour – is secondary information, or in Potts' terms, the not-at-issue content. On Potts' model, this secondary information is NAI and it gets admitted

[116] I take it that the bids in *Susan's Antique Shop* are declarative sentences and so there is no need to add to this account. However, Craige Roberts (2012) adds a history of questions to the common ground too.
[117] Potts, 2005

to the common ground of a conversation without debate. An interlocutor is expected to respond to the main content of the sentence and either accept or decline the proposal to add it to the common ground of the continuing conversation. That is not to say that a speaker *couldn't* respond to the NAI content: speakers might especially challenge the NAI content of their interlocutors' speech when there is a contradiction with something else in the common ground.[118] However, while the speaker is preoccupied with the at-issue content, unless the speaker does challenge the NAI content of an utterance, it passes into the common ground. Hence, it is significantly easier for NAI content than that at-issue to pass into the common ground because NAI content must only avoid unexpected challenge, where at-issue content will be debated before inclusion. In our example, that red is Eleanor's favourite colour passes into the common ground unchallenged as NAI content.

NAI content does not need to be embedded in subordinate clauses: NAI will be all the more clearly *not*-at-issue if it is implicit, as we saw in pre-theoretic accounts of presupposition. The presupposition of market transactions, that the goods traded in market transactions are appropriately exchanged through the medium of money and are radically fungible with one another, is of this kind: while not uttered by market participants, it is a presupposition of their participating in market transactions, even when they participate in the market only silently – for example, adding something to an online basket or waving a contactless card. Applying Potts' model, when market

[118] Maitra (2012) argues that we may be required to challenge NAI content in cases of ordinary speakers' hate speech.

participants transact, they presuppose that financial valuation is an appropriate mode of valuation for the goods being purchased and that the goods being purchased are radically fungible with all other goods that can be acquired in exchange for money in the sense that this proposition is unexpressed NAI content and passes into the common ground of subsequent conversation.

Return to *Susan's Antique Store*, the at-issue content of David and Michael's assertions and actions is the amount that they will pay for the landscape painting. In each case, Susan must accept or decline the amount of money being offered for the painting. These utterances and actions presuppose that financial valuation, which will make the painting radically fungible with all other goods that can be bought and sold in market transactions, is an appropriate method of valuation for the painting. This passes into the common ground of the conversation by virtue of its role as presupposed, NAI content in David and Michael's assertions and actions.

Susan's Antique Store illuminates another feature of the presupposition. David is an art connoisseur: he is a collector and he appreciates art's aesthetic value. Being an art connoisseur, if asked, David might reject the assertion that financial valuation is appropriate for works of art. He might think that the value of art cannot be expressed in financial terms and the painting is not fungible with some number of oranges. However, to bid in the auction, he must fail to challenge the presupposition that artwork is properly valued in financial terms. He must fail to challenge the NAI

content even if he would not accept it as at-issue content.[119] Hence, the presuppositions of market transactions can enter the common ground as NAI content, even if the interlocutors would not agree to the assertion if it were at-issue.

I have argued that market transactions presuppose that financial valuation is an appropriate method of valuation for the goods being bought and sold and that the goods exchanged in market transactions are, and ought to be, radically fungible with all other kinds of goods exchanged in markets. This serves to explain the terminology of presupposing radical fungibility but it is a descriptive claim. Hence, it does not constitute a reason to restrict market transactions. In the second half of this chapter, I motivate the normative conclusion that this presupposition of radical fungibility gives us reason to restrict markets in particular commodities.

III.2: What's wrong with presupposing radical fungibility?

One might think that 'smuggling in' presuppositions via NAI content is sufficient to ground an objection to market transactions, even if what gets added is true. Indeed, the language of 'smuggling in' anything makes it sound insidious.[120] However, adding NAI content to the common ground of a conversation is frequent and often

[119] Langton and West (1999) suggest that allowing in presuppositions as NAI content accounts for pornography's assertions about women. Stanley (2015: 157) argues that its being difficult to challenge makes propaganda effective.

[120] As Stanley (2015: 138) describes Langton and West's argument.

morally neutral. Returning to the example, there is no moral problem with the NAI content that red is Eleanor's favourite colour. Appeal to NAI content by itself cannot ground our normative conclusion. Moreover, it is sometimes permissible to add the presupposition of radical fungibility to the common ground of a conversation. The presupposition of radical fungibility is acceptable, and even desirable, for some (perhaps even most) commodities to facilitate efficient trade. Hence, to show that it follows from the presupposition of radical fungibility that we ought to restrict market transactions, we need another step, which will not apply to all instances of this presupposition.

I suggest that there is a category of commodity of which fungibility claims are not true, i.e., there are particular commodities which are not intersubstitutable with any other goods in any context. I then argue that a speech act analysis can be applied to this false presupposition of market transactions, such that, if this category can be established, we ought to restrict markets in those goods for two reasons: the false presupposition leads first to an epistemic flaw and second to a moral flaw since it is harmful. Of course, both may be true. Each of these provides a conditional reason to restrict market transactions in particular goods. I discuss paid surrogacy in detail, and argue that the case for restricting paid surrogacy can be established in these terms. The argument may also apply to other commodities.

III.2a: If some goods are not radically fungible…

The attraction of radical fungibility is that it makes the value of all goods comparable. Radical fungibility means that I can compare oranges, chocolate bars, and train tickets by valuing them all in terms of a single currency, i.e., money, and thereby render them intersubstitutable in the marketplace. If the market were extended, transactors would also be able to substitute children, women's labour, and sexual intimacy, for oranges, chocolate bars, and train tickets. However, many assume that it is not possible to substitute chocolate bars with children, or oranges with women's reproductive labour. There are two ways to make sense of this intuitive assumption. First, it could be normative: we ought not to substitute some goods with others. Or it could be descriptive: some goods cannot be substituted. The former interpretation is less interesting since from a normative assumption that some things should not be inter-substituted would follow a normative conclusion that they should not be inter-substituted in the marketplace. More interesting is the descriptive claim that without money facilitating these substitutions, there is no way to substitute the services of a surrogate with an orange or chocolate bar. This is the version that I primarily defend. The argument therefore is that markets require us to presuppose radical fungibility and, if there is a category of non-fungible goods, this presupposition is false.

So, why think that such a category of non-fungible goods can be established? There are three reasons. First, I noted above that the intuition that some goods cannot be swapped for others is a popular one: many have a strong intuitive response that some goods are not intersubstitutable with others. When I introduced the example of

chocolate bars being substituted with children, or oranges with women's reproductive labour, it is likely that any reader will have considered this at best strange and at worst morally wrong. The intuition that there are some things that are not intersubstitutable is particularly acute in the blood money objection to reparations, which claims that reparations are inappropriate because the payment presupposes that monetary payment can compensate for the loss of life or wellbeing.[121] That we get such an intuition ought not to be ignored. However, reliance on intuition has been compellingly critiqued,[122] so the appeal to intuition is not by itself sufficient.

There is a second reason. Goods are substitutable when they are a means to the same end. Oranges are substitutable for chocolate when they are serving as a means to the end of fuelling a consumer's walk, but if the consumer has a vitamin deficiency or a lactose allergy, a chocolate bar ceases to be intersubstitutable with oranges. When the orange is a means to the end of vitamin consumption, the chocolate ceases to be a substitute, though perhaps a vitamin tablet would be. However, there is at least one context in which the orange and the chocolate bar are substitutable – namely to fuel the walk, as described. By contrast, women's reproductive labour is a means to the end of begetting a child and there is nothing else which can serve as those means in any context.[123] Hence there is nothing with which it is fungible in any context.

[121] See IV for discussion.
[122] For a critique of intuitions see Nagel (2012) and Singer (2005).
[123] I set aside the possibility of *ex utero* gestation as an incomplete substitute for childbearing.

One might object that it is unnecessarily prescriptive to say that the end of surrogacy is to birth a child. Looking more broadly, surrogates sometimes see the end of their work as bringing together a family, making a family 'complete' or making the intended parents happy.[124] If these are the ends at which surrogacy aims, there may be alternative means to achieving them and hence surrogacy is fungible with these other things. Indeed, when couples are faced with infertility, they are often presented with a series of options: surrogacy, adoption, or IVF. The medical advice claims that there are multiple means of achieving their ends. Given this, surrogacy might be fungible with these other goods. However, this is too broad a consideration of the ends of surrogacy: all goods might be made fungible if we appeal to as large a concept as human flourishing as the ends at which they are directed. It somewhat begs the question to say that those things are fungible as a means to the end of human flourishing when there is a more specific end that they are more precisely aimed at. Moreover, in the example of the medical advice, the ends at which the means of surrogacy, adoption, and IVF aim are all different, especially when we consider traditional motherhood. It is this difference which makes the decision between surrogacy, IVF and adoption so difficult for those who must make it. Hence, surrogacy is not, when the ends are properly specified, intersubstitutable with other goods because it is not a means to the same end as any other good.

