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## *Introduction*

‘The time when “we are all socialists”’, H. B. Acton said in 1971, ‘is the very time to reconsider the morality of the free market.’<sup>1</sup> Three decades later, this dictum may, as it were, be reversed. The time when the market is, in its different variants, unanimously taken as a given across the political spectrum, is the very time to subject the morality of the market to critical scrutiny.

The question ‘Should we have a market?’ is now, and for an indefinite time, off the agenda. As is now nearly universally acknowledged, there are overwhelming arguments in favour of market-based economies. One such argument is the informational or epistemic one: the market, as a process whereby property rights are exchanged and decisions by suppliers of goods and services made and adjusted in light of prices, is a discovery procedure that allows valuable information dispersed throughout society to be transmitted.<sup>2</sup> Furthermore, as the incentive argument for the market emphasises, the price mechanism acts as a signalling device for what demand there is for what goods and services, and, by so doing, it offers suppliers an incentive to supply what is in demand by way of prospects of increased profits. Arguments of this sort are amongst the reasons that have led even those who have been traditionally suspicious about the market’s justification, such as socialists, to recast their views in a way that makes room for some role for it.<sup>3</sup>

Whilst these efficiency-based justifications of the market are well known and rarely contested today, the question is still open as to whether the

<sup>1</sup> H. B. Acton, *The Morals of Markets: An Ethical Exploration* (Harlow: Longman, 1971), p. 2.

<sup>2</sup> F. A. Hayek, *Individualism and Economic Order* (London: Routledge & Kegan Paul, 1949).

<sup>3</sup> See A. Nove, *The Economics of Feasible Socialism* (London: HarperCollins, 1991); D. Miller, *Market, State and Community. Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press, 1989); C. Pierson, *Socialism after Communism. The New Market Socialism* (Cambridge: Polity, 1995); J. Roemer, *A Future for Socialism* (Harvard University Press, 1994), among others. Socialists also appeal to other considerations as relevant for their support of the market, but efficiency is certainly a central one.

defender of the market can seize the ‘moral high ground’ thus far occupied by its critics.<sup>4</sup> Attempts at seizing such grounds are made especially arduous by problems regarding the justice of distributions of benefits and burdens generated by the free market. By ‘free market’ I refer to the free or unregulated process whereby full private property rights are exchanged, so that goods and services over which people have rights are transferred and exchanged at whatever conditions the individuals whose rights these are choose. That the distributional consequences of free market choices raise serious concerns for justice seems so undeniable to some commentators that they find that arguments which try to establish otherwise merit relatively little attention.<sup>5</sup> Yet, for defenders of the free market to be able to occupy the moral high ground, showing that the distributional consequences of free market choices are compatible with justice is a central objective. If it could be shown that the free market produces distributively just outcomes, then the case for the free market would altogether be very strong indeed.

This book is concerned with those attempts at trying to show that the free market can, its critics notwithstanding, produce outcomes that are just. In particular, I examine two of the most important lines of justification that have been offered in defence of unregulated market outcomes.<sup>6</sup> The first appeals to a substantive principle of distributive justice, namely the principle of desert. Market rewards are here viewed as deserved either as compensation for the non-monetary costs attached to different occupations, or as remuneration for one’s productive contribution. As I will show, these justifications of free market inequalities enjoy some support among political philosophers, and they constitute the seemingly most promising, though ultimately unsuccessful, ways of showing that the unregulated market can be substantively just.

The second line of justification appeals to individual rights of self-ownership and of private property over external resources, together with

<sup>4</sup> J. Gray, *The Moral Foundations of Market Institutions* (London: IEA Health and Welfare Unit, 1992), see pp. 16–17 in particular.

<sup>5</sup> C. R. Sunstein, *Free Markets and Social Justice* (Oxford University Press, 1997), p. 386; J. O’Neill, *The Market. Ethics, Knowledge, and Politics* (London and New York: Routledge, 1998), p. 3.

<sup>6</sup> Throughout, by ‘market’ I refer to ‘unregulated market’ or ‘free market’. By talking of the ‘free’ or ‘unregulated’ market I by no means want to imply that no institutional regulations and norms are needed to sustain the market. Institutions of private property and of contract, together with a host of social norms and psychological dispositions, are constitutive of a free market, but I do not explore these much discussed issues here. For discussions of these issues, see, for example, K. Polany, *Origins of our Time. The Great Transformation* (London: Victor Gollancz, 1945); R. M. Titmuss, *The Gift Relationship* (New York: Pantheon, 1971), B. Barber, ‘Absolutization of the Market: Some Notes on How we Got from There to Here’, in G. Dworkin, G. Bermant and P. G. Brown (eds.), *Markets and Morals* (New York: Halsted Press, 1977). Note also that I leave aside problems to do with market imperfections, and assume a competitive free market.

