Introduction

The Subject and Object of Commodification

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In the latter part of the twentieth century, academic attention to commodification grew in response to increasing calls to turn over more and more of human life to the invisible hand of the market. Where some saw freedom in markets, others sensed despairing capitulation or inexorable dehumanization. Contrary to the liberatory economic rhetoric, the ability to sell anything and everything might—commodification theorists argued—prove ultimately disempowering. When this discourse entered the legal arena, the question was to what extent legal limits on commodification should exist. Commodification scholars focused our attention on the choices made, and consequences felt, of reducing aspects of our lives to market exchange.

Viewed this way, the topic of commodification is reduction of the person (subject) to a thing (object). Viewed in terms of society as a whole, the inquiry is who would be the subjects of commodification—controlling the terms of the sale—and who would be its objects—turned into mere commodities in a global trade? The answers to these crucial questions determine the distribution of wealth in society, and indeed throughout the world. They also determine how we conceive of ourselves (and others) as persons, and therefore bear deeply on the meaning of human life itself. Often, those whom commodification objectifies become entrenched as society's subordinated class.[1] Conversely, those who control the terms of commodification secure their position as society's ruling class. Market relations reflect, create, and reinforce social relations. But they are not the whole of those relations.

This book reveals the changing subject(s) and object(s) of commodification. It traces how the academic discourse evolved, both in its treatment of commodification as an academic topic (subject) of study and in its views of the purpose (object) of commodification, as well as how the discourse evolved in its views of the subject in a relationship of commodification (the owner) and the object in a relationship of commodification (the thing owned). The book begins by establishing a canon of commodification discourse. In legal academia, the marketplace finds its champions in Elisabeth Landes and Richard Posner, who modestly propose to assist childless couples through a free market in babies.[2] Scholars and courts resisted their approach, and the tendency of the Chicago school of economics to embrace an archetype of "universal commodification."[3] Court rulings in this volume range from declaring a surrogacy contract void for public policy reasons where a mother has contracted to sell her parental rights,[4] to denying one Mr. John Moore property ownership in his spleen and blood cells (although research doctors were free to profit from medical discoveries derived therefrom).[5]

The Thirteenth Amendment forms the backdrop of these cases. Our nation's long and bitter history of subjugating an entire racialized group of people to slavery offered a devastating critique of commodification—here, the reduction of persons to things. Indeed, the first wave of commodification scholars reminded us that human flourishing depends upon the *separation* of these two categories. Persons are harmed when they are, in whole or in part, commodified.[6] The harms of commodification take many forms—from dignitary to economic exploitation, from changes in people's material lives to changes in the discourse through which their self-conception is constructed and survives.

In the Information Age, knowledge, ideas, and culture are the hot commodities. Intellectual property is America's most important export. It is not surprising, then, that traditional knowledge and genetic resources in the developing world stand at the center of global struggles for control of these valuable resources.[7] Corporations mine everything from forests to medical patients for "raw materials" for their lucrative patents. Supermodel Christy Turlington, for example, offers Sundãri, a "collection of Ayurvedic-inspired luxury skin care products suited to meet the needs of contemporary women."[8]

Cyberspace intensifies the concerns of traditional commodification theorists.[9] From an economic perspective, the Internet deeply reduces the costs of transacting with others around the world. With the click of a

mouse, individuals as far apart as Argentina and Zimbabwe can correspond and, perhaps what is more important, *trade* via sites such as eBay. Where search and information costs would have prohibited exchanges between such parties in the past, the Internet makes a truly global marketplace more possible and at the same time more valuable. Indeed, on the Internet nearly everything—from the eggs of female models[10] to mail order brides[11] and Nazi paraphernalia[12]—is posted for sale.[13]

The Canon: Economics and Cultural Studies

Debates over commodification have occurred primarily within two disciplinary frameworks: economics and cultural studies. Beginning with Gary Becker's work, the Chicago school of economics made a basic claim: everything is already commodified—exchanged in marketplaces for a price, even if that price exists only implicitly in the "shadows," not subject to discussion in the light of day.[14] But the Chicago economic view goes further yet, arguing (as a matter of utilitarian ethics) that explicit and universal commodification is *good,* and that efforts to prevent it through *legal* rules that prohibit the sale of certain goods and services are prima facie bad. To this end, Posner and Landes, seek (in the absence of market failures) unregulated markets in *everything*—even human babies.[15]

This argument for expanded laissez-faire markets is grounded in a defense of private culture. These Chicago school economists tend to view individual preferences as exogenous to the market and the market as merely a neutral mechanism for maximizing satisfaction of those preferences. Universal commodifiers trust the preexisting preferences of private actors (as expressed through supply, demand, and the resulting price structure) and distrust the paternalism of the state, which would seek to discipline those preferences. Markets, then, offer the mechanism through which culture is realized, by definition: culture is tastes and distastes expressed—or, as the Chicago school sees it, revealed—through markets.