[124] In the absence of much written testimony, these assertions come from interviews with surrogates in a recent BBC documentary series, 'The Surrogates'.

Finally, and on the normative half of the above distinction, some goods concern persons. Surrogacy is clearly an example, but there are others, including prostitution and human organ sales. Goods and services may be intersubstitutable, but persons are not. We saw above that it is the fact that two things are a means to the same end that makes them intersubstitutable in a particular context. To consider persons intersubstitutable is therefore to use them as a means. Moreover, it is to use them as a mere means, since their intersubstitutability undermines their being viewed as an end in themselves. Hence, there is moral reason not to consider persons, and commodities which are intimately connected with persons, intersubstitutable because to do so denies the persons engaged in the transaction their humanity.[125] This denial of humanity constitutes an alternative understanding of the dignity claim. This is the third reason to establish a category of goods about which radical fungibility claims are false. Moreover, when I introduced the dignity claim at the beginning of Chapter Two, I introduced it in similar Kantian terms of undermining the status of a transactor as a person (see p. 23). This further supports the understanding of the dignity claim that I have proposed.

These three reasons can be heaped up to support the claim that there is a category of goods about which the presupposition of radical fungibility is false; however, they are individually defeasible and, as a result, even their combination will not convince the sceptic. I noted above that the appeal to intuition has been compellingly critiqued and, as such, the motivated sceptic has a route of reply to this first reason. The second

[125] Lewis (2019) describes commercial surrogates as a "prosthesis" i.e., the surrogate crosses the Kantian person/object distinction.

reason to think that some goods were not intersubstitutable was that, at least in the case of surrogacy, there was nothing which achieved the same end as gestating a child and therefore nothing with which that labour was intersubstitutable. One might object here that goods are all intersubstitutable as a means of achieving the end of preference satisfaction. I pushed back above (p. 62) against the idea that all goods would be substitutable in achieving human flourishing, and the same reply might apply here, but again, the sceptic is likely not convinced.

The third reason to establish a category of non-fungible goods was the Kantian argument that some goods are connected with persons and persons should not be treated as a mere means, which intersubstitutability requires. This established the normative claim that some goods should not be considered intersubstitutable. The argument is Kantian in the sense that it appeals to the moral requirement to treat people as ends in themselves. This reason is also not indefeasible: Margaret Radin examines the argument as she sets out the distinction between wage labour and slavery.[126] However, she concludes that there is no "metaphysical bright line" that determines which items are part of the person and which are not.[127] She argues that there is a grey area between the subject and object; between those things which are a part of us and those which are objects in the world. Hence, an appeal to the Kantian divide will not convince the sceptic because they refuse to see the distinction between persons and objects. However, even if it is not perfect, there nonetheless seems to be

[126] Radin, 1996: 34-40
[127] *Ibid*, 40

something in this distinction: Radin also acknowledges that the absence of this "bright line" is not fatal.[128] Hence, while my reasoning will not convince the sceptic, the volume of reasons nonetheless gives us significant persuasive, if not indefeasible, reason to think that there is a category of good which is not fungible with any other goods in any context.

However, the possibility of this sceptical response motivates a more modest, conditional conclusion that *if* a category of non-fungible goods can be established, then the dignity claim understood in terms of radical fungibility holds and we have reason to consider restricting markets in particular commodities because the presupposition will be false and/or harmful.

III.2b: …Then radical fungibility makes false statements about particular commodities

We saw that financial valuation presupposes that goods valued in financial terms are fungible with all other goods valued in financial terms. From there, I argued that we have reason to think there is a category of non-fungible goods. However, not all lies are impermissible: we cannot conclude from the fact that market transactions involve making a false presupposition that we therefore have reason to restrict them. Before I

[128] *Ibid*

set out the harm claim, it bears considering whether the mere falsity of these presuppositions is sufficient to motivate restricting market transactions.

Allowing false presuppositions to enter the common ground is comparable to simpler cases of presuppositional failure. In often-discussed sentences like "the king of France is bald", where there is no king of France, one account of what goes wrong (and it is one of many) is that the false presupposition (that there is a king of France) makes the sentence containing the presupposition neither true nor false.[129] On this view, false presupposition is epistemologically flawed because it is 'catastrophic' to the rest of the discussion, rendering the rest of the conversation meaningless or without truth value. Just as the sentence which contains a presupposition cannot be either true or false, when false presuppositions enter into the common ground of a conversation, the conversation becomes likewise meaningless in the context of the real world. The conversation continues as if the interlocutors are discussing a fictional world. Applying this account to market transactions, the false presupposition of radical fungibility is flawed because allowing it into the common ground renders discussions of price meaningless, since the statements which presuppose this falsehood are neither true nor false. On this argument, any goods which are not radically fungible, in the sense that they are not intersubstitutable with other financially valued goods, ought to fall outside market transactions, because markets in these goods rest on an epistemological failing. Discussions of price proceed as if they are discussions of value in the real world when they really concern a fiction where financial valuation is an appropriate method of valuation. That the false presupposition entails that the

[129] Strawson, 1950. See Yablo, 2006 for the claim that there could be non-catastrophic presuppositional failure.

ensuing discussion is meaningless is just one way to make sense of this epistemological failing. There are other accounts of traditional presuppositional failure, and they may also be deployed to explain the presupposition of radical fungibility. I contend that this is one suitable explanation.

If there is a category of goods which are not fungible with other goods, market transactions in those commodities will involve false presuppositions about the goods exchanged – namely that they are radically fungible with all other goods valued in financial terms. This false presupposition constitutes an epistemological flaw. On that basis, there is reason to consider restricting markets in those commodities. However, the moral peculiarity of the trades in the Introduction did not seem epistemological, or at least not *merely* epistemological. There is a second way to motivate to the normative conclusion: presupposing radical fungibility is harmful.

III.2c: …Radical fungibility makes harmful statements about particular commodities

Presupposing radical fungibility of non-fungible commodities may be harmful. One way to understand this is by carrying over the work of the previous section – it is harmful to make these false presuppositions.[130] The false presupposition of market transactions, that the goods exchanged are appropriately valued in financial terms and therefore radically fungible with any other goods also valued in financial terms, is

[130] There may be another way to understand the harm claim which is independent of the false presupposition claim of the previous section. For discussion, see P. 71ff.

harmful because it involves subordinating women's reproductive labour from the position that it ought to have.[131] In this sense, such markets are degrading. In the terms of the previous section, making the false presupposition that women's labour is radically fungible with all other goods which can be purchased in market transactions is to engage in a fiction. The contention of this section is that engaging in this fiction is harmful: it is not true that women's labour is radically fungible and the moral wrong of presupposing that it is, is that this presupposition degrades their labour, subordinating it from the position that it ought to have. This is morally impermissible because it constitutes harm.

That speech, of which presupposition is an example, can be harmful is well-known from feminist investigations of the harm of pornography, as well as speech act analyses of racially motivated hate speech.[132] We can borrow from that literature two senses in which speech may be harmful: (a) speech may cause harm, or (b) speech may constitute harm. Plausibly, presupposing the fungibility of women's reproductive labour causes women to be treated in harmful ways. For example, it might affect how women's maternity leave was allocated or how much of the national healthcare budget was allocated to ante-natal care because the act of gestating a child would come to exist in the public imaginary as a parallel for other commodities. However, this is difficult to defend in the context of surrogacy and other commodities in which there is no legal market because it is an empirical claim about which there is little to

[131] This is an essentialist argument: there is a particular meaning or position that women's labour out to have.
[132] Langton, 1993; Mikkola, 2019; Maitra, 2021

no data. In the case of surrogacy, unlike in discussion of the harm of pornography[133] or racial hate crime,[134] the causal claim is mere speculation. Moreover, the causal claim looks vulnerable to the socialisation objection because it requires a change in social attitudes, and hence it may only address universal availability markets. The most that philosophy can do, therefore, warn that market transactions might cause these harms to women, if they become widespread.