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related notions of liberty, choice and of procedural justice. Unregulated market outcomes, in this view, are just insofar as they are the result of the exchange of legitimately acquired and transferred private property rights individuals have over themselves and worldly resources. Whatever distributions of rewards result from such exchanges are just so long as they respect certain constraints on just appropriation and transfer.

For the sake of exposition, I will refer to these two main arguments as *desert-based* and *entitlement-based* justifications of the free market respectively. By this I mean that both desert-based and entitlement-based arguments aim to justify the distributional consequences of market choices. Whilst both defend unregulated market outcomes, they clearly do this in different ways, however, and it may be helpful to note at the outset three salient differences between them.

First, the primary subject of justice is different in the two justifications. With desert-based arguments, the primary subjective of justice are outcomes, patterns or distributions of burdens and benefits, whereas with entitlement-based arguments individual acts are the primary subject of justice, and distributions are only derivatively just.<sup>7</sup> When we ask whether everyone in a society has what he *deserves*, we are asking whether a given distribution of resources matches a certain pattern. When we ask whether everyone in society has what he or she is *entitled* to, by contrast, we are asking whether a given distribution has come about through rights-respecting steps, and whether or not such a distribution reflects any pattern is irrelevant for its justice.

A second difference between desert-based and entitlement-based arguments is as follows. Whilst both can be seen to be defences of the 'unregulated market', what the latter comprises is different in the two cases. With the desert-based arguments I examine here, the 'unregulated market' refers only to the labour market, so that the incomes people reap is the market price for their labour. The free labour market, according to defenders of the market who appeal to desert, is part of a market economy in which intervention in other spheres may well be allowed.<sup>8</sup> However, what

<sup>7</sup> See H. A. Bedau, 'Social Justice and Social Institutions', *Midwest Studies in Philosophy*, vol. III (University of Minnesota Press, 1978).

<sup>8</sup> One area in which such interference is typically allowed is in the enforcement of meritocratic, or equality of opportunity, policies. But this interference does not, it is assumed, affect labour prices. Note that the appeal to desert in justifications of meritocracy is not something I examine here. There is a distinction between the question of whether the differential rewards of different activities is justified on grounds of desert, on the one hand, and the question of how particular individuals should be recruited for differentially remunerated jobs, on the other. In this book I am concerned with the first, not the second, question.

is crucial for our purposes is that, while such intervention may or may not affect other benefits people receive, it is supposed that it will not affect the ‘earned’ incomes they reap, which are said to be deserved. This is important because, if income inequalities are deserved, then the burden of justification on those who defend redistributive measures in the name of other principles of justice, such as need, is very great. With entitlement-based defences of the unregulated market, by contrast, the ‘unregulated market’ refers to the unfettered exercise of all private property rights, including the right to one’s labour. Individuals are seen to have full private property rights over their mind and body, as well as over any worldly resources they acquire in line with the principle of justice in acquisition and transfer. Consequently, what entitlement-based arguments provide, standardly, is a justification of a full market society in which everything is owned by individuals or by voluntary associations of individuals.

Finally, a third difference between desert-based and entitlement-based arguments concerns the sense in which they provide a ‘justification’ of the market. With entitlement-based arguments, an endorsement of certain fundamental individual rights – rights of self-ownership and, possibly, of ownership of worldly resources – is argued to yield a justification of the unbridled market: the market is not valued derivatively, but is seen as ‘part and parcel’ of the exercise of those pre-given rights.<sup>9</sup> Desert-based arguments, by contrast, provide ‘justifications’ of the market in a weaker sense: some desert theorists do not deny that a desert-based distribution of incomes may, in principle, be achieved in a non-market economy, but they insist that market-generated incomes, too, are rewards that reflect individuals’ deserts.

