



# Regulated freedoms: the market and the state, agriculture and the environment

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## Abstract

We argue that a “free” market — that is, a market in which the state does not intervene — is a theoretical impossibility in a state society. In place of the *natural economy* view of a market apart from the state, we offer a *social economy* view of the inescapable social structuring of markets through state regulation. Even when states institute policies which prevent “interference” in a market, the enforcement power of the state is no less required. We thus distinguish between two forms of regulation: *negative regulation* — regulation which prevents interference — and *positive regulation* — regulation which enables interference. These two forms of regulation make possible two different conceptions of freedom, what Isaiah Berlin once termed “negative freedom” from agency and “positive freedom” to have agency. We argue that positive and negative freedom and positive and negative regulation are inseparable; freedom is always contextual. Through a discussion of the debate between industrial agriculture and environmentalists, we show that both supporters and critics of the “free” market are alike in their advocacy, often unacknowledged, of both negative and positive forms of regulation. Rather than a lessening of regulation, this debate represents the institution of a new *regulatory regime* out of the contest of interests. We conclude by considering the implications for democracy of the contextual character of freedom. © 2000 Elsevier Science Ltd. All rights reserved.

## 1. Introduction

Every age has its characteristic rhetoric, its defining ideas and proverbial expressions, its language of motivation. And one of the most characteristic bits of the rhetoric of our age is, assuredly, the “free market.” It has become scarcely possible to read the front page without encountering this catchphrase and some among its many kindred terms: free trade, downsizing government, deregulation, private enterprise, competitiveness, creative destruction, efficiency. Arrayed alongside are the equally familiar opposition: big government, regulation, central planning, bureaucracy, command-and-control, inefficiency, red tape. The principal opposition, however, is between the market and the state: By common agreement, in the words of one introductory economics textbook (Fischer and Dornbusch, 1983: 14), “markets in which governments do not intervene are called *free markets*.”

We should be wary of dichotomous thinking, here and elsewhere. While all concepts need points of contrast to

give them their dimensions and make them recognizable, we must be mindful of the ideological tendency to erect fences and walls along the boundaries mapped by the current compass of our thought. Paradoxically, in the case of the notion of the free market, the fences and walls have gone up under the guise of taking them down. The period since the early 1980s has seen truly epochal changes in the social organization of economics as old orthodoxies have been replaced by new ones. Institutional structures established between the 1930s and 1950s in both the East and West, and their satellites in the South, have undergone profound, even revolutionary, revision in the past 15 or so years under the banner of freeing the creative power of markets from the constraints of government planning and regulation. The reorganization of economics has had different components in different contexts — the weakening or repeal of various restrictions on firms, liberalization of trade, privatization of state-run industries, abandonment or modification of price controls and subsidies for various commodities, curbs on government expenditure, the introduction of market principles into the running of government itself. The underlying aspiration in all these contexts was the same, however: to “roll back the state.” And it was informed by

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a common pejorative, and frequently uncompromising, view of regulation as state interference in the operation of otherwise undistorted markets.

But the notion of a “free” market without or prior to the state is an ideological abstraction. No market is possible without a society to provide it with moral, legal, political, and administrative foundations. All markets are socially structured and socially patterned by legal codes, policing, norms of interaction, and common mediums for exchanging goods and information. In a state society, this necessarily entails the state. No form of modern market has validity apart from the state or states that gives it licence, scope, and regularity. It is the state that guarantees the property rights, enforceable contracts, product standards, and sound money upon which the operation of any modern market depends<sup>1</sup>. Unless by the term “free” we mean a brigand economy of six-shooters, pirates, and highwaymen, a market inherently involves the state. David Marquand (1988: 101) put it well: “The truth is that it is as misleading to talk of the state ‘distorting’ the market as it would be to talk of the market ‘distorting’ the state. Without the state there would be no market: at the door of the auction room stands the policeman.” Moreover, no market can exist apart from the cultural surround to which it adheres, and which adheres to it, giving it some normative regularity and some potential for change, both of which — regularity and change — depend in part on the state’s structuring powers.<sup>2</sup>

Indeed, even policies which roll back or prevent “interference” in a market require state action to put them into practice and to maintain them. Any new market freedoms that we may contrive — through deregulation, privatization, and free trade agreements, for example — are inescapably the result of state power to structure and restructure economic and social life. As Karl Polanyi long ago observed, it is no accident that the expansion of the “free” market in the early 19th century was accompanied by a great expansion of the state as well:

Just as, contrary to expectation, the invention of labor-saving machinery had not diminished but actually increased the uses of human labor, the introduction of free markets, far from doing away with the need for control, regulation, and intervention, enormously increased their range.... Thus even those who wished most ardently to free the state from all unnecessary duties, and whose whole philosophy demanded the restriction of state activities, could not but entrust the

self-same state with the new powers, organs, and instruments required for the establishment of *laissez-faire* (Polanyi, 1944: 140–141).