However, the presupposition of radical fungibility might constitute, rather than cause, harm. This is the view I defend. In the language of speech act analysis, this is the claim that the presupposition of radical fungibility has illocutionary, rather than perlocutionary, force.[135] A speech act has illocutionary force when it is an *act* as much as speech. The speech act performs some action, rather than being mere expression or causing some action. J.L. Austin, who introduced this idea gave the example of marriage: when an officiant pronounces that two people are married, she does not merely claim that they are, rather, her words make it thus. Her statement of their marriage makes the world such that they are married.[136] This is illocutionary force: the speech act performs some action itself. Where a market in surrogacy might have caused harm by persuading market participants to consider women's reproductive capacities fungible with traditional commodities, the constitutive claim says that the presupposition of market transactions is more like instituting a policy which itself

[133] E.g., Catharine Mackinnon and Andrea Dworkin (1997) catalogue the harms of pornography.
[134] According to Mari Matsuda and Richard Delgado, racist hate speech affects the physical and psychological health of its targets. See Maitra, 2012: 97
[135] Austin, 1962; Langton, 1993
[136] Austin, 1962

harms women's reproductive capacities.[137] If market transactions in particular commodities have the illocutionary force of constituting harm, this provides moral reason to restrict those transactions since harm should be avoided.[138]

The presupposition of radical fungibility constitutes harm when it is made of particular commodities because it subordinates the commodities sold and, by extension, the market participants who sell them. This presupposition ranks women's reproductive labour as on a par with oranges and chocolate bars, and the labour used to produce them, and this constitutes harm by subordinating market participants, in a sense to be explained. First, it merits noting that subordination is a well-documented example of the illocutionary force of speech: Ishani Maitra gives the example of a CEO instituting a policy in her organisation that says people with red hair will not be promoted. While this could cause harm by causing people to treat red-heads differently, it also constitutes harm because it performs a harmful action: it ranks red-heads as a subordinated category.[139]

It is similar in the case of market transactions: the presupposition that certain commodities, like surrogacy contracts, are radically fungible with commonly traded goods, like oranges and chocolate bars, constitutes harm because it ranks women's

[137] Maitra and McGowan, 2012: 8

[138] I note that engaging in market transactions involves action as much as speech, initially lending itself to such a speech act analysis. See p. 55f.

[139] Maitra, 2012: Maitra notes that this legitimises a certain view and treatment of red-heads. This may track across to surrogacy too.

reproductive labour as on a par with oranges and chocolate bars and the labour used to produce them. Interpolating the false assertion claim of the previous section, this is harmful because it is false: ranking women's reproductive labour on a par with various commodities and the labour to create them is harmful because if there is anything which belongs in the protected category of goods, it is women's reproductive labour. Indeed, when I motivated the existence of such a category, I did so with reference to this example. (See III.2a) Maternal labour ought to have a particular esteem, one reason is that it is more closely connected with the person than other labour.[140] By virtue of that esteem, it falls into the category of non-fungible goods I sought to establish in III.2a. Presupposing that it is fungible with oranges and chocolate bars denies it this position. This denial is degrading and constitutes harm. The false presupposition that women's labour is on a par with oranges and chocolate bars is harmful because it is false that these things are intersubstitutable.[141] This is one way to add flesh to the bones of Satz' (c) introduced in II, (see p.37) namely that the problem with markets in surrogacy contracts is that they make the reproductive labour of men and women look like equivalents when they are not.[142] Subordinating childbearing from the position that it ought to have harms both the good of childbearing and, by extension, those who bear children.

[140] See also discussion of subordinating human life and wellbeing in IV (p.88)

[141] Compare Sandel, 2013: To corrupt a good is to treat it according to a lower mode of valuation than is appropriate for it. For the difference between Sandel and my argument, see discussion of Walzer on P. 52-3

[142] Satz argues that the problem with surrogacy contracts is that they happen to the background conditions of gender inequality. (Satz, 2010: 117) My argument is different from hers in that regard. There need be no background conditions of gender inequality to motivate restricting market transactions. Paid surrogacy subordinates, meaning such markets introduce inequality, even if it was absent before.

There is another way to think about surrogacy contracts: I have so far described them as the sale of women's reproductive labour. However, they may also be the purchase of a child. This understanding sharpens the focus on the harm claim. To claim that the child which results from this labour is on a par with oranges and chocolate bars, just as the reproductive labour of the woman who bears her is on a par with those who pick oranges and wrap chocolate bars, is all the more obviously harmful. We can think of this as more obviously crossing the (albeit not 'metaphysically bright', see p.64) Kantian divide between subject and object: it is not just the labour of the surrogate, but the child born from the surrogacy arrangement who is ranked on a par with oranges and chocolate bars. A person is ranked as an object, not only their gestational labour. The child who results from surrogacy, and perhaps all children, are subordinated to the level of an object and this constitutes harm. This is a second way to understand harm claim.

Moreover, this second understanding of the harm claim appears independent of the false assertion claim: when we consider surrogacy as the sale of a child rather than the sale of women's reproductive labour, we could remain neutral on whether or not claims of radical fungibility are true or false, instead claiming only that they are harmful, even if they are true. It would be coherent to argue that all goods are fungible with all other goods, but this should nonetheless be resisted in particular cases for the harm it constitutes. Hence, this second argument for the harm claim establishes the normative conclusion that we ought to restrict market transactions from the descriptive claim that markets require making false presuppositions, but it is also an

independent (and normative) claim that the presupposition of radical fungibility is harmful of certain commodities, whether true or false.

One might ask whether we can also get the harm claim of surrogacy understood as women's reproductive labour without the false assertion claim, which we saw some might be unwilling to grant. I am not convinced that we can separate the harm claim from the false assertion claim on this understanding, but there may be an intermediate position. We can understand surrogacy contracts as involving not only the 'services' of a surrogate, but the rental of the woman herself for the duration of the pregnancy. Even without the essentialist claim that gestating a child necessarily has a certain esteem, we can observe that part of surrogacy involves purchasing the night-and-day labour of a woman for a fixed period. We could consider this a 'rental' of the surrogate. On this understanding, it will follow that women are subordinated – to all genders which are not capable of bearing children – by such contracts because they, like the children in the previous iteration of the harm claim, become objects, presupposed to be fungible with all other commodities through the medium of money, in a way that other genders are not.[143] By being purchasable, or 'rentable', in a way that other genders are not, women are subordinated. This is a second way to establish the harm claim without the false assertion claim.

[143] I have throughout referred to 'women' as the childbearing gender. The argument still follows if 'woman' is replaced with any description of people who could bear children.

There are a number of objections and addressing them makes the argument clearer. Firstly, there is a disanalogy: I have compared the unexpressed presuppositions of market transactions with the policymaking of a CEO. One might object that presuppositions cannot have illocutionary force. When I introduced the concept of illocutionary speech acts, I appealed to Austin's example of marriage, but one cannot be married by a presupposition: the speech act must actually be performed. However, it's not clear that this disanalogy is a threat. First, although one cannot be legally married by a presupposition but only by explicit statement, the law could be otherwise: it may be possible to be married by a presupposition if the laws were different. Second, building on Potts' work on NAI content, Frazier et al. propose that the NAI content is a second complete speech act, which is distinct from, while being contained within, the speech act of the utterance (or action) which presupposes it.[144] They present supporting empirical evidence. If the NAI content of an utterance is interpreted as a separate speech act, there is no reason to think that presuppositions cannot have illocutionary force. For the disanalogy to threaten, more is required from those who wish to use is as an objection than merely it pointing out.

A more potent objection is the authority problem: that market transactions express certain content does not mean that they successfully subordinate, i.e., market transactions may not have the required authority to legitimise beliefs about women's reproductive labour or to rank women as subordinate. This objection is frequently raised of other speech acts: Maitra notes that (lamentably) much racist hate speech

[144] Frazier et al., 2018

comes from ordinary people rather than from sources of authority.[145] If we mean by authority the capacity to subordinate based on the speaker's social position, it is difficult to establish in the case of market transactions: it is not clear that market transactors who would engage in transactions in particular commodities have sufficient social authority to have any of the illocutionary force required for my argument. Return to the example: those who turn to surrogates might lack social standing, since they sometimes come from marginalised communities.[146] There is not good quality data on who is engaging in surrogacy, which makes it difficult to substantiate this claim. However, even if we assume for the sake of argument that they do not have the required social status, we can still circumvent the authority problem.