When one of us (Radin) published *Market-Inalienability* in 1987, the apparent hegemony of the Chicago school's economic discourse in law was interrupted.[16] The paper criticized the use of economic categories and analytical procedures as the only language and medium through which to explain, organize, and make our world.[17] Questioning the moral neutrality of markets, it argued that the archetype of "universal commodifica-

tion" is itself a "worldview"—a conceptual scheme—that, if left unchecked, might threaten to vitiate competing ways of understanding and creating our world. Focusing on the rhetoric of commodification, it reasoned that conceiving of and speaking of everything from sex to babies in the market terms of goods with exchange value would coarsen our world, slowly chipping away at the nonmonetizable aspects of life.[18] This is the feared corruptive influence of commodification. If everything that humans value becomes conceivable only in terms of gains from trade, human life as we now know it no longer can exist. The worry for legal theorists, moreover, is that without legal support for alternative conceptualizations, commodification of some important things of value could have a "domino effect"[19] on others, and overrun nonmarket cultures in which some parts of life—including love, babies, sex, and freedom—are not for sale.

Market-Inalienability also questioned the economic neutrality of markets. Markets affect the rich and the poor differently. The poor are more likely to be the sellers, and the rich, the buyers, of questionable commodities such as sexual services or body parts. Unequal distributions of wealth make the poorest in society, with little to offer in the marketplace, more likely to commodify themselves—their bodies for sex, their reproductive capabilities, their babies, and parental rights. Such "desperate exchanges"[20] raise moral and legal concerns about the coercive nature of markets, and challenge the economists' understanding of "voluntary" market transactions.[21] Notably, the article asked whether certain things should be "market-inalienable"—that is, aspects of life that may be given away but not sold in markets.[22] Thus, conventional wisdom would have it that while donations of human organs and an adoption regime for babies would be acceptable, free markets in organs and babies would not.

At the same time, *Market-Inalienability* recognized the way elites who use this reasoning are simply deepening the misery and powerlessness of those who have nowhere to turn but to attempted sales of their bodies. Pragmatically, the article asked whether foreclosing markets to the poorest in order to protect them and society in fact harms them even more by denying them a source of revenue. This was the "double bind" implicit in commodification controversies.[23]

Market-Inalienability formed the germ of a book, *Contested Commodities*.[24] The book goes further than the article, trying to conceptualize the indicia of commodification; the relationship between commodification, objectification, and subordination; and the consequences of com-

modifying politics and speech. In short, one of us (Radin) worried about the effects of commodification—or the denial thereof—on the poor but also about the effects of commodification on everyone, through the shifting understanding of human relationships it entailed.[25] Each of us has argued since then that the only way to make progress is to restructure the way we think about commodification so as not to let it polarize into these two views that are both unacceptable for the powerless.[26] That is, it is unacceptable for society to embrace commodification of aspects of the self when it is in practice the only avenue of survival for the powerless, and equally unacceptable for society to heap opprobrium and further oppression on those who try to create and enter such markets under those conditions.

Simultaneous to the legal and economic discourse on commodification, cultural studies theorists delved into the cultural significance of commodification. A volume edited by Arjun Appadurai published in 1986 sought to understand "The Social Life of Things."[27] How are cultures constituted through things, and in opposition to them? On the one hand, cultures seek to build communities of meaning through shared commodities. On the other hand, commodification—with its attendant homogeneity and fungibility of the commodified good or service—can work against the impulse of culture to differentiate.[28] France seeks to rebuff Hollywood by legislating local media content rules. Towns seek to preserve their local character by zoning out McDonalds. Wal-Mart chills the blood of local shopkeepers the world over. India kicks out Coca-Cola in favor of domestic drinks (though two decades later Coca-Cola is back, and now the owner of the local competition).