Free-market ideology has long wrestled, and wrestles yet, with this basic contradiction: that “freeing” the market from the state depends upon the state. But like any economic arrangement, a “free” market is a *social* creation — not a force of “nature” and the autonomous laws of efficient and adaptive production. Again in Polanyi’s words (1944: 139), “There was nothing natural about *laissez-faire*; free markets could never have come into being merely by allowing things to take their course.... *Laissez-faire* itself was enforced by state action.” Even capitalism is a social phenomenon.

Our goal in this paper is to develop a critical language for understanding the interrelationships between the market and the state and their social creation. Of late, a growing chorus of writers has been demonstrating these interrelationships, arguing for the necessity of government as a counterweight to the market, controlling its excesses and ensuring the optimal allocation of resources and achievement of social goals, such as health, a clean environment, and social equality. We term this argument the *institutional critique* of “free” markets, perhaps best exemplified by the writings of Robert Kuttner (1991, 1997). We find the institutional critique very persuasive, but our goal is to go beyond it and follow Polanyi in the development of a *constructionist critique* that challenges the very idea of a “free” market in which governments do not intervene.

A similar distinction applies to the sociology of science. An institutionalist, for example, might explore the way careerism in science leads scientists to choose particular topics for research over others, whereas a constructionist might argue that the way scientists interpret their results reflects the power-laden ideologies of science. An institutional approach is sometimes referred to as the “weak” argument for a sociology of science, while a constructionist argument is sometimes referred to as the “strong” argument. We do not accept a parallel language of “weak” and “strong” critiques of the “free” market, though. There is nothing “weak” here about the institutional critique. Rather, in our view the institutional and constructionist critiques together make up two complementary sides of what we term the *social economy* perspective on the market, as opposed to the *natural economy* view that has gained such prominence of late.<sup>3</sup>

<sup>1</sup> We are indebted to Lawrence Busch’s article in this special issue for pointing out to us the importance of product standards and commodity grading systems in the state structuring of the market.

<sup>2</sup> The cultural dimensions of the market is a topic we, for reasons of focus, do not much discuss here, except to the extent that this whole paper represents a critique of free-market ideology. For detailed looks at these cultural dimensions, see Bell (1998a,b) and Ray (1997).

<sup>3</sup> The debates between constructionists and realists in environmental sociology and between the “weak” and “strong” approaches to the sociology of science have distracted much scholarly effort. Indeed, these debates are themselves emblematic of the dichotomous and polarizing mode of thought that we critique with regard to the relationship between the market and the state. For an argument for a more interactive view of how to handle conceptual distinctions, see the discussion in Bell (1998b) of “ecological dialogue.”

The institutional critique represents a more materialist approach to social economy, while the constructionist critique a more idealist one. The two are equally necessary; however, the constructionist approach is currently less developed, a situation we seek to correct in this essay.

In this paper, we also hope to correct a misconception about the state on the part of some authors sympathetic to a social economy point of view, and here we will again be rejecting the utility of the metaphor of “weak” versus “strong.” One common way to describe the economic reorganization brought about by the political success of “free” market ideology is to say that states have become “weaker.” But there is nothing weak (or “small”) about the state behind the “free” market. Rather, it takes just as strong (and “big”) a state to institute a form of economic reorganization as to resist it or to institute another form. One is reminded here of Andrew Gamble’s characterization of the objectives of that most deregulatory of administrations — that of Margaret Thatcher in 1980s Britain — as being “the free economy and the strong state” (Gamble, 1988). In other words, the relationship between state and economy is not a question of the relative strength of a state but rather one of which interests dominate its control and to what ends<sup>4</sup>.

We draw most of our examples from recent debates over agriculture and the environment, but our argument is by no means limited to these areas of economic policy we know best. Our principle contribution to the development of the constructionist critique of the free market is more general — the distinction we make between two forms of state regulation: what we term *negative regulation* and *positive regulation*, regulation that prevents interference and regulation that enables interference. Free market advocates only recognize positive regulation as regulation, as when the state passes laws ensuring workplace safety, instituting labeling requirements, or limiting pollution emissions. But the failure to pass such laws, or the removal of such laws, are no less acts of regulation: *negative* regulation. When such laws are removed or not passed, many actors in the economy — such as labor, consumer, and environmental groups — will find that the state has no less ably restricted their ability to take action.

Advocates and critics of the free market alike commonly propose both negative and positive forms of regu-

lation to gain their ends, we will argue, but they seem little aware of it. The philosopher R.G. Collingwood drew a distinction between “absolute” and “relative” propositions (Collingwood, 1944; Krausz, 1972). The former tend to enjoy unquestioned status, so much so that those who espouse them may be unaware of their own allegiance to them, whereas the latter need to be continually demonstrated and discussed. The absolutist character of the current mood of free-market abstractions, portraying markets as natural, as if beyond human agency, lends urgency to the relative (in Collingwood’s sense) propositions of a social economy view of the market.