The assumption that authority is only derived from social position requires a simplistic notion of authority.[147] Moreover, it would be strange to conclude that market transactions had the requisite authority to have illocutionary force only insofar as the participants were of a particular social standing. Moving beyond the market participants reveals a source of authority. It is not the social position of the transactor which imbues the presuppositions of market transactions with illocutionary force; it is the position of the market itself. Market transactions are backed by laws which make contracts enforceable. If, following a market transaction, one party does not uphold

[145] Maitra, 2012: 95

[146] Perhaps single men and women or non-heterosexual couples who, by failing to fit the traditional family mould, fail to have sufficient social standing. Of course, it might also cut the other way: surrogates may lack social standing relative to commissioning families. (See Lewis, 2019)

[147] See Maitra and McGowan (eds.), 2012

their side of the contract, the law stands behind the transactor to enforce their contracts. Hence, market transactions derive their authority from the law.

That authority can be borrowed like this is already established: Maitra imagines that a student at school can be given authority by the teacher appointing her as a helper. In Maitra's imagined case, Amma, a student, is called on to divide the work between the class. Amma had no authority from her own social standing, but she derives it from the social position of her teacher when the teacher appoints her to lead the class. Similarly, it is because market transactions are enforceable in a court of law that they find the authority for their speech acts to have illocutionary force and constitute harm. This facilitates the subordination of both the goods concerned and market participants and, for the same reasons, legitimises ill-treatment of the women who would engage in these transactions. That the law stands behind market transactions, just as the teacher stands behind her appointed helper, gives transactions the authority required for illocutionary speech acts. This removes the imagined authority objection.

I have argued that the false presupposition of radical fungibility is harmful and it may still be harmful, even if it is not false. The false presupposition of market transactions subordinates the reproductive labour of women, and women themselves, from the position that they ought to have by presupposing that they are on a par with other commodities. It is in this sense that the market denies transactors their dignity and, on that basis, there is reason to consider restricting markets in particular commodities.

III.3: Why doesn't the socialisation objection apply?

This chapter set out to provide a moral reason for restricting market transactions which did not fall victim to the socialisation objection of the previous chapter. The objection was that some arguments for a moral limit to markets do not precisely target market transactions because such arguments apply to non-market distributions of particular goods (e.g., *the Fertility Commune*) and only to particular market transactions (namely to universal availability markets, not to *the Crony Contract*). An account of why my argument does not face this objection is owed.

First, some arguments from fungibility are vulnerable to the socialisation objection, perhaps because they are inalienability arguments couched in different language. For example, Sandra Marshall's argument against prostitution relies on the claim that the fungibility of women (or intimacy) erodes personal ties and therefore ought to be restricted.[148] This is really Anderson's argument against surrogacy on the grounds that it erodes personal ties, simply cast through the lens of fungibility. The following defence will therefore not apply to all arguments from fungibility.

The first element of the socialisation objection, that our reasons for restricting market transactions could also be pushed against non-market distributions, carries no weight

[148] Marshall, 1999

against the argument from radical fungibility in the earlier sections of this chapter. I have claimed that using money to pay for something is harmful for certain goods because it presupposes that financial valuation is appropriate for the thing being purchased, and hence it presupposes radical fungibility. In grounding the argument for a moral limit to market transactions in the expressive function of monetary payment, it is difficult to see how the argument could be generalised to non-market distributions in which there is no monetary payment.[149] The objection is to a feature of trade, not to the resulting distribution of goods. This ensures that the objection will not apply to non-market distributions.

The second element of the socialisation objection, that some reasons to restrict market transactions only apply to particular kinds of market, seems more threatening. We might think that radical fungibility requires a certain kind of 'price transparency': to express that the services of a surrogate can be exchanged for a number of oranges or chocolate bars, surrogacy services need to be sold in on-demand, universal availability markets because expressing that the services of a surrogate are of equal cost to some number of oranges requires the price of surrogacy to be known in the same way that the price of oranges is. If this is the case, the radical fungibility argument will also only address a subset of markets, namely those which have sufficient on-demand

[149] We might question whether a barter economy in contested commodities would be acceptable, since such transactions would not involve money. If goods could be found to exchange with commodities like surrogacy contracts, such that the false and harmful assertion claims were neutered, they would be permissible. However, there are two reasons to be sceptical about the possibility of such exchanges: 1) these markets are inefficient and difficult to find in modern societies, and 2) it is not clear that there are any goods with which commodities like surrogacy could be exchanged without the false and harmful assertion claims. See p.62 and N.110.

availability for transparent pricing. Hence, it will not live up to the promise of targeting market transactions more precisely than the rights account.

However, radical fungibility does not require that the price of surrogacy contracts is well-known, only that the prices of *some* goods are known in this way. Individual surrogacy contracts, when they are priced in money still express radical fungibility when the price of surrogacy services is unknown, so long as there is a universal-availability market in some other goods, for which the prices are known. So long as the transactions are priced in money, they will still presuppose that this is a suitable mode of valuation. Moreover, so long as the price of other goods is known, they will still presuppose that surrogacy contracts are fungible with some number of other commodities. The commissioning family, when they pay for the services of a surrogate with money, will still have had the option of spending that money on some number of oranges or chocolate bars. Hence, transactions in all markets will presuppose that surrogacy contracts are fungible with some number of oranges. Presupposing radical fungibility does not require universal availability markets: the argument is not vulnerable to the socialisation objection.

However, one might think that even if the presupposition of radical fungibility does not require universal-availability markets, for the presupposition to be harmful, markets must be of this kind. Talk of presuppositions entering the 'common ground' and the 'authority' of market transactions might be trading on a notion of markets

altering public discourse, which again might only be possible if they are of the universal availability kind. The objection runs that society could not be made to believe these false and harmful facts about women, unless there was a universal-availability market which could propagate the false assertions at scale. Individual transactions do not have the same illocutionary force. If transactions were confined to individuals, with no developed market, like in *the Crony Contract,* then there would be nothing to cause harm to surrogates or women more broadly because the presupposition of fungibility could not enter any 'common ground'.

However, the authority of markets will still be supported by the law even in cases where there are only individual transactions with no formal infrastructure to support on-demand, universal-availability markets. The only way we could circumvent this is if transactions like *the Crony Contract* case were illegal. No doubt there are (illegal, today) transactions like the one described, but if the transaction is made legal, it becomes supported by the weight of the law. The law still provides individual transactions the authority required for illocutionary speech acts, even if there are no developed marketplaces. Moreover, the knowledge that these markets are permitted is sufficient for such markets to constitute harm in the ways described, even if these markets are not open to everyone. Further, to be a potent objection, this must be accompanied by the claim that it is only by entering public discourse that these presuppositions become genuinely harmful, and there is no reason to think that this is the case. The presupposition of radical fungibility can be harmful in individual transactions, even if it does not enter the common ground of public discourse but only

the common ground of individual transactions. Subordination is still subordination, and it is still morally impermissible, when it targets one surrogate and not women as a class. The second element of the socialisation objection therefore also does not apply to my argument from radical fungibility: individual transactions as much as universal availability markets constitute harm by presupposing radical fungibility.

III.4 Conclusion: There is reason to consider restricting markets in particular commodities

I have argued for restricting market transactions in particular commodities on the grounds that such markets require presupposing that financial valuation is an appropriate method of valuation for the goods being traded and, by extension, that the goods being traded in a particular market transaction are radically fungible with all other goods which can be bought and sold. I gave three reasons to think that some commodities are not radically fungible with other commodities. I argued that the presupposition of market transactions therefore involves making false and/or harmful presuppositions about the goods being traded. I have suggested that the latter may be independent of the former. These false and harmful presuppositions give us reason to consider restricting market transactions in particular goods.[150]

[150] There is reason, but there may not be overriding reason. See I.

However, I noted that none of the three reasons for thinking that a category of goods which are not fungible with any other goods in any context could be constructed were indefeasible. I hence suggested that these three reasons constituted an attempt at persuasion rather than proof. However, this necessitates weakening the conclusion of the argument. All that has been definitively shown is that *if* this category of non-fungible goods can be established, *then* there is reason to restrict market transactions – namely because the presupposition of radical fungibility is, in those cases, false and/or harmful. I have given reasons to endorse the full conclusion, but the argument here strictly only warrants the conditional conclusion.