This view of culture and commodities in *opposition*—with culture as a differentiating impulse and commodification as a homogenizing one—evokes a deeper tension between meaning and markets. Under one view, commodification aids culture-building—individuals express and create commonality through markets. Under another view, markets strip away local meanings and contexts, universalizing a good and making it common, rather than unique. And when global markets are controlled by powerful, Western corporations, their universalizing goods and services overrun local ones: cultural and market imperialism converge. And yet, placing cultural commodities outside the market by declaring them sacrosanct can also impede cultural evolution. As Appadurai warns, "enclaving" cultural resources—controlling culture through select guardians of culture—favors the powerful members of society.[29] Thus, these scholars,

too, highlighted the potential ill effects of both commodification and noncommodification.

The sociologist Viviana Zelizer offered another important contribution to the cultural understanding of commodification during this time. In her 1985 book *Pricing the Priceless Child: The Changing Social Value of Children,* Zelizer showed that, contrary to the writings of Becker and other economists, children over time were perceived less and less as commodities with exchange value and more and more as "priceless."[30] Zelizer's findings challenged the "domino theory"—she argued that markets do not overrun cultures but, rather, are themselves defied and influenced by culture.[31]

Emergent Voices: Compensation and Control

In the two decades since these foundational works surfaced, the subject and object of commodification have taken a distinctly cultural turn.

What might broadly be called a "cultural studies" approach animates much of the new commodification scholarship published herein. Cultural studies theorists observe the circulation of peoples, capital, and commodities in an age characterized by globalization, liberalization, the Internet, mass markets, and increasing freedom of movement.[32] Above all, the cultural studies approach centers on the production and circulation of "meanings" in modern society, markets, and culture.[33] For these scholars, commodification and culture are indelibly linked. The cultural study of "commodities in motion"[34] focuses on the changing meaning of the commodity as it passes through various local and global circuits, including markets. Cultural studies theorists argue that, in many cases, individual agents—and not just the hegemonic market—control those meanings. Thus, commodities are in motion both literally and figuratively. As they pass through various physical spaces, they also undergo semiotic changes.

Like the approach of commodification scholars who came before,[35] this approach is postmodern in that it is skeptical of the binary and totalizing categories of traditional Western theory (e.g., commodified versus noncommodified, gift versus sale, market versus family, material versus spiritual). The new commodification scholars intensify the claim that "[t]hese oppositions parody both poles and reduce human diversities artificially."[36] That is, the diverse and shifting cultural life of things is an expression of human life, not its rejection.

But the new theorists perhaps go further with this observation than the original commodification critics did, arguing that the unstable meanings of commodities make them potentially or actually liberating, and not just potentially or actually subjugating. A central claim animating many of these papers is that moral agents are not the mere victims of commodification and markets. Far from it, they can—and do—appropriate the chains that bind them.

Take a few examples. Madonna Ciccone appropriates female sexuality but retains cultural and market dominance.[37] African Americans market their own holiday, Kwanzaa, during the heavily commercial Christmas season.[38] Lesbians make babies by buying sperm on an open market.[39] American women pay for romance in Latin America.[40] Female sex workers in the United States increasingly set the terms of the trade.[41] Indigenous peoples seek royalties for others' use of their native symbols and remedies.[42]

A new age of freedom through commodification, or what Appadurai has termed "commodity resistance"?[43] According to some, yes. Read as a whole, the essays in the latter half of this volume suggest an emerging new conception of human flourishing itself: today, demands for equality include a right to compensation and control in the world's markets. This market-liberationist rhetoric hearkens back to old-style market liberationism. The question is if—and how—they are different. On the one hand, this contemporary liberationist claim may be more consonant with changes in our understanding of rights elsewhere. For example, in the international human rights field, we have witnessed a similar shift from first-generation rights—civil and political rights to speech and political participation—to second-generation rights—namely, social and economic rights.

On the other hand, the focus on commodification as a means to social and economic parity is more controversial. Early commodification theorists recognized that poor and disempowered peoples are more likely to engage in "desperate exchanges." Taking a pragmatic approach to such situations, ideal theory (leaning toward inalienability of personal attributes) may have to give way to nonideal theory, allowing for some commodification in certain, regulated exchanges.