Despite these differences, both desert-based and entitlement-based arguments are, for present purposes, viewed as attempts to provide justifications of the free market. Although desert-based arguments focus primarily on the justice of distributions of earned incomes while entitlement-based ones emphasise the justice of outcomes produced by individual acts involving the exchange of private property rights, both converge in claiming that the free market is a just distributive mechanism, and that free market-generated income inequalities are just.<sup>10</sup>

<sup>9</sup> See A. Sen, ‘The Moral Standing of the Market’, in E. F. Paul, F. D. Miller and J. Paul (eds.), *Ethics and Economics* (Oxford: Blackwell, 1985), pp. 1–19.

<sup>10</sup> The focus on *income* inequalities, in particular, should not be taken to reflect a conviction that income is itself of fundamental moral significance, or that it is the only thing that has significance. Income inequalities matter insofar as income is an all-purpose means that enables individuals to pursue their conception of the good life and contributes to securing the conditions in which to achieve well-being.

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This book, then, examines in depth these two main attempts at showing that the free market can occupy the ‘moral high ground’. In so doing, it leaves a host of related issues concerning the justice and ethics of markets to one side. One such issue concerns the scope of the market. Even if a society commits itself to economic liberalism, as I have suggested earlier it is widely thought any society must do, there is room and, indeed, urgent need for a critical discussion about the justifiable extent of the market domain.<sup>11</sup> Other issues that will not be explicitly addressed in what follows include general questions of whether social justice requires markets,<sup>12</sup> of whether and how the market can be regulated in order to reach justice, of whether some other moral value justifies the free market,<sup>13</sup> and the issue of the moral status of welfare-based arguments for the market.<sup>14</sup>

These questions are certainly of great significance for the ethics of markets, and some of the ground covered in what follows does have implications for some of them. The entitlement-based defence of the free market, for example, is an argument for the unfettered exercise of private property rights, and for the unlimited extension of the market domain, in that it holds that everything can be legitimately owned and exchanged by individuals. To the extent that individuals have rights of full self-ownership, they may justifiably alienate or transfer for money any bodily or mental powers and resources. Entitlement-based defences of the free market, then, have clear implications for the scope of the market domain, as do some of the claims I make in analysing such defences. Yet while this and other questions are obviously important, and while the views developed in this book are by no means neutral *vis-à-vis* them, I have decided to deal with them only tangentially, so as to make room for my central objective, that of subjecting to scrutiny desert-based and entitlement-based justifications of the free market.

Pursuing this objective, as will appear in what follows, requires an in-depth examination of some of the central notions utilised by defenders of the market, which have so far, in my view, not been subjected to sufficiently close scrutiny. The ensuing analysis is fruitful both insofar as it reveals fatal

<sup>11</sup> See E. Anderson, *Value in Ethics and Economics* (Harvard University Press, 1993); M. J. Radin, *Contested Commodities* (Harvard University Press, 1996).

<sup>12</sup> See R. Dworkin, *Sovereign Virtue* (Harvard University Press, 2000), chapter 2.

<sup>13</sup> See Gray, *Moral Foundations of Market Institutions*. For a critique of arguments for the market that appeal to neutrality, human welfare, autonomy, epistemic considerations and self-interest, see J. O’Neill, *The Market. Ethics, Knowledge, and Politics* (London and New York: Routledge, 1998).

<sup>14</sup> See A. M. Okun, *Equality and Efficiency: The Big Trade-Off* (Washington, DC: Brookings Institution, 1975), and D. Hausman and M. S. McPherson, *Economic Analysis and Moral Philosophy* (Cambridge University Press, 1996), especially pp. 43–4.

weaknesses of these arguments and insofar as it casts light on notions which these arguments utilise and which, I believe, a defensible conception of distributive justice should accommodate. The investigation I undertake in this book, then, while primarily focusing on a critical examination of desert-based and entitlement-based defences of the free market, also generates insights into the principle of desert, the notion of voluntariness and the theory of personal responsibility which, I argue, we must adopt and which, rather than sanctioning free market outcomes, provide a justification for regulating the market.

To see why an in-depth examination of desert-based and entitlement-based arguments for the free market is needed, consider, first, desert-based justifications. An analysis of the role of desert in justifying market outcomes seems particularly timely. In discussions about welfare and the need for its reform, desert has been appealed to as a principle for guiding social policy. Some welfare policies, it is claimed, have failed to recognise that we must refrain from rewarding the undeserving poor.<sup>15</sup> At the same time, the principle of desert has been attracting growing attention among political philosophers, some of whom claim to find support for their adoption of desert as a principle of justice in the fact that so doing squares up nicely with ordinary attitudes toward desert and distributive justice.<sup>16</sup> The desert debate has been intermittent, however, and mostly dominated by defenders of desert, with sceptics of desert mostly relinquishing discussion of it. The result is a fairly eclectic collection of contributions by desert theorists whose views differ widely, and a careful analysis of the role of desert in justifying market-generated inequalities is, I believe, seriously wanted.