Nonetheless, this conditional conclusion provides a preferable interpretation of the dignity claim that some markets undermine the dignity of participants. The harm claim is an alternative to Anderson's interpretation of the dignity claim: it is not that market participants are denied dignity because they are denied particular rights; they are denied dignity because such transactions make presuppositions concerning them which are false and constitute harm. This interpretation, although weaker since it is conditional, is stronger since it more precisely targets market transactions and neither overgeneralises to non-market transactions nor addresses only a subset of market transactions. Hence, I conclude that if the claim that some markets ought to be restricted because they undermine the dignity of market participants is tenable, it should be understood in terms of my harm claim, rather than the rights claim.

IV. Off-Market Payments – The Case of Reparations

In Chapter III, I set out an objection to market transactions grounded in radical fungibility. I argued that market transactions presuppose radical fungibility and that, for some commodities, this is false and/or harmful. I suggested that this argument would be potent against any and only market transactions in particular commodities, i.e., it precisely targeted markets, giving us reason to restrict trade, in a way that other arguments do not. However, one might object that this is still not an argument against market transactions *per se*. Instead, the argument might apply to any payments which happen in the context of markets. In a society which has market exchanges, there could be payments outside of those markets which also seem to fall victim to the radical fungibility objection. For example, if a customer is inconvenienced in an interaction with a company, the company may make a payment to preserve the relationship and improve the chance of their 'victim' being a repeat customer. This is not a market transaction, but we might think that the radical fungibility argument still applies because it seems to equate the suffering of the customer with some financial payment. I shall call such payments 'payments to the background of market transactions'. The objection is that my argument for a moral restriction on market transactions over-generalises to encompass any payments made in a context which includes markets, i.e., payments to the background of market transactions, when it should only have targeted market transactions themselves. In that regard, the objection says, it is as imprecise as Anderson's argument.

To make the objection potent, we need to establish that there could be payments which are (a) found to the background of market transactions, but (b) are not themselves market transactions. Transactions which meet these two criteria include compensatory payments and, of particular contemporary importance, reparations payments.[151,152] Neither is a market transaction but, to the extent that they are payments made to the background of markets, they both initially seem to fall victim to the radical fungibility objection. In IV.2, I motivate the seriousness of this problem. I argue that such off-market payments must be structured to avoid the presupposition of radical fungibility and hence to deny these payments their "marketized" meaning. (IV.3) In particular, I argue that monetary payments, when they are not market transactions, can have alternative expressive functions. I suggest ways to structure such payments to further neuter the harmful expression of radical fungibility. I defend this response from the objection that I ought to have allowed market transactions access to this alternative expressive force and particular structuring of payments (IV.4). I ultimately conclude that there are methods of resisting the presupposition of radical fungibility which allow for more sensitive deployment of payments in off-market transactions, which is of particular importance in making reparative payments. First, the terminology must be clarified (IV.1).

IV.1: Defining the Terms: What are reparations?

[151] As I write, the reparations movement in the US is gaining traction under the Biden administration. The question of how to pay reparations may be imminent. See Human Rights Watch, 2020

[152] There may be other examples of payments which meet the criteria listed here, or these may be special cases which are not part of a broader category. I leave this an open question.

The terminology used to discuss reparations is not consistent in either the philosophical literature or popular thought. This must be detangled before the objection that the radical fungibility argument overgeneralises can be motivated.

Following J. Angelo Corlett, I take restitution to be the act of restoring exactly what was taken or of making good the exact wrong committed.[153] For example, if Jack squashes Ben's bicycle by driving over it one Sunday morning, restitution would be Jack returning to Ben a qualitatively identical bicycle at some point in the near future. In some cases, restitution may involve something more than returning the thing that was broken: suppose that Jack squashes Ben's bicycle on a Monday morning while he is on his way to an important interview. In that case, replacing the bicycle in the near future would not be restitution because, if Ben had missed his interview and subsequently failed to secure a long-desired job, only returning the bicycle would be too little to restore exactly what had been lost by the victim at the hands of the perpetrator. In that case, full restitution would be returning an identical bicycle at some point in the future *and* calling Ben a taxi now which could get him to the interview in time. In this way, Jack makes the situation good again, such that Ben should have no preference whether his bicycle had been squashed or not.

[153] Corlett, 2011

Reparations, on the other hand, concern instances where restitution is not possible but some attempt must be made.[154] Suppose that Ben had been on his way to catch a flight to get to his interview when Jack squashed his bicycle. The delay to Ben's journey caused by Jack's actions could be so great that, with the technology currently available, there was now no way that Ben would make it to his interview. Restitution is impossible because things cannot be made good again. However, Jack cannot simply walk away from Ben's squashed bicycle claiming that there is nothing he can do – he must still make some attempt to set things right. This is where reparations come in: the situation cannot be rectified in a like-for-like manner, but some other attempt is required instead.

Corlett adds that reparations aim to provide tangible goods to the harmed group[155] proportional to the harm previously inflicted.[156] There are plentiful examples of reparations in this sense through history. One is the German government reparation scheme in the aftermath of the Second World War, which remains one of the largest reparations programs ever seen. That program provided opportunities and payment to those who had lost both material wealth like income and property, as well as immaterial goods, like physical health or loss of freedom, as a result of their persecution.[157] The former case, of restoring wealth to those who had lost wealth is

[154] We can ignore the modality question: restitution may not be possible at the level of concept or at the level of practicality. I take those to be the same.
[155] I ignore the diachronic question of who is eligible to receive payment in reparations programs by virtue of their heritage. See Fabre's (2016) account of the aptness of apology.
[156] Corlett, 2018: §8
[157] Brooks, 1999: 61f.

uncomplicated restitution. In the latter, however, there was no way to restore what had been lost because the nature of the good meant that once taken, it could not be completely restored, e.g., permanent physical or mental injury. When the German government compensates with money for these non-financial losses, they are paying reparations rather than restitution: they endeavour to set things right again, though they cannot make things as they were before.

Restitution claims are not interesting for our purposes because the same kind of good is used to restore what was lost. There is no presupposition of radical fungibility, only of basic fungibility: Jack assumes that the bicycle he returns to Ben is fungible with the one that he squashed, but not that a bus ticket would be. Moreover, in some restitution claims, it is not just the same category of good which is returned to make things good again, but the exact same good – this is especially true in claims to land. The indigenous claim for land to be restored to them is not for *some* land to be awarded – which might count as reparations on our understanding, given the symbolic and spiritual importance of particular land to some communities – rather, the claim is for some particular land to be given back.[158] This is restitution. The category match between the money taken and repaid, or land taken and restored, entails that radical fungibility is not presupposed because at worst, the category of the good taken and restored matches and at best, the good is identical. In the case of reparations, as

[158] See, for example: Betasamosake Simpson, 2017

defined, however, the harm of radical fungibility seems once again to arise. Reparations hence pose a problem for the argument of Chapter Two.

IV.2: Reparations and the Problem of Radical Fungibility

The payment of reparations in the sense described, when made to the background of market transactions, might also require presupposing radical fungibility. Indeed, some would-be eligible recipients criticise reparations programs exactly because they consider that paying reparations involves presupposing radical fungibility and they consider this both false and harmful. Call this *the blood money objection*. Although this objection has not received much serious attention in philosophical treatment of reparations – for example, Roy Brooks does not mention it in his catalogue of potential arguments against reparations[159] – there are plenty of instances in history of individuals who were offered reparations declining them by appeal to the blood money objection. Before I give just three instances, we must notice that this is an objection made by those who would receive payments and not by those who would pay them, though it may also have been raised in bad faith by the latter.

First, Martha Minow, while discussing the wealth unjustly gained from slavery or stolen lands, comments that "no market exists for the value of living an ordinary life,

[159] Brooks, 1999

without nightmares or survivor guilt. Valuing the losses from torture and murder strains the moral imagination".[160] Second, when the Comfort Women of the Second World War were offered payments by the Japanese government, only six of the five hundred eligible recipients who were still alive took up the offer[161] which Minow puts down to the crossing of "different lexicons of value".[162] Third, Sam Solnik, a survivor of Nazi concentration camps, commented: "they can never in a lifetime pay off six million [people]. They will never pay off what we lost".[163] Each of these is an appeal to the problem of radical fungibility and its harm or falsity.