But thinking that commodification is sometimes strategically necessary is different from the normative claims to commodify that we hear in the latter half of this volume. Where early commodification theorists may have viewed commodification as nonideal but necessary, many of the

emergent commodification theorists see freedom itself in the ability to commodify. The worry here is that the poor have neither the ability nor the right to commodify. Thus, the role of law is quite different in this new context: rather than calling on law to *regulate* trades, many authors in this volume seek law to *facilitate* trades, in everything from sex work to sperm to indigenous intellectual property. Again, the underlying theme of these commodification authors is welcoming commodification—more commodification can mean more *equality,* not inequality.[44]

Here is where we begin to see the changing discourse of commodification more clearly. The new commodification scholarship is focused less on the traditional object (in the sense of objectification) of commodification: it does not dwell on women, blacks, gays, and the victims of the market; nor does it suppose that the only object (in the sense of purpose) of commodification is subordination. To the contrary, the object of commodification can be liberty and equality, and the feared objectification can be discounted, they contend. Indeed, whether this is possible depends on the subject of commodification, that is, on who controls the terms of the sale and the meaning of the exchange.

So are the new commodification theorists liberal laissez-faire apologists in new garb? Politically, at least, they do not see themselves in the same camp as the Chicago school economists.[45] But just how different they are from traditional free-market liberals is a question calling for investigation. Does the focus on control and compensation require further structuring by law? Or will laissez-faire markets be preferred? The answers, this book reveals, differ by author and context.

One thing is certain. Early on, one of us (Radin) called for a nuanced, case-by-case analysis of commodification as it shifts in culture and in time. The new commodification theorists have taken up this task with insight and vigor.

Agency, Meaning, and the "Multivalent" Commodity

Williams and Zelizer's contribution to this volume exemplifies the "cultural studies" approach to commodification. Williams and Zelizer reject Michael Walzer's "separate spheres" view of the commodified and noncommodified worlds as distinct,[46] and the "hostile worlds" view that "when such separate spheres come into contact they contaminate each other."[47] "Instead of living in segregated spheres, people participate in

networks of social relations that span a variety of settings," they write. "They manage different ties simultaneously rather than moving from one sealed chamber to another."[48] Destabilizing the traditional categories, Williams and Zelizer write that "many market transactions have elements of emotion and sociability, and . . . many intimate transactions have economic dimensions." Teemu Ruskola makes a similar observation in his comparative study of Chinese clan corporations.[49] Carol Rose describes a reality in which categorizations dissolve so that gift-giving may be understood as market exchange, or worse, theft.[50]

All of the above offer concrete examples of what Miranda Joseph terms the "multivalent commodity"[51]—the idea that any given object has multiple meanings—sometimes commodified, sometimes noncommodified, and sometimes both—depending upon the context. This concept questions the hegemony of a hostile worlds or domino theory,[52] which perceives the commodified world as threatening the existence of the noncommodified world. Zelizer argues that many commodities are in fact able to retain their multiple meanings. Ann Lucas agrees, arguing in her chapter that "commodified and noncommodified sexuality can coexist."[53] Deborah Stone, too, suggests that the market does not denigrate care work, either, but bureaucracy does—through the loss of agency on the part of the care worker.[54] These contributions suggest that, increasingly, the central issue of commodification is who has the power to control the meaning of the commodity. As Regina Austin writes in her chapter on the black holiday Kwanzaa, "Commodification per se is not the problem . . . the real struggle is over the meaning that is embedded in" black cultural objects.[55]

Controlling the meaning of commodification is where agency, another foundational concept in cultural studies, comes in. Writing about female sex workers, Ann Lucas rejects arguments for criminalizing prostitution as paternalistic, contending that female prostitutes have much more agency than they are perceived to have. For Lucas, the harm of commodifying sex work is neither its effect on noncommodified[56] sex relationships (i.e., the "domino theory") nor the immorality of such a trade.[57] That is, what matters is not the sale but the autonomy of the seller. Legalizing prostitution, she argues, would have the beneficial effect of reducing forced sex work and enhancing sex workers' autonomy.[58] Martha Nussbaum similarly urges that autonomy, not morality, should be at the center of our consideration of prostitution's future.[59]