## 2. Negative freedom and positive freedom

Before we consider regulation, however, let us address freedom. And like many others, we can think of no better place to begin to address the question of freedom than the work of the late Isaiah Berlin. Indeed, our central theoretical distinction between negative regulation and positive regulation (which we will describe in more detail in the next section) follows Berlin’s famous distinction between “negative liberty” and “positive liberty.”

By the phrase “negative liberty” or “negative freedom” (Berlin used the terms “liberty” and “freedom” interchangeably) Berlin meant “liberty *from*; absence of interference ...” (Berlin, 1969 [1958], 127; original emphasis). As John Gray (1996: 5, 15) in his recent synthesis of Berlin’s work usefully defines it, negative freedom is “the absence of constraints imposed by others” resulting in “unimpeded ... choice among alternatives or options”<sup>5</sup>. Negative freedom is freedom in John Stuart Mill’s sense, said Berlin, quoting Mill’s dictum that “The only freedom which deserves the name is that of pursuing our own good in our own way” (Berlin, 1969 [1958], 127).

But Berlin recognized in the history of ideas another widespread conception of freedom, “the ‘positive’ conception of liberty: not freedom *from*, but freedom *to* — to lead one prescribed form of life ...” which “derives from the wish on the part of the individual to be his own master” (Berlin, 1969 [1958], 131; our emphasis). Gray (1995: 5) defines it as “rational self-determination, or autonomy.” This positive conception, said Berlin, is freedom as it was understood by Herder, Hegel, and, of course, Marx — a freedom to make the changes one desires.

If one were to put the distinction in more sociological terms, the word *agency* would come immediately to the fore. (So too should the word *structure*, as we will shortly

<sup>4</sup> Some states are stronger relative to other states, however, as opposed to relative to the market. Indeed, “strong” states in this sense may impose “free” market regimes on “weaker” states, such as happened in many developing countries and former socialist countries. Much of this imposition has occurred through interstate action involving a kind of transnational pooling of sovereignty through such bodies as the European Union, the World Trade Organization, the World Bank, and so on. On the notion of an emerging “global state” above the level of the national state, see McMichael (1997). In other words, the “state” is a far more complex category than we have room to explicate here.

<sup>5</sup> Gray’s (1996: 15) precise phrase is “*choice among alternatives or options that is unimpeded by others*”; original emphasis. We’ve altered it to avoid repetition with the previous quotation from Gray.

see.) Negative freedom depends upon freedom from agency. Positive freedom depends upon freedom to take agency. The negative freedom from agency allows me to make my own choices, pursuing my own good in my own way. The positive freedom to take agency allows me to determine my own life-course, taking control over the conditions of my existence.

Several important implications for the sociology of freedom follow from recognizing that to talk of freedom is to talk of agency, but we will hold these to the side momentarily while we continue to explore the concept of freedom as political philosophers have understood it. First, we should note that Berlin was well aware of something that likely has already occurred to some readers, and that is that in both instances of freedom, negative and positive, we are really talking about different sides of the same coin. As Berlin (1969) [1958]: 131–132) observed, positive and negative liberty are “no great logical distance from each other — no more than negative and positive ways of saying the same thing.” In other words, if one is to be free of constraints imposed by others in the making of choices, one must be enjoying conditions that grant one some autonomy, and vice versa. But although each implies the other, Berlin argued (convincingly, we think) that these ideas of freedom have been developed and applied in distinctly different ways in the history and politics of thought.

Second, we would point out that the history and politics of thought have also seen a parallel debate concerning the origin and meaning of property. On the one hand, there has been the view, perhaps best exemplified by John Locke, which sees property as, to quote Bromley (1991: 7), “some immutable and timeless *entitlement* that can only be contravened with difficulty, and then only if compensation is paid by the state.” For Locke, then, property was prior to the state and represented the absence of constraints. Thomas Hobbes, though, saw the matter differently, arguing that without the Leviathan state there could be no property as we in our savagery would have no regard for entitlements of any kind. For Hobbes, the state had to be prior to property, not least in bestowing the ability to seek redress for theft and other grievances of property.

Property has long been considered in economic thought as the primary goal and measure of freedom. Property in this view is the material manifestation of freedom. Thus, it is perhaps not surprising that debates over property should echo those over freedom. We hear in the Lockean position strains of the negative conception of freedom in which the essence of property is freedom from the agency of others as embodied in the state. We hear in the Hobbesian position strains of positive freedom in which property depends upon our freedom to take agency over others, via means of the state, in defence of our property. Therefore, we suggest calling the Lockean view the *negative* conception of

property, and the Hobbesian view the *positive* conception of property<sup>6</sup>.

### 3. Negative regulation and positive regulation

But none of these — negative and positive freedom, negative and positive property — are possible without social action. Freedom and property are social, not individual, and so too is the agency that underlies them. Negative freedom from agency means freedom from the agency of others; positive freedom to take agency means freedom to take agency over others. Freedom is contextual. As Berlin noted, quoting an old English aphorism, “Freedom for the pike is death for the minnows”; the liberty of some must depend on the restraint of others.” In other words, Berlin well recognized the contextual character of freedom — that freedom is a political matter constantly negotiated among us and involving trade-offs between us: “a matter of argument, indeed of haggling,” in Berlin’s words (1969 [1958]: 124). But Berlin, a philosopher, did not follow up on the sociological implications of freedom’s contextual and conflictual character. We do so here.