The blood money objection is not only a sentiment felt by those offered reparations, it is also a philosophically rigorous objection. Monetary payment is used to 'make up for' historic injustices and the losses caused by them. This appears to require the presupposition, at least on behalf of those who offer the payment but perhaps also for those who receive it, that the actions which require compensating are (a) appropriately valued in financial terms, and (b) radically fungible with all other goods that are valued in financial terms. i.e., reparations seem to require the same presuppositions as market transactions. Moreover, if the protected category of goods which are not fungible can be established, life and wellbeing would surely be chief among its members. The falsity and harmfulness of this presupposition seems better baked into the case of reparations; however, we do still need the corollary that this

[160] Minow, 1998: 104
[161] *Ibid,* 105
[162] *Ibid,* 104
[163] Brooks, 1999: 80

presupposition is false and/or harmful in the case of reparations in particular to motivate the idea that radical fungibility overgeneralises.

If any fungibility claims are false, those which involve life and wellbeing are most obviously false and those made of the historically marginalised are most obviously harmful. First, those who make the blood money objection claim that valuing their loss in financial terms is somehow degrading because what they have lost cannot be replaced with any amount of money. This is the claim that we saw in the previous chapter: paying monetary reparations to set right non-financial losses is impossible because no amount of money makes up for what is lost. There is a category mismatch between the loss and the payment which prevents monetary reparations from being proper compensation. In Satz' terms, this makes reparations problematic because they do not respect the "varied harms that victims have suffered" and instead reduce them to a "common currency".[164] Financial compensation is inappropriate because it presupposes that the category of the loss can be eroded, such that financial valuation in the singular axis or currency that this valuation allows can be used for repayment. By including this false presupposition, there will be an epistemic flaw to offering reparations payments in financial terms, as we saw in the previous chapter.

Presupposing this falsehood is also harmful. According to the argument of the previous chapter, allowing financial payment for some commodities constitutes harm

[164] Satz, 2007: 182ff.

because it ranks the object of the transaction as subordinate to others. For reparations, the presupposition asserts that the lives and wellbeing of those historically harmed is evaluable in terms of oranges and chocolate bars, i.e., their lives are on a par with these commodities. We do not presuppose that the lives and wellbeing of the rest of us are radically fungible with commodities, hence those who are (retrospectively) considered fungible are ranked as subordinate to those who are not. Their lives are closer to the objects that can be bought than the lives of those who are not compensated in cash. Moreover, the presupposition of radical fungibility required by this monetary payment ranks the receiver as subordinate to the person or group which pays the reparations. The presupposition, therefore, subordinates by asserting inequality: the lives of one group are considered evaluable in terms of oranges and chocolate bars, while the lives of others are not.

Take up the imagined sceptic's position: even if it is literally true that some lives could be compensated in cash because there are no non-fungible goods, there is harm in presupposing that the lives of those who were harmed are fungible with commodities while the lives of those who historically inflicted the harm are not. The presupposed fungibility turns some lives into objects, subordinate to the subjects who historically inflicted harm. Even if this can be made true by the power of financial valuation, it constitutes harm. By presupposing that the wellbeing of an eligible recipient is evaluable in terms of commodities, behaviour which treats those recipients as subordinate, as objects in contrast to the subjects who pay reparations, is licensed. In this regard, reparations seem to augment rather than remedy historic harms.

The case for an illocutionary speech act analysis of reparations is also stronger than the case for ordinary market transactions because reparative payments more obviously have the required authority for this force to be recognised. Reparations are usually paid by a state and proposed by its leaders, who have the ability to constitute harm with their speech in much more traditional ways of understanding authority.[165] The leader of a state has authority much more similar to Austin's officiant. Moreover, it is because the state has this authority that they are required to pay reparations: one argument for such payments, which addresses the diachronic nature of the problem, establishes that reparations are due where historical actions resulted in unjust hierarchies today.[166] There ought, therefore, to be serious concern that offering to pay reparations in cash requires a false and harmful presupposition with illocutionary force derived from the present-day authority of those who verbalise the offers.

Further, reparations were supposed to address historic harm: it is historical harm and subordination, which necessitate reparations today. If paying reparations in money only furthers this harm by relying on some authority that has been derived from historical injustices, cash reparations will be even crueller. That reparations have this self-undermining character has been acknowledged by indigenous scholars. Leanne Betasamosake Simpson describes how bodies and land are commodified under

[165] A full, diachronic account of when reparations are suitable would make clear that the injustice must have ramifications on the shape of the world today.
[166] Coates, 2014

colonialism and "naturalised as objects for exploitation".[167] According to her two arguments, cash reparations once again bring the tool of the oppressor into the communities who have historically been harmed. First, financial payments again commodify the bodies and land of indigenous people. Hence, not only is there further harm in making these reparative payments, but the harm of financial reparations is the same harm as was brought by the colonialism for which reparations purport to apologise. She argues instead for the "resurgence" of those who have historically been harmed, accompanied by restitution of land but not monetary reparations.[168] If reparative payments instantiate not only further harm, but the exact same harm as they are supposed to make up for, there is an even stronger argument for the harm claim in the context of reparations than there was in the case of surrogacy contracts.

All of this might lead us to conclude that we shouldn't be paying reparations at all: I used the false assertion claim and the harm claim in the previous section to argue that we should restrict markets in paid surrogacy contracts completely. Applying this to the case of reparations would motivate that we have reason to withhold reparation payments. However, before we leap to this conclusion, we must consider whether there is any way to resist the presupposition of radical fungibility and, therefore, to erase the harm of such payments. This will rehabilitate the case for reparations and clarify the scope of the radical fungibility argument of the previous chapter: it will

[167] Betasamosake Simpson, 2017: 41

[168] Resurgence is the central concept for Simpson. Resurgent movements allow indigenous communities to imagine ways out of domination, allowing them to reconstruct themselves out of the shadow of colonialism, by their shared struggle.

show that the argument applies to market transactions in particular, but not to all payments set to the background of markets.

I argue that there are two ways to resist the market presupposition of radical fungibility in the case of reparations: (a) reparations serve an explicit expressive function which excludes the harmful and false assertion of the market presupposition; and (b) practical steps can make reparations payments resist the presupposition of radical fungibility. As such, I conclude that there is reason to reject what I have called the blood money objection to reparations payments. However, this is not the same as casting aside the emotive responses of those who may be eligible for reparations payments. Rather, the following argument instructs us to take significant care in offering reparative payments.

IV.3a: An Alternative Meaning: Reparations acknowledge historical injustice

There is an alternative meaning to reparations. Reparations are not only the transfer of money from historical perpetrators to those historically harmed. In the simpler example described in IV.1, when Jack squashes Ben's bicycle, even in the case of restitution, we do not expect him only to hand over a new bicycle in the near future. This is even more obvious when he cannot just hand over a like-for-like good but has to make reparations in an attempt to make things good again. Such unaccompanied payments are not reparations at all because, even if they could do some material work

in making things as they should have been, we couldn't be certain that the payments were aimed at addressing historical injustices.

This problem would be particularly acute if the historical injustices had not been elsewhere acknowledged. Suppose that the US government sent an unexpected cheque to all Black Americans whose heritage was tied to slavery. First, it would be unclear what the monetary payment was for and why only some citizens had received it. Even if information could be collated and the recipient eligibility criteria deduced, it would be unclear what the purpose of these payments was. The expressive function of a simple transfer of funds would be the presupposition of radical fungibility since, just as in market transactions, the payment would be made with the default purpose of facilitating purchases. Cheques in the mail would fall victim to the radical fungibility argument because they might make it seem as though the payment was intended as restitution, not only reparation, for the historical injustice. It is acknowledgement of and apology for historic wrongdoing that is missing. Reparations require an apology for and acknowledgement of the wrongs for which the monetary payment is supposed to make up. It is not a reparations program if the historical perpetrators simply handover cash to the historically harmed, just as it is not a reparative payment for Jack to have a bicycle shipped to Ben's house without an acknowledgement and apology.[169]

[169] Intuitions may not accord with this. For example, if Ben were to make a claim against Jack's insurance policy, all that would be required is a replacement bicycle. However, in those cases, animosity between perpetrator and victim likely remains. If we add to the case that Ben and Jack are flatmates, it becomes more obvious that Jack is required to apologise to Ben for the sake of their ongoing relationship to make full and proper reparations allowing them to live alongside one another without continued animosity in the future.