Highlighting the mere presence of agency and multivalent meanings, however, is not to say that the market does not matter. As Miranda Joseph writes herein, while the market is not destiny, we must nonetheless be vigilantly conscious of how it shapes us.[60] Surely there must be some contexts—perhaps pornography?—in which the emergent writers would agree that commodification affects the noncommodified commitments of human value that we feel must be maintained. While the postmodern resistance to the idea of the market as a totalizing, hegemonic force among the emergent voices is strong, scholars must also contend with existing material and social inequalities that reinforce dominant meanings over subversive ones. In such contexts, laissez-faire markets will often entrench further existing structures of domination. Thus, while the two of us agree that contested meanings exist, we disagree that we can take the plurality of meanings for granted.[61] Without more, market forces threaten to wipe out noncommodified understandings of the world that many of us hold dear.[62] Thus, regulatory approaches facilitating autonomy of sellers and a plurality of meanings may go further toward achieving both liberty and equality.

Commodification and Subordination

But the optimism of the emergent authors should not be mistaken for naiveté. Having studied the lessons of their predecessors, they, too, recognize commodification's dangers. To this end, their work continues to ask an important question: What is the relationship between commodification, objectification, and subordination?[63]

Whether the formerly dispossessed who become owners of new commodities will exercise power in the same old ways remains to be seen. Tanya Hernández is concerned that the predominantly white, Western female sex tourist market subordinates poor, Third World men who are the objects of the women's desire.[64] Here we have an apparent case of equality for women: they can wield a power that has previously belonged to men, achieved through commodification, objectification, and subordination premised on differences of race and class. At the same time, Hernández suggests that the Third World men, too, have power—and perhaps even more power—than do the women in these trades. At first glance, female sex tourism appears to subvert traditional gender relations, figura-

tively if not literally putting the "women on top." But in fact, Hernández argues, these relationships ultimately exploit and reinscribe traditional gender relationships, rather than subvert them: The male locals make the women feel powerful by making them feel *feminine*.[65] The female tourists, in turn, accord the men power by giving them sex.[66] Interestingly, Hernández describes how the male sex workers attempt to avoid the "feminization" of their identities by recasting "their activities within a masculine narrative."[67] Commodification, she argues, leads to a "staged authenticity" of reified—not subversive—gender relations.[68] Hernández calls this view of women's equality "disquieting."[69]

Others are self-consciously critical of the by-products of commodification but, as nonideal theorists would recommend, argue that the good may outweigh the bad. Ertman, for example, is concerned that white lesbians buying male sperm may be enriching themselves at others' expense. She is not sympathetic to the male donors (like Hernández, she believes they are in the driver's seat because of traditional gender hierarchies).[70] Rather, Ertman worries, as does Patricia Williams in the earlier part of this volume,[71] that white lesbians will "prefer" white babies—and thereby reinforce traditional *racial* hierarchies.[72] Here, the problem is not commodification per se but, rather, the failure to regulate or temper private preferences. At the same time, Ertman points out that markets offer an important vehicle for the expression of what she calls "good" preferences that the more conservative state may otherwise disallow (e.g., adoption and parenting by gays).[73] The question arises, then, whether all private preferences—à la Landes and Posner—ought to be allowed, and not just what she terms "good" ones.

While individuals may come out differently on these questions, and for different reasons (some propelled by "pragmatic" concerns, others by "equality," and still others by "liberty"), there is an important point of commonality among most of the authors in this volume. Early commodification scholarship worried about commodification when "[r]elationships between people are disguised as relationships between commodities, which appear to be governed by abstract market forces."[74] But the new authors keep a concern about social relations at the forefront of their analyses. In essay after essay, they ask whether the liberating aspects of commodification can be harnessed without releasing commodification's subordinating impulses. Some of them think, in certain specific temporal and cultural contexts, that the answer, at least provisionally, is yes.

Culture as Commodity

Another central insight of this volume is that economic empowerment and cultural empowerment are indelibly linked.[75] As Salman Rushdie has observed, "[T]hose who do not have power over the story that dominates their lives, power to retell it, rethink it, deconstruct it, joke about it, and change it as times change, truly are powerless. . . ."[76] This is the essence of what Appadurai means when he calls commodities political. Controlling culture—the arena through which we represent ourselves—is essential for attaining power. For better or worse, markets are a primary means of distributing and debating cultural representations. Thus, cultural control requires some market control.