After the debates of the 1980s and the writings of Giddens, Bourdieu, Latour, and others, it has become a sociological truism — and a correct one — to observe that to speak of social agency is to speak of social *structure*, each guiding and mutually constituting the other<sup>7</sup>. If the liberty of some depends upon restraint of others, and over others, then there must be a restraining force at work. Freedom does not exist apart from constraint, nor — although this is often harder to recognize — does constraint exist apart from freedom, from the freedom to constrain. Like all social action, freedom is socially structured; it is patterned by, just as it itself patterns, the actions of others. Freedom is a product of social compromise, of argument and haggling, of the play of competing interests in setting the guidelines of action. Freedom, then, is always regulated.

Thus, sociologically we need to draw attention to the structural side of positive and negative social action, so much having already been said of the agency side. We

<sup>6</sup> Not everyone associates Hobbes with the “positive” position. For a contrary view, see Gray (1996). Bromley (1991) sets the Lockean negative view against the writings of Kant who saw society and property as mutually constitutive, a more sociological view that is close to that of Durkheim and to what we advance here.

<sup>7</sup> Bourdieu, in fact, claims to have moved past the distinction between structure and agency altogether with his notions of “field” and “habitus,” but we feel that the strength of Bourdieu’s concepts is the way they unite structure and agency; we do not accept that he has eliminated the need for the distinction. In fact, without the concepts of structure and agency in the back of one’s mind, it is hard to appreciate the value of the concepts of “field” and “habitus.” See Bourdieu (1977) and Bourdieu and Wacquant (1992).

need to add two additional concepts to the terminology of freedom and property: their necessary structural correspondences, *negative regulation* and *positive regulation*. By negative regulation we mean the social structural underpinning of protection from the agency of others; regulation that prevents interference; regulation-*from*. By positive regulation we mean the social structural underpinning necessary to take agency over others; regulation that enables interference; regulation-*to*.

Our point, let us underline, is not to deny the agency side of the story and replace it with structure. Just as freedom requires regulation, regulation requires freedom — the freedom to implement the guidelines of action. Rather, our point is to balance our understandings of them both.

We have two main motives for seeking this balance, one sociological and one normative. First, it is sociologically important to note the limited understanding of freedom and property which the ideologue's abstract, natural economy view of the "free" market affords. The abstract view walls off our vision of the social construction, through regulation, of freedom and property. For the free market ideologue, true freedom is negative freedom, freedom from, and true property is negative property, property prior to the state. Consequently, the free marketeer, in challenging the role of government, typically only regards positive regulation as regulation. Freedom and property are thus portrayed as resulting from the curtailment of the authority of government to regulate, particularly through bottling up the potential of the state to override the Lockean limits of property and impose constraints on its free enjoyment. For the abstract view, then, freedom and property represent the absence of regulation. But recalling, with Berlin, the contextual freedom of the pike, we can recognize that to provide freedom from agency is also to regulate. Interference must be prevented here as well, and in a state society that is the task of the state. Freedom-from requires regulation-from, just as freedom-to requires regulation-to. But the legitimation of such negative regulation — legitimating, for example, the role of the state in the assertion and defence of particular forms of private property — has acquired the character and transparency of an absolute proposition.

Second, if the above is sociologically correct, it is normatively important to seek a balanced view of the dialogue of freedom and regulation, of agency and structure. The dominant pejorative view of positive regulation, though, blinds us to the social conditions that make freedom and property possible; it erects the high walls of dichotomy. Consequently, the holder of the abstract and natural view drives along in a private conceptual car oblivious to the social origins of the infrastructures — the roads, the police force, the ambulance and health care services, the subsidized parking, the increasingly decentralized land use — that make the private car both

possible and attractive, and a symbol of our modern propertied freedoms. But just as the motorist's freedom inflicts tyranny on others (through pollution, noise, congestion, accidents, and the physical isolation of the carless), so there is always a trade-off between positive and negative freedoms, with the trade-off point at any time being set by the type of regulation prevailing. Thus, in emphasizing that regulation is the counterpart of freedom, our normative (and sociological) point is *not* that more regulation necessarily means more freedom. Rather, our point is that the debate over the "free" market is not really one of freedom versus regulation but instead a debate over particular distributions of particular regulations and thus over the distribution of particular contextual freedoms among us.

#### 4. Regulatory regimes

In order to understand the full role of the state in the structuring of the market and of property, we need to employ a broad concept of what regulation, negative or positive, is. In a state society, regulation — which we define simply as the structuring of society by the state — is unavoidable, as we have said. Whatever a state does, and does not, structures the conditions in which its citizens live and enjoy, or do not enjoy, various properties of freedom and freedoms of property. Whatever laws a state passes or repeals or fails to pass, whatever bureaucratic agencies and guidelines and standards it establishes or removes or fails to establish, the pattern of human agency is equally structured by the operative policies of that state.