Without acknowledgement of historical injustice, it is not just that the reparations would be ineffective in making things good again, but that they would not properly be called reparations. Scholarship reinforces this view: Elazar Barkan notes that reparations are not really about money, or at least they are not about what the recipients can do with the money.[170] Rather, he argues that reparations are an expression of acknowledgement for historical wrongs. Similarly, Jeremy Waldron argues that there is an expressive function of reparations payments over and above the transfer of money, namely to "symbolize a society's understanding not to forget or deny that a particular injustice took place".[171] Further, Corlett argues that reparations serve as a punishment of the perpetrators, grounding his argument in a parallel between the two expressive functions.[172] If this is right, reparations have a competing expressive purpose beyond the presupposition of radical fungibility. They have an explicit expressive purpose to acknowledge and apologise which is separate from, and perhaps stronger than, the presupposition of radical fungibility.

Moreover, the apology cannot be separated from the payment. Consider Satz' example of President Clinton's apology for slavery: since it was not accompanied by monetary payment, she notes that it was met with a "lack of enthusiasm".[173] An acknowledgement of historical injustice, when it is not accompanied by monetary

[170] Barkan, 2007: 17
[171] Waldron, 1992: 6
[172] Corlett, 2018: §8
[173] Satz, 2007: 183

payment, faces the 'empty words' objection: there is a sense that to be legitimate or meaningful, the apology offered for such significant events as the historical injustice of slavery has to be accompanied by monetary payment. Indeed, the then Prime Minister of Antigua and Barbuda, Baldwin Spencer, noted exactly this when he commented in 2013 that following leaders' verbal apologies, they must "match their words with concrete and material benefits".[174] The acknowledgement of historical injustice and the transfer of monetary payment are inextricably linked and cannot be separated into two separate acts of payment and of acknowledgement.

This alternative expressive function of reparations competes with the presupposition of radical fungibility: reparations express acknowledgement of the historic injustice and apologise for historic harms, but they also presuppose radical fungibility which is both false and constitutes present harm. To address this problem of reparations payments being self-defeating in addressing historic harm, the acknowledgement and apology will need to 'crowd out' the presupposition of radical fungibility.[175] We must note that the acknowledgement of and apology for historical injustice would be explicit, while the presupposition of radical fungibility is found only in the NAI content of market transactions. This might be sufficient to centre it as the main expressive work of reparations payments. However, reparations have still historically faced the blood money objection even when they come alongside apologies. Hence, we need something more drastic to ensure that the explicit expression of

[174] The Economist, 2013
[175] The terminology is borrowed from Titmuss (1970).

acknowledgement is the only, or at least main, expressive function of reparations, i.e., to deny the force of the marketized presupposition.

Payers can explicitly disavow the claim of radical fungibility. Reparations can be accompanied not only by an acknowledgement of historical injustices, but with the simultaneous acknowledgement that any attempt at reparations, when they are paid financially, cannot make up for the historical injustices which they attempt to make good again. Returning to the definition of reparations in the previous section, reparations are paid in exactly those cases where there is no way to make up for the actions of the past. In other words, money is paid because it is the best thing that can be offered to make up for historical wrongs. Monetarily paid reparations do not aim to make things as they were before. If this inability of monetary payment to restore things to how they were before is acknowledged, alongside the acknowledgement that historic acts were wrong and the current state does not stand by them, this begins resisting the presupposition of monetary payment that the goods being compensated for are radically fungible with all other things that can be bought and sold, as well as centring the expressive function of apology and acknowledgement.[176]

IV.3b: A Particular Structure: Reparations payments can resist radical fungibility

[176] There is independent reason to acknowledge that reparations do not restore things to the *status quo ante*: having paid reparations does not give the historic perpetrator the right to forgiveness. See Corlett (2011).

We do not need to rely on words alone to express this category mismatch. Off-market transactions like reparations payments can be structured in such a way that, alongside an acknowledgement of their insufficiency, the presupposition of radical fungibility can be further denied. In the toy example above, reparations were a blunt tool where cash landed in the letter box of anyone with a claim to have been harmed by some historical actions of injustice. Arguably, paying reparations like this is a good way to promote the radical fungibility claim: money is paid in compensation for the loss of life or wellbeing of someone in the past, which will be spent on the essentials of everyday life – oranges, chocolate bars, and train tickets – or on some luxury item, as if the cash comes as a 'windfall'. Making payments like this centres the radical fungibility meaning of the payment, leading to the sense that the loss of wellbeing or life of those who have been historically harmed is evaluable in terms of some number of oranges or an expensive luxury item. With each of these transactions comes the presupposition of radical fungibility, and this carries both the false assertion and harmful assertion claims that we saw above. However, this needn't be the only way to make reparations payments: monetary payments can be structured to resist this presupposition.[177]

This is brought out by Simpson's argument that while she does not advocate cash reparations for indigenous Nishnaabeg communities, they nonetheless require access to funding to regenerate their communities. For example, she argues that the academy must make space for indigenous forms of intelligence and education, and this requires

[177] Structuring payments to block luxury spending may also convince payers of reparations of their necessity.

"funding the regeneration of Indigenous thinkers".[178] Simpson rejected arguments for cash reparations, but there is no tension between this and her argument that funding should be available to facilitate community resurgence. Simpson is appealing to the same distinction that I have sought to make – there are blunt tools for making payment, where it seems that radical fungibility will become a serious problem, but there are also ways of making reparative payments that do not require this harmful presupposition. There are ways of making payments that are not the blunt tool of sending money to all individuals, but which fund specific programs to address the present (non-financial) state of affairs within communities which have been affected by historical injustices.

Simpson's account of making funding available to facilitate the regeneration of indigenous thought is one example of how funding can support reparative programs. There are many others: paying reparations could involve making funding available for the community projects of those who have been historically harmed. Boris Bittker makes this suggestion, arguing that rather than money being paid to individuals, where he likewise thinks that at least some of it would be spent on consumption, it should be paid to communities as a whole.[179] Roy Brooks adds to this the idea that money could be given to a legally authorised entity which could receive applications from individuals and award grants based on some established criteria.[180] By ringfencing funding for community groups and individuals or particular projects,

[178] Betasamosake Simpson, 2017: 164
[179] Bittker, 1973: 131
[180] Brooks, 1999: 373

reparations can be paid in a way that blocks the presupposition of radical fungibility from entering the common ground. In these examples, there is a distinction between making funding available to facilitate reparation and the transfer of cash such that the presupposition of radical fungibility is centred.

We can compare payments made to disabled students which fall into two categories. First, they reflect the additional financial cost of being disabled and they provide direct compensation for those additional costs. For example, if a disabled person attending an event requires the constant company of a carer for medical support, they are often able to claim a free second ticket for their carer to attend. Jonathan Wolff argues that this is the right way to rehabilitate a disabled or disadvantaged person: they ought to be compensated with the category of good which matches the dimension in which they are disadvantaged.[181] This is simple restitution, in the terms of this chapter. Second, and more interesting for our purposes, funding can be made available to disabled people for specific kinds of help. For example, a disabled student might be provided with money to allow them to buy a laptop, or a Dictaphone, or to employ the services of a scribe to take notes while they attend lectures. In this case, the money does not arrive in their letter box to be spent on anything they choose, as it did in the toy example above. Rather, funding is made available for particular projects, to address particular needs and injustices. This is a parallel for reparations. This model of funding for disabled students, like my proposed model of paying reparations, is designed to resist the presupposition of radical fungibility. The payment is structured

[181] Wolff, 2002

to make it difficult to presuppose that the particular disability which the person faces can be valued or 'made up for' in terms of some number of oranges.[182]

There are two tools available, therefore, for off-market transactions to resist the presupposition of radical fungibility. Those making reparative payments ought to (a) acknowledge the deficiency of monetary payment in addressing historical injustice, and (b) structure the reparations payments to resist the presupposition of radical fungibility. Of course, those who offer reparative payments must be prepared that the blood money objection may still rear its head, since the presupposition of radical fungibility could still be extracted, even with these mitigating factors. However, these practical measures go some way towards mitigating the blood money objection.

IV.4: Are there limits to these measures? Why can't they apply to market transactions?

I have granted possibilities to off-market payments that I denied to market transactions. One might reasonably ask why these tools could not just as well be used in market transactions to undermine the argument from radical fungibility. In the terms of the surrogacy example, the question is first of why a commissioning family could not pay a surrogate for their labour in producing a child while disavowing the presupposition of radical fungibility, and second of why the payment could not be

[182] It might be relevant that payments are often made between states. This is different to monetary exchanges between individuals and it may resist the presupposition of radical fungibility because what a state budget could have been spent on (e.g., healthcare and education) is different to individual consumption. This undermines the false assertion and harm claims. However, the money collected and awarded ultimately derives from individuals and this reintroduces standard radical fungibility.

structured in such a way that the presupposition of radical fungibility is resisted. The first part of this objection, which appeals to the altered expressive force of off-market payments, has two routes of reply.