The motivation for examining entitlement-based defences of the unbridled market is somewhat different. The debate following and around Robert Nozick's *Anarchy, State, and Utopia* – which to date remains the most significant contribution to right-libertarianism – has been considerably more sustained and richer than the desert debate.<sup>17</sup> My view, however, is that some central concepts employed in both the defence and critique of libertarianism have not been fully brought out and analysed. In particular, the extent to which freedom and voluntariness, as a notion distinct from that of freedom, play a role in the libertarian argument for the free

<sup>15</sup> See R. J. Arneson, 'Egalitarianism and the Undeserving Poor', *Journal of Political Philosophy* 5 (1997), pp. 327–50.

<sup>16</sup> D. Miller, 'Distributive Justice: What the People Think', *Ethics* 102 (1992), pp. 555–93 and reprinted in his *Principles of Social Justice* (Harvard University Press, 1999).

<sup>17</sup> R. Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974). From now on I will refer to right-libertarianism as 'libertarianism' *simpliciter*.

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market has not been sufficiently appreciated. Nozick's own analysis of the notions he employs is altogether disappointing, and the contributions of other right-libertarians are not more enlightening in this respect. Those critiques of libertarianism that have focused on Nozick's appeal to freedom have also failed to distinguish between voluntariness and freedom, and to provide a satisfactory account of the way in which freedom, voluntariness and related notions of coercion and responsibility are related, and of how an analysis of them bears on the libertarian defence of the free market. Finally, in recent discussions about libertarianism, and left-libertarianism in particular, the focus has been mostly on original rights and the principle of just acquisition. Whilst not denying the salience of questions regarding original rights and appropriation, my own view is that we can gain greater insight than has so far been achieved into the libertarian justification for the free market by examining the notions of freedom and voluntariness which are crucial to the principle of justice in transfer.

To each of the desert-based and the entitlement-based arguments I dedicate three chapters: chapters 1 to 3 deal with desert and desert-based justifications of the market, chapters 4 to 6 with the libertarian argument. Given the different state of the debates on desert and on libertarianism, it is unsurprising that my approach in examining them is also different. As far as the analysis of desert is concerned, one great difficulty here consists in the variety and diversity of the uses of the notion of desert, with intuitions and ordinary language not providing any solid guidance for straightforwardly favouring one or some of these uses over others. In this context, desert theorists may broadly be divided into those who analyse and defend all existing uses of 'desert', on the one hand, and, on the other, those who choose to focus on, and to adopt, one particular interpretation of desert. Neither of these approaches, I believe, is wholly satisfactory. The former tends to overlook the fact that, while several interpretations of desert may be appropriate in different contexts, not all uses of 'desert' are relevant for distributive justice; the latter, by contrast, mistakenly proceeds as if there were a principle of desert sufficiently determinate to be adopted and put to the task of justifying market outcomes. I try to steer away from both these tendencies, and suggest that we proceed by laying down some constraints on what an eligible principle of desert must look like for it to lend itself to the task at hand and in order for it to overcome some objections that have been levelled against it. My main conclusion here is that desert as a principle of distributive justice is a notion of *active*, or *responsibility-sensitive* desert, that is, desert on the grounds of choices individuals make and activities they undertake, and that inequalities are just because deserved when individuals



have a fair opportunity to acquire differential deserts. When we consider some of the main desert-based arguments for free market inequalities with this notion of desert in mind, we find that none of them is successful.

My analysis of the libertarian justification of the unbridled market proceeds differently. Here, and unlike with desert, it unfolds mostly through an in-depth examination of a particular argument – that of Nozick – and my first task is to expound the main steps of that argument, in the course of which I characterise it as one in which freedom and voluntariness play a salient justificatory role. In particular, I argue that a treatment of the conditions under which the transfer of rights is carried out and choices are made is crucial for analysing the libertarian justification of the free market, and that an attempt to circumvent the appeal to voluntariness would render libertarianism unappealing and, ultimately, incoherent. I then develop my critique of the libertarian argument for the free market, where the main contention of that argument is that a free market society is one in which freedom and justice are realised because all (supposed) limitations of freedom derive from specific voluntary undertakings.