In other words, understood sociologically, the regulatory power of a state is not equivalent to the length of, for example, the US Code of Federal Regulations — which, as of 1998, stood at 201 volumes and 135,127 pages. The US state does not structure its corresponding society less if the code gets shorter. The elimination of a rule, standard, or item of legal code represents instead a restructuring of society, and perhaps certain efficiencies in drafting. It does not necessarily indicate that collective freedom (assuming such an abstraction could be measured) has increased. Although ideologically it may be proclaimed as deregulation, it is analytically an act of negative regulation, of regulation that prevents interference. Deleting a statute or an item of legal code that institutes some form of, say, pollution prevention eliminates the positive enabling of certain social agents to object to the choices made by other social agents and substitutes it with a negative restraint. Neighbors of a polluting industry will find that, without the item of code, they no longer have that structural means of objecting to the pollution. One social agent's freedom-to has been converted into another social agent's freedom-from, enforced by the regulatory power of the state. "Cutting"

regulations in the legal sense thus amounts to re-regulation in the sociological sense.

It is equally a manifestation of the regulatory power of the state to fail to enact a particular law or bureaucratic standard to begin with. If a neighborhood organization, perhaps linked with other like-minded groups, approaches a politician or official and requests the passage of a new restraint on pollution, it may well find itself confronted with state resistance to, or rejection of, its request. That neighborhood organization thereby comes up against the social-structural reality of regulation-from, of negative regulation that prevents its interference in the “free” agency of a polluter. Its members will as well find that the state has structured social life such that their negative property rights, their rights to enjoy their property free of the agency of others, are compromised by the drifting of pollution from the positive property rights of others — the positive right of polluters to infringe on someone else.

The positive regulation dimension of the failure to enact a law or standard should not be overlooked here. We do not mean in all instances to equate the absence of a line in the legal code of a country with negative regulation, with regulation-from. The absence (or lack of enforcement) of that line is just as likely to enable certain agents to take agency over others, as in the drifting of pollution into another’s property, as it is to prevent others from taking agency over the polluter. As with negative and positive freedom, negative and positive regulation directly imply one another.

There are thus two common ideological omissions from the abstract, natural view of freedom and the market. First is the failure to recognize negative regulation as regulation. Second is the inability of the abstract view to understand that negative freedom depends not only on negative regulation (regulation that restricts the agency of others) but equally upon positive regulation (regulation that enables the constraint of others). Indeed, it is worth noting that despite nearly two decades of government “down-sizing” in the United States the length of the Code of Federal Regulations has increased over 30% from its 164 volume, 102,195 page length in 1980, the year of Ronald Reagan’s election<sup>8</sup>.

Nevertheless, understood sociologically we ought not to speak of an increase or decrease in regulation when a new law or standard is passed or an old one is dropped, nor should we speak of the decision not to pass a new law or standard as holding the line against Big Government. Rather, we should speak of the reshaping of *regulatory regimes* — overall patterns, chaotic and contradictory as

they may be, of state-sponsored social structures, negative and positive — out of the play of political interests. As Cerny (1991: 192) suggests,

The analysis of deregulation and re-regulation is of a state mediating between powerful opposing interests, deregulating here, and re-regulating there, normally trying to change as little as possible while adapting to limitations imposed by wider market or institutional/technological conditions, but occasionally having to impose more extensive changes in the balance of interests which are given priority or special attention.

The debate over the “free” market is thus not about the elimination of regulations and the down-sizing of governmental power, but is instead about the establishment of a new regulatory regime and about the strength of the various political interests for and against the re-regulations it will bring<sup>9</sup>.

## 5. Regulating agriculture and the environment

The play of interests in the formation of regulatory regimes is well illustrated by the debate between agriculture’s industrial advocates and their environmental critics. We have become accustomed to understanding agribusiness as advancing a negative property and negative freedom agenda of removing regulations and preventing interference. And we have become similarly accustomed to understanding environmentalists as favoring positive regulation (in the terminology used here) that interferes with agribusiness’ otherwise freehand in the use of its property. But there is no ideological purity on either side. Agribusiness interests routinely lobby the state for new regulations, both negative regulations to structure the prevention of interference and positive regulation to enable interference with the agency of others. Environmentalists for their part routinely lobby for both positive regulations-to and, as we shall show, negative regulations-from.

One widely discussed result of the agribusiness lobby for positive regulation are the food disparagement laws now on the books in a number of US agricultural states. These laws attracted worldwide attention when the Texas Cattlemen’s Association sued the popular television personality, Oprah Winfrey, for disparaging beef during a 1996 show about the possibility that the BSE virus had infected some US cows. The failure of the suit (pending appeal at this writing) did not affect the standing of Chapter 96, “False Disparagement of Perishable Food Products,” of the Texas Civil Practice and Remedies Code as the judge determined that the case could not

<sup>8</sup> To be precise, the increase between 1980 and 1998 was 32.2%. The length of the Code did drop slightly between 1995 and 1996, though, as it also did between 1981 and 1982, 1984 and 1985, and 1990 and 1991 (Office of the Federal Register figures).