This is an important new turn in progressive theorizing; many progressives have previously resisted the commodification of culture, worried in particular about the appropriation of cultural forms and knowledge by outsiders. But the new authors deploy commodification as a strategy for both economic and cultural growth. Regina Austin's contribution best exemplifies this approach. Austin describes the frustration in the black community when white artists (from yesterday's Elvis and Benny Goodman to today's Eminem) appropriate black cultural forms for profit.[77] For Austin, economic empowerment for blacks depends upon their reclaiming market control of their cultural representations.[78]

Significantly, Austin is concerned not just about the loss of compensation but also about the misrepresentation of black culture. Commodification of black culture by whites, she writes, is a form of "mummification"—it freezes black culture and reifies it into artificial forms, creating a "staged authenticity" that threatens the organic, dynamic nature of black culture.[79] In contrast, Austin is optimistic about commodification of black culture by African Americans in the form of the holiday Kwanzaa. Austin recognizes the corrupting influence of markets. She observes, for example, hip-hop's tendency toward a misogynist, homophobic, and crassly materialistic culture.

But Kwanzaa offers a model for good commodification, Austin argues. To begin with, she is not troubled by the fact that Kwanzaa is a "made up" holiday, invented by African Americans in recent times. While some would call the holiday inauthentic, Austin believes the invention illustrates the dynamism of culture, and how the African American diaspora appropriates and changes traditional cultures to suit its own needs.

Austin's contribution highlights the political importance of commodities. Black control of culture enhances both the economy and the dignity of the community. Through the production and distribution of Kwanzaa, African Americans, now the *subjects* of commodification, wrest some compensation for their work and, perhaps more important, cultural and market control, from their commodifying counterparts.

At the same time, we may do well to think about commodity resistance *and its limits*. Vesting control over cultural representations in particular communities raises difficult questions. Which members of a community will exercise such rights? How will dissenters within the community fare?[80] In a multicultural, diasporic world, how do we define the relevant community?[81] How will we decide who is "inside" or "outside" a community? How do we best resolve the inherent tension between intellectual property rights in culture and freedom of speech? Dereka Rushbrook's contribution critically assessing queerness as "an object of consumption" raises other important concerns.[82] Consuming common material objects, and even gay "spaces" in cities, is central to the development of a gay identity, as well as an acceptance of gays among cosmopolitan, chic nongays, Rushbrook writes.[83] But paradoxically, commodified gay identity may ultimately vitiate gay community and political activism, Rushbrook argues, once gay is reduced to a mere commodity for the consumption of all rather than a living, dynamic community.[84] bell hooks expresses yet another concern about "eating the other": the insatiable hunger for stories and images of the Other.[85] Commentators make similar arguments about the new hit reality TV show *Queer Eye for the Straight Guy,* which features five gay men (the "Fab 5") who make over "frumpy" straight men and win the hearts of American TV viewers along the way.[86] While some worry that the show symbolizes how "gay people have become complicit in their own oppression"[87] others rejoice that the show has endeared gay men to the American public at a time when the issues of gay marriage and gay bishops are front and center in public debates.[88]

The existence of these questions and concerns do not, by themselves, counsel against cultural commodification. Rather, they remind us that the goal is not commodification or noncommodification, per se, but rather, the "semiotic democracy" that Rushdie describes—that is, a world in which all individuals and groups have rights to make their cultural worlds. On that score, we see many successes, from the 1998 movie *Smoke Signals,* which was written, directed, and coproduced by Native

Americans,[89] to the 2002 black independent film *Barbershop,*[90] and the 2003 surprise hit *Bend It Like Beckham,* directed by a diasporic Indian filmmaker.[91]

Cultural theory helps us to see better these cultural commodities as means of economic and cultural resistance. It highlights cultures—and commodities—as interrelated, dynamic, and tainted rather than pure. In short, commodified culture is culture nonetheless.

Culture and Markets

This volume's interdisciplinary account of the changing subject and object of commodification—bringing together both economic and cultural theorists under the same roof—helps to deconstruct both markets and culture, separately, and to reconstruct them in relation to one another.