My arguments against the libertarian justification of the free market unfold against the background of a number of assumptions. First, I assume that self-ownership is a defensible thesis, and that there is a principle of just acquisition which yields a justification of full private property rights over external resources. Second, I assume that the endorsement of self-ownership justifies positing a requirement of voluntariness for the legitimacy of all obligations and interferences with individuals, with the exception of those obligations that are the correlative of (other) individuals' (libertarian) rights. Finally, the definition of freedom I use is a negative definition, on which an individual is unfree to do  $x$  if and only if his doing  $x$  is prevented by another agent.

I make these assumptions with the aim of developing a critique of the libertarian argument that proceeds within shared premises. My main contention is that the libertarian defence of the free market relies on a flawed rights-definition of voluntariness, as well as a rights-definition of freedom, and an incorrect understanding of the relationship between freedom and voluntariness. If voluntariness is a necessary condition for holding individuals responsible, then the question of what counts as voluntary choice merits careful analysis, and an account of voluntariness must be formulated that squares up with a defensible view of personal responsibility.

The examination and defence of the conditions for the attribution of responsibility is an appropriate point at which to conclude an analysis and critique of two principal attempts at showing that the market is just.



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The theme of responsibility runs throughout the book. In different ways, defenders of desert as much as libertarians view their theories as founded upon a recognition that individuals should be treated as free and responsible agents. And the concern with making room for individual responsibility within theories of justice opens up the possibility of a crossing point between theories of justice and defences of the market: the appeal to freedom, choice, and responsibility has often been associated with a eulogy of the market, as the realm of choice *par excellence*, where free individuals have both the burden and the benefit of choice.

An analysis of the relationships between responsibility, desert, voluntariness and freedom, is, then, of crucial importance for assessing the justice of markets. The conclusions of this book are that entitlement-based arguments do not successfully establish that treating individuals as responsible agents requires that they be left to enjoy both the burdens and the benefits of their choices on a free market, and that desert-based arguments are no more convincing in establishing that rewards generated by a free labour market are what responsible individuals are due. The recognition of the importance of giving responsible individuals their due, in fact, far from justifying the unbridled market, supports its regulation. This is true whether a commitment to voluntariness and freedom or the endorsement of desert is defended as the most attractive interpretation of the requirement that we treat individuals as freely choosing and responsible agents.

## CHAPTER I

*Desert and justifications of the market*

## I. INTRODUCTION

The idea that people deserve to be paid for the work they do is a familiar one in common thinking about justice, and finds support in various arguments put forward by political philosophers who endorse desert.<sup>1</sup> Some argue that entrepreneurs deserve their profits as prizes for their alertness to the misallocation of resources. Others suggest that workers engaged in hazardous and unpleasant jobs deserve their wages as compensation, or as rewards for the effort they have made. Yet others claim that productive contribution makes people deserving of the incomes they earn. These and other claims are offered in defence of the view that at least some incomes are deserved, and that *economic desert* – namely, desert of monetary benefits – is a principle of distributive justice. That is, the justice of a distribution of incomes among individuals is thought to be at least in part a function of those individuals' deserts.

Different claims of economic desert have different implications concerning the moral status of the market. Some support viewing free market income inequalities as unjust. In this book I leave these claims aside. I am concerned with arguments that purport to show that the distribution of monetary rewards or incomes (where these are taken to refer, broadly, to profits, wages and other earnings) generated by a free market is just because deserved. Broadly speaking, these arguments unfold by defending two main contentions. The first is that one particular interpretation of the principle of desert – for example, desert as a principle of contribution, requiring that people be rewarded in proportion to the valuable

<sup>1</sup> I will consider several such views in the course of what follows. But for a few classic examples, see J. Feinberg, 'Justice and Personal Desert', in *Doing and Deserving* (Princeton University Press, 1970); D. Miller, *Social Justice* (Oxford: Clarendon Press, 1976); D. Miller, *Market, State and Community. Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press, 1989); G. Sher, *Desert* (Princeton University Press, 1987); W. Sadurski, *Giving Desert its Due. Social Justice and Legal Theory* (Dordrecht: D. Reidel, 1985).