<sup>9</sup> See, for example, Cloke and Le Heron (1994); Flynn et al. (1994).

be tried under that statute. But it did highlight a contradiction between the ideology of the “free” market as anti-regulation and the evident presence of the policeman at the door of the agricultural auction room.

This was not an aberration. Any agricultural market is a state-structured market. To cite another US example, the expansion of industrial hog operations in the Midwest has depended in large measure on the passage of laws which restrict nuisance lawsuits against the operations. These operations, with their many tens of thousands of animals, have been the subject of intense debate in the 1990s. The pungent smells, the manure spills, the high levels of antibiotic use, the living conditions of the livestock, and the economic effects on smaller farms have made large “hog lots” a potential target of many law suits by the aggrieved. However, a 1995 Iowa law, known as HF 519, established generous guidelines of environmental legitimacy for hog farms, and decreed that the prosecuting side in any lawsuit which is deemed a “frivolous” challenge of that legitimacy pays the defence’s legal fees, greatly limiting the likelihood of a suit. Indeed, that was the expressed intent of the legislation: to restrict the agency of others, in this case potentially aggrieved neighbors. This was a clear imposition of a regulation — a positive regulation, in our terminology — in support of a “free” market, but the advocates of a “free” market in hogs, not surprisingly, did not present HF 519 in that contradictory light.

The same use of positive regulation in support of “free” markets, but on a far larger scale, underpinned the aborted Multilateral Agreement on Investment (MAI). Under highly secretive negotiation between 1995 and 1998 among the wealthiest nations of the OECD, the MAI would have prevented the nations which signed on (and eventually likely any nation which wanted to do business with those nations) from restricting in any way the access of foreign capital to their markets. Eventually, the MAI died in the wake of the East Asian financial crisis and as critics successfully alerted the media to the consequences for the poor, for the environment, and for localities of giving multinational capital such a freehand. But there are signs, as we write, that the “Millennium Round” of WTO negotiations in December of 1999 may amount to an attempt to resurrect the MAI under a different guise; other attempts will no doubt surface if the Millennium Round fails to enact additional substantial trade liberalization. These continued attempts are further demonstrations of what every board member of every multinational corporation intuitively, if not ideologically, recognizes: That an economic “freehand” is only possible through state-enforced structures that restrict the agency of others and their ability to contest the agency of global capital.

Industrial agricultural interests also advance regulatory regimes through the institution of negative regulations. For example, in addition to the provision about

“frivolous” lawsuits, Iowa’s 1995 hog production law decreed that local governments do not have the power to regulate hog farms, eliminating one legal avenue that a number of areas were considering taking; only the state (in the US sense of the term “state,” the state as in the “State of Iowa”) has this power. Critics argue that keeping this power at the level of the State of Iowa, whose legislature is currently controlled by the Republican Party with its Lockean view of property, stacked the deck of power in favor of hog lots. Localities thus found that their positive freedom to take agency over industrial hog farms had been converted into the negative freedom from agency for these farms, via the higher structuring authority of state-level government. The state had been called in to enforce that which ideologically was apart from the state: Lockean negative property and its “free” rights.

However, it is not only the presence of a line of legal language in HF 519 or some other law or code that manifests a regulatory regime. Absence manifests it equally. For example, one Iowa county, Humboldt County, tried to establish legal standing via a different legal avenue than the one HF 519 closed. The Iowa Supreme Court eventually threw out that attempt on March 5, 1998, but the controversy resulted in considerable debate in the Iowa legislature over whether HF 519 needed to be superseded with a new law that allowed local regulations. One such new law, HF 2145, had been proposed in 1996 but was not passed — nor was a law like it eventually passed in the 1998 or 1999 legislative seasons. But the fact that such a law was not passed (nor looks likely to be passed anytime soon) equally structures the agency — what they can and cannot do — of the various parties in the controversy. The same could be said of the decision of the Iowa legislature not to pass a law making the board of directors of an agricultural firm personally liable for damages resulting from a suit, such as the neighboring state of Nebraska did pass. The same could be further said of the hundreds of bills every year in legislative bodies across the world which never make it “out of committee” — or indeed never make it into committee to begin with.

Environmental interests attempt to shape the regulatory regime as well. Nebraska’s liability law is an example of the kind of positive regulation we typically associate with the regulatory regime advocated by environmentalists: regulations that give the public agency over the agency of capital. There are, by now, countless positive environmental regulations, a fact which the advocates of industrial agriculture often try to bring to our ideological attention. But what seems less obvious, though equally prevalent, are environmental arguments for negative regulation. Environmentalism frequently advances a Lockean negative property rights position, enforced through the state, as in arguments to limit the spread of pollution from industry to neighbors. To say that the strong anaerobic smell from the slurry lagoons of

an industrial farm should not cross property lines or that nitrous waste or pesticide run-off should not enter the wells of others or the public water supply is to advocate the negative sanctity of property rights.