Culture is a paradox. In the modern world today we more and more hear claims to "rights" to culture. Indeed, despite globalization and the liberalization of choice the world over, modern individuals want and demand cultural community. At the same time, we wish to avoid the constraining aspects of culture. Stated differently, we prefer the roots that culture affords yet at the same time want to be able to spread our wings and be free.[92]

Markets evince a similar paradox. Some theorists herein, in the spirit of traditional liberalism, recognize our need for markets and their liberating aspects. At the same time, the authors caution against the market's constraining features, asking: Do markets really afford freedom or just the appearance of it? How do markets alienate us from our communities[93] and reduce us to cultural caricatures—that is, branded things rather than peoples?[94] Property rights in cultural intangibles such as Native stories or Kwanzaa raise other troubling concerns. If, as Salman Rushdie writes, freedom lies in being able "to have power over the story that dominates their lives, power to retell it, rethink it, deconstruct it, joke about it, and change it as times change," do not property rights in cultural ideas prevent others—cultural outsiders, despised members of the culture, and new generations—from accessing the very resources they need to be free? To be sure, such concerns animate the crucial balances struck in traditional intellectual property laws in the United States (from disfavoring moral rights to allowing for "fair use" of otherwise protected material), which help to wrest control from a select few guardians of culture.

What emerges, then, from these pages is a more nuanced understanding of the effects of too much—and too little—commodification on both culture and markets. Too much protection of cultures through commodification can lead to cultural ossification and mummification (by cultural outsiders as well as insiders). Too little protection, however, can make cultures too unstable, the easy prey of Western corporate culture or control by others. In the same vein we hear that inalienability of some resources—from traditional knowledge to the genetic resources in our own bodies—could reinforce social relations in which some are the privileged holders of property and others the mere suppliers of "raw materials."[95] In this view markets might facilitate cultural democracy (making the goods available to all). Going further, commodification might spur cultural *change*.

At the same time, reinscribing the doctrines of traditional liberalism is not the answer. As the Great Mahele in Hawaii illustrated, private property rights may impoverish, not enrich, a community coerced by economic circumstance to sell away all of its rights to the highest (usually white and Western) bidder.[96] While history cannot foreclose options today and tomorrow, it does remind us that commodification remains a nonideal approach in a context of inequality. The continuing challenge, then, for commodification theorists is to find a way to express the human needs for freedom and flexibility outside the terms of contract and markets, as well as within them.[97]

Commodification's Present and Future

The changing subjects and objects of commodification unfold between these pages as they do in our increasingly complex world. As this book goes to press, an administrator at the University of California, Los Angeles has been arrested for allegedly stealing and selling body parts of cadavers donated to the university's medical school.[98] And the *New York Times* follows its reporter's purchase of freedom of two teenage girls who had been sold into sexual slavery in Cambodia. Tragically, in a world with ever-widening gaps between the haves and have nots, commodification of human beings—indeed, even human slavery[99]—persists. In Cambodia today men buy sex with girls for as little as $3,[100] while expressing a "preference" for virgins, who command prices ranging from $500 to $1,000.[101] The girls are ensnarled in a chain of commodification: first,

they are often commodified by their families, sold to brothels out of desperation; the brothel owner commodifies them in turn.

It is unsurprising that the freedom of these girls, too, can be purchased. Indeed, the *New York Times* reporter "bought" the freedom of two girl sex workers for as little as $200 a person.[102] A happy ending for commodification? Perhaps. But as the essays—old and new—in this volume make too clear, commodification exists within a complicated cultural and economic landscape. In truth, the subject of commodification is an unfinished story, just as the story of these girls remains to be told. At the time of this writing, after she had been reunited with her family, one of the two girls had returned to the brothels.

But the failure of commodity resistance to "answer" her plight is not the only reason the reporter's "purchase" feels not quite right. The Nature Conservancy raises funds to purchase land to protect it from development—the perfect act of commodification to protect the object of the commodification. Imagine now an analogous organization—a nongovernmental organization for sex workers, raising funds to purchase the freedom of girls in the Third World. The essays in this volume push us to understand better why we are disturbed by such a league.