It is important to note *how* I have suggested the presupposition of radical fungibility could be resisted. Take the second route of argument first: I have suggested that there are practical steps that states paying reparations could take to show that they are not licensing the presupposition of radical fungibility that payments presuppose. I have argued that the money from reparations payments ought to be spent in particular ways: payments should be made in such a way as to avoid spending reparative money on consumption, i.e., commodities like everyday essentials or luxury goods. It is impracticable to allow this into the surrogacy example, or indeed any market transaction, for many reasons. First, it is not clear that a commissioning family would be practically able to limit the ways in which their payments were spent in the same way that the state can ringfence money. The state can set up funds for particular projects, but once the commissioning family hands cash to their consenting surrogate, they will be unable to control how it gets spent.[183]

Second, and at the level of concepts, even if this could be achieved, the transaction would become an off-market payment because it would cease to be a transaction in which goods are exchanged with money as the universal medium. Hence, there is an

[183] An objector might appeal to payments for ante-natal healthcare or nutrition. However, paid surrogacy requires paying more than expenses.

extent to which we can bite the bullet of this objection allowing that, if there could be transactions in which the commissioning family limited what the surrogate could spend her payment on to the only thing with which surrogacy contracts are fungible – other surrogacy contracts (see N.110) – they would be morally permissible because they would not presuppose radical fungibility. However, it is not clear that a surrogate would ever enter into a contract to be paid only in further surrogacy contracts.

A further route of response is even more potent: I argued that the state paying reparations can resist the presupposition of radical fungibility by acknowledging that the money awarded in such payments does not equate to the lives and wellbeing of those historically harmed. A commissioning family cannot make a parallel acknowledgement. The state paying reparations has a duty to apologise and attempt to make up for their historical injustices – they must do something to apologise, even though what they offer is unsatisfactory and incomplete. When a state offers reparative payment for historical injustices while acknowledging the incomplete nature of that restitution, it does so to show that they are attempting to make things good again but are rendered ineffective by the paucity of the tools available to them. By contrast, the commissioning family contracting a paid surrogate has no duty to bear a child. They are not striving to achieve something with the best tools at their disposal. The commissioning family is therefore misguided in acknowledging the inappropriateness of their payment because their payment is not called for; they are

not discharging a duty and, being merely optional, acknowledging the inappropriateness of their payment is hypocritical.[184]

The same reply is therefore not available to market transactions because: (a) the state paying reparations is justified in acknowledging the impropriety of their payment, while the commissioning family in a surrogacy contract is not, and (b) the state can take practical steps in structuring reparative payments to avoid the presupposition of radical fungibility which are not open to market transactors.

IV.5 Conclusion: Non-market payments can resist the presupposition of radical fungibility, where market payments cannot

In this chapter, I introduced an objection to the argument for a restriction on market transactions from radical fungibility that this overgeneralises by applying not only to market transactions but to any payment set to the background of market transactions. I have rejected this objection for two reasons: (a) such payments have alternative expressive purposes which can deny their marketized meaning, and (b) off-market payments can be structured to deny the presupposition of radical fungibility. Therefore, the radical fungibility argument may well apply to off-market payments,

[184] I have not qualified the scope of the 'necessity' of payments before they can deploy the argument that I have allowed to reparations. One might object that while having children is not a moral duty, it is a cultural necessity: couples are culturally expected to have children, and this necessity drives surrogacy payments. In response, we must restrict necessity claims in terms of cultural norms lest many more payments come to be morally permissible using the argument that I have afforded to reparative payments.

but only to the extent that they are functioning as market transactions and centring their marketized meanings. Off-market payments can have marketized meanings, i.e., they can presuppose radical fungibility, and this presupposition can be both false and harmful, but they can also resist that meaning in a way that market transactions cannot. I have shown that the tools to resist the marketized presupposition of radical fungibility are not available to market transactors. There are, therefore, more tools available to non-market payments than market transactions which can resist the presupposition of radical fungibility, and therefore, the argument from radical fungibility precisely targets market transactions.

To strengthen the imagined objection in light of this reply, what is required is not only the possibility of off-market transactions such as reparations. Rather, the objector requires an off-market transaction (i.e., a transaction to which we do not want the radical fungibility argument to apply) which does not have any alternative expressive purpose, and which cannot be structured in such a way as to be insulated from the marketized presupposition of radical fungibility. Only such an example would be potent against my argument for restricting market transactions from radical fungibility. I have no examples of payments of this kind.

Conclusion

This thesis has concerned the claim that we should restrict market transactions in particular goods because such transactions undermine human dignity. This was *the dignity claim.* I argued that one prominent way of understanding this claim, in terms of the rights of market participants, is flawed because it imprecisely targets market transactions. This was *the socialisation objection:* the dignity claim understood in terms of rights, imprecisely targets market transactions because it applies to other distributions which are similarly 'socialised' but do not involve payment, and it does not apply to all instances of payments. I argued that another understanding was therefore required, to establish that there is reason to restrict market transactions based on the dignity of transactors, else the dignity claim must be rejected.

I argued that we should appeal to the presupposition of radical fungibility which is required by market transactions and which can be both false and harmful when made of particular commodities. More precisely, I argued that if a category of goods which are not fungible with all other goods could be established, which I gave reason to think that it could, then markets would require making false and harmful presuppositions by virtue of presupposing radical fungibility. I have not listed all markets which meet the criteria of this radical fungibility claim, but I have used examples of surrogacy, prostitution and human organ sales both to illustrate that some markets do, and to argue that surrogacy markets in particular do. I finally defended the account from the

objection that it might address all payments set to the background of market transactions and not only market transactions themselves.

To the question which began this thesis, therefore, I answer that financial valuation does undermine human dignity. It does so in cases where presupposing that the goods being financially valued are radically fungible with all other goods valued in these terms is false and/or harmful. In III, the harm claim in particular substantiated the dignity claim: the dignity of participants in particular markets is undermined because some transactions involve degrading participants and the goods that they sell, as well as ranking them as subordinate to those who are not valued in financial terms. We saw this particularly acutely in IV with the case of reparations, but also of the case of surrogacy in III. I contend that this is how financial valuation undermines human dignity, and it is a preferable account of the dignity claim than the rights understanding of II.

However, I noted that the argument would not convince the sceptic who believed that there was no category of non-fungible goods. The three reasons that I gave to establish such a category – namely (a) there is a strong intuition to this effect, (b) some goods are the only means to a particular end, and (c) goods which involve persons should not be treated as a mere means – were not indefeasible. Hence, we are left with a restricted conclusion: *if* a category of non-fungible goods can be established, there is reason to restrict market transactions. While I have argued for the full conclusion that

there is reason to restrict market transactions, the argument only strictly warrants the conditional.

The argumentative work of this thesis demonstrates that the following constitute an inconsistent triad:

(i) Some goods are not radically fungible with all other goods in any context

(ii) Markets require presupposing that all goods are radically fungible

(iii) There should be no restrictions on market transactions

It has been the work of this thesis to establish that (ii) shows that (i) and (iii) are inconsistent with one another. Since market transactions require presupposing that all goods are radically fungible with all other goods, by the arguments of III, if (i) is true, then (iii) is false. I have advocated rejecting (iii): that there are goods which are not radically fungible with all other goods, and that the market requires presupposing this, motivates rejecting the claim that there should be markets in all goods. The sceptic may reject (i) and accept (ii) and (iii) without any inconsistency. Indeed, some do approach the triad in this way.[185]

[185] E.g., Brennan and Jaworski, 2015

That the sceptical position is so intractable as to leave us with this conditional conclusion leaves us also with an important practical question with which I want to conclude: what ought we to do in the face of this long-standing disagreement? Since the literature has gone back and forth between anti-market theorists and those who profess the universal applicability of market norms for so long, we may have to face the question of what we, and more importantly policy, should do at this impasse.

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Declaration of Originality of Authorship of a thesis submitted for examination in the BPhil in Philosophy in the academic year 2020-2021

I, Amy Thompson, affirm that my submitted thesis entitled ' "Certain modes of valuation are appropriate to certain goods." (Sandel, 1998) Does financial valuation undermine dignity?' is my own original work, except where otherwise stated, and that I have only shown drafts of it to my supervisor, Prof Jonathan Wolff, in approximately eight hours of supervision, and that I have received help in its preparation from N/A.

Signed: .....

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