A similar argument, albeit with a different notion of ownership, underlies the environmentalist's wilderness advocacy. When the environmentalist argues that a patch of "wilderness" needs to be protected, the contention is, in part, that there are places where one should be able to go where the agency of others — other humans, at least — is not. What is true wilderness but the complete absence of others' agency, the ultimate freedom-from? And in a state society, such freedom-from requires corresponding regulation-from.

These freedom-from arguments on the part of environmentalists are not always expressed in terms of property, however. Some issues of negative environmental freedom are primarily concerned with assaults on the person, not assaults on property (to the extent that notions of person and property are separable). Why should I be compelled, the environmentalist also asks, to breathe, smell, drink, ingest, see, or otherwise absorb into my body the results of someone else's environmental agency, eating food produced using genetically modified organisms or breathing air infused with the smell of hog waste? In order to protect the freedom-from of the person, the environmentalist advocates corresponding forms of regulation-from, such as laws that control the drifting of the smell of hog waste, and corresponding forms of regulation-to, such as laws that limit the importation of food produced with genetically modified organisms. Similarly, some environmental arguments about freedom-to are also primarily concerned with protecting the positive environmental freedom of the person, not property, such as negative regulations that uphold the walker's right to use ancient rights of way that cross a farmer's land and positive regulations that require farmers to assist in the maintenance of these rights of way, on the books in various forms in most European countries. But even in these environmental arguments about the person, corresponding notions of property are usually close to the surface of the argument, enabling walkers to use another's land and limiting the kinds of activities hog producers may conduct on their farms.

Thus, environmental and industrial agricultural interests alike advocate regulatory regimes based on both negative and positive regulation. The rhetoric they employ, is of course, quite different. Industrial agriculture's "free" market arguments draw explicitly on the moral force of the Lockean, negative vision of property and freedom, while environmental arguments draw upon the moral force of the Hobbesian, positive vision. As Bromley emphasizes, "environmental policy is nothing if not a dispute over the putative rights structure that gives protection to mutually exclusive uses of certain environmental resources" (1991, p.3).

This dispute between Lockean and Hobbesian visions of property and the state has some intriguing asymmetries. One depends upon the geographical focus of the political debate. At the local level, the argument typically runs as follows: local producers when confronted with pressures to tackle the environmental impacts of their activities argue that this will unfairly restrict their ability to trade as they will face costs that some of their competitors do not. Consequently, they will be at a competitive disadvantage with producers elsewhere. At the international level, on the other hand, global capital interests often portray environmental regulations and standards as local defensiveness against free trade, what are pejoratively referred to as "non-tariff trade barriers." In the local case environmental regulations are criticized for restricting the movement of goods *out of* a region, and in the international case environmental regulations are criticized for restricting the movement of goods *into* a region. In this way, arguments about environmental externalities face a double jeopardy in relation to "free" market arguments.

Or is it triple jeopardy? Although environmental advocates argue for both negative and positive regulation, as do the capital interests of agriculture and other industries, environmentalists must portray their general position in Hobbesian terms lest they lend further legitimacy to the Lockean fires of "free" market ideology. But given the greater legitimacy the Lockean view currently holds, environmentalists thereby deny themselves a highly valued — if not the most valued — political touchstone of the day. Consequently, environmental advocates are rhetorically disadvantaged with respect to capital's oft-repeated demand that "all we want is a level playing field." Considering the inevitable interconnections between freedom and regulation, we find some interesting omissions in this analogy: no one ever mentions the referee or the rules of the game.

## 6. Dialogue, democracy, and the social economy

But the time has come to recognize the inevitable collapse of a polarized conception of the market. Negative freedom depends upon positive freedom, and each depends equally upon negative regulation and positive regulation. In the societies in which we live, state societies, freedom depends upon regulation and regulation depends upon freedom. Each term represents the other's counterpart, a point of interaction with the other — a dialogue of mutually constituting elements in which one condition of existence gives occasion to another.

Berlin, as we noted earlier, was well aware of this dialogue between the heads of Janus. However, he himself ultimately gave priority to negative freedom (and did not dwell on the sociological necessity of regulation for any freedom, negative or positive). In Berlin's reading,



negative freedom was more pluralistic and less given to absolutist ideals and authoritarian politics. Writing in the late 1950s against the background of the entrenched Stalinism of his native Russia and World War II's recently concluded battles with Fascism, Berlin (1969 [1958]: 171) argued that "Pluralism, with the measure of 'negative liberty' that it entails, seems to me a truer and more humane ideal than the goals of those who seek in the great, disciplined, authoritarian structures the ideal of 'positive' self-mastery by classes, or peoples, or the whole of mankind." For Berlin (1969 [1958]: 169), the positive side of liberty (and thus of property and regulation) represented the dangers of "monism," the "demonstrably false" proposition that "some single formula can in principle be found whereby all the diverse ends of men can be harmoniously realized."

Berlin was assuredly right about the dangers of monism, of final solutions, of moral absolutism in a world of conflicting principles and priorities. But the major threats to liberty in our day come from different quarters than those of the decades immediately following World War II. When seen against a post-Cold War background of *laissez-faire* fundamentalism and the triumphalism of global capitalism, it is clear that negative freedom is no more the permanent home of pluralism than positive freedom is not. To speak of the "free" market is to speak of the great absolutist project of the late 20th century, a project overweening in its scope, its popularity, and its monistic advocacy of negative freedom. Berlin was no free-marketeer, of course, but the recent successes of the merchants of free-market utopia have given "actually existing" negative freedom increasingly authoritarian and hegemonic powers.

What are these authoritarian and hegemonic powers? In essence, they involve the assertion, extension, and defense of particular property rights regimes and the state-sanctioned coercive apparatus which supports them. In the 19th century, free trade was imposed across much of the globe through European colonialism, which involved the enforced commodification of natural resources through the extensive displacement (and sometimes the eradication) of native peoples and native political systems, allowing natural resources to be "owned" by capital. The contemporary globalization of markets does not involve such naked brutality to the same extent, not least because corporate capital now already controls a lot of the natural resources on which it depends. The changing focus of capital accumulation, though, nonetheless demands the constant assertion, extension, and defense of property rights and the regulatory regimes which instantiate them, resulting in new laws and treaties which, for example, enforce intellectual property rights, allow global capital local access, and draw boundary lines on the ocean floor for mining and fishing. These all require not only state action but an assertive state working closely with corporate capital.

The ideology of the "free" market, however, falsely implies that private property is beyond human agency and that its defence is both socially neutral and benign — with no recognition of the contradiction between an agentless, freedom-from conception of property and its necessarily active defense through both regulation-from and regulation-to, all of which is only possible under state-structured conditions of freedom-to. What the free market ideology does do, though, is to privilege certain types of commoditized property rights and to accord the right to trade an overriding and universalistic status that consigns other relations of production and consumption to subsidiary and particularistic positions.

Enough of this privilege. Rather than saying markets need to be either free or regulated, negative or positive, we need to recognize, and indeed encourage, the un-finalizable dialogue of these equally necessary constituents of economic life<sup>10</sup>. To repeat, every freedom-from emerges in response to a regulation-from and every freedom-to emerges in response to a regulation-from — and conversely. As well, every freedom-from implies a freedom-to and every regulation-from implies a regulation-to — and conversely. The Janus of the economy has more, far more, than one pair of faces.

But although there is an essential unity in these points of contrast, we do need to be able to keep these forms of regulation and their corresponding freedoms conceptually separate. Each constitutes the other but that does not mean that they are the same. We need very much to be able to recognize differences and their dialogic contributions if we hope to avoid lapsing into the absolutism of one monism or another — into, as Mikhail Bakhtin would have called it, monologue<sup>11</sup>. Our goal should be to collapse polarities, not difference.

Let us, then, emphasize again that the goal of this paper has not been to advocate a more regulated society. We do not wish to replace the current authoritarianism of the market and global capital with some form of state authoritarianism. Rather, the ends we seek are dialogue, interactiveness, and the creativity they encourage in the economy and polity — as well as challenging the ideological and economic privilege of free-market absolutism. Given the current condition of the global discussion, these ends have led us to try to articulate the contextual character of freedom. Recognizing this contextuality is not to envision a totalitarian rigidity in social and economic life, however — quite the contrary. Indeed, one of the great advantages of seeing freedom in the context of

<sup>10</sup> We note here a striking correspondence between Berlin's cautions against the search for a "single formula" for living and the support of Bakhtin, from whom we draw much of the epistemological foundation of this paper, for the "unfinalizability" of dialogue.

<sup>11</sup> For Bakhtin's account of the dangers of "monologue," see especially Bakhtin (1986).

regulation (and regulation in the context of freedom) is that no one *likes* regulation (except, that is, for that vast bedrock of subterranean regulation on which our cosseted lives so depend that we take it for granted). We typically regard regulation as, at best, a necessary evil, not some transcendental good. We are thus far readier to amend some particular conception of regulation than some conception of freedom, opening up our imaginations and our futures.

Understanding the regulatory requisites of freedom also opens up our politics. The claim that freedom is best attained by “down-sizing” the state is really about down-sizing democracy. By identifying the “free” market with the removal and absence of regulation, advocates divert attention, whether deliberately or not, from the constraints market freedoms impose on some. The question of freedom is always who is being regulated to provide it. For every regulation the “free” market taketh away it giveth one in return, often unnoticed until after the event.

To conclude, our point is not that markets do not or should not exist. Rather, it is that the shape markets take inevitably depend on the structures we provide for them. And it is just such structured markets, such regulated freedoms, that can lead to a truly social economy, but only when they are structured by commitment to democratic debate. When we break those commitments, we lose that freedom. The biggest problem with the rhetoric of the “free” market is the way it diverts our attention from that loss. For it is not markets we want to be free, but ourselves to restructure the context of freedom itself.

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