The commodification of rights is particularly troubling. If a girl's freedom can be purchased, her freedom can also be sold. The very existence of a group purchasing the freedom of girls makes a market for girls, perhaps encouraging the very thing it is intended to eliminate. The Declaration of Independence guarantees that the rights to "life, liberty, and the pursuit of happiness" are inalienable.[103] But our connection to this foundation seems to have become unhinged. More and more public rights to speech, equality, and access—once guaranteed through the traditional law of intellectual property—are becoming alienable today, through the combined regimes of technology, property, and contract.[104]

At the same time, the optimistic stories of agency and contested meanings herein hearten us. They show that resistance to the hegemonic market is not only possible but sometimes an empirical reality; that is, that markets may not be as hegemonic as they seem. Indeed, the optimism of the new commodification theory—more so than its postmodern deconstruction—may be precisely what makes this approach progressive. We cannot be progressive if we do not have some optimism—that we can get from here (not so good) to there (better). Of course, the way we conceptualize the here and the there are intertwined and interdependent. Also, the transition is important—how idealistic can we be and still make

progress rather than going nowhere—or worse, going backward? But if we are not idealistic enough we can cement current structures, naturalizing them. And as one of us (Sunder) has written, reform from within is normatively important; it is the process through which we claim a home in the world.[105] In sum, we are hopeful that the approaches outlined in this volume—nonideal and optimistic—just may work, but we should recognize that they always harbor a potential for backlash. Commodification remains a two-edged sword, even while its meaning is continually evolving and being transformed, both by actions and relations in the world and by the discourse of those who observe and theorize about them —the writers in this volume.

NOTES

1. See Margaret Jane Radin, Contested Commodities 154–63 (1996).

2. See Elizabeth M. Landes & Richard A. Posner, *The Economics of the Baby Shortage,* 7 J. Leg. Stud. 323 (1978). *Cf.* Kenneth J. Arrow, *Invaluable Goods,* XXXV J. of Econ. Lit. 757–765 (June 1997) (reviewing Margaret Jane Radin, Contested Commodities (1996)) (implying that Landes and Posner do not reflect economists as a whole).

3. Radin, Contested Commodities, *supra* note 1, at 2.

4. *In re* Baby M, 537 A.2d 1227 (N.J. 1988). *Cf.* Johnson v. Calvert, 19 Cal. Rptr. 2d 494 (1993).

5. Moore v. Regents of Univ. of Cal., 793 P.2d 479, 497 (Cal. 1990).

6. See Anita L. Allen, *Slavery and Surrogacy, in* Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy 229–254 (Tommy L. Lott ed., 1998).

7. See Madhavi Sunder, *Property in Personhood,* this volume.

8. *About Sundãri, at* http://www.sundari.com/about_frameset.cfm (last visited Feb. 27, 2004).

9. See Margaret Jane Radin, *Incomplete Commodification in the Computerized World, in* The Commodification of Information (Niva Elkin-Koren & Neil Weinstock Netanel eds., 2002). See also Sunder, *Property in Personhood,* this volume.

10. See http://www.ronsangels.com/index2.html (last visited Feb. 20, 2004).

11. See, e.g., http://www.bridesbymail.com/ (last visited Feb. 20, 2004); http://www.goodwife.com/ (last visited Feb. 20, 2004).

12. See Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 169 F. Supp.2d 1181, 1184 (N.D. Cal. 2001).

13. See, e.g., Michael L. Rustad, *Private Enforcement of Cybercrime on the*

Electronic Frontier, 11 S. Cal. Interdisc. L.J. 63, 100–101 (2001) (discussing the sale of kidneys on eBay); Brian J. Caveney, *Going, Going, Gone . . . The Opportunities and Legal Pitfalls of Online Surgical Auctions,* 103 W. Va. L. Rev. 591, 593 (2001) (discussing eBay's sale of drug-free urine).

14. Gary Stanley Becker, The Economic Approach to Human Behavior (1978).

15. See Elisabeth M. Landes and Richard A. Posner, *The Economics of the Baby Shortage,* 7 J. Leg. Stud. 323 (1978).

16. Margaret Jane Radin, *Market-Inalienability,* 100 Harv. L. Rev. 1849 (1987). The article was upsetting to some, and it was unclear whether the oversimplified schematic of universal commodification was something economists wanted to uphold or defend against. I (Radin) recall that my esteemed mentor, Mike Levine, came to my office after receiving the manuscript, and argued passionately both that he wasn't a universal commodifier and that there is nothing wrong with universal commodification. For some time I have been convinced that my most useful scholarly contribution is likely to be having made the word "commodification" speakable in legal academic discourse.

17. *Id.* at 1851.

18. *Id.* at 1918–1919.

19. *Id.* at 1914.

20. Michael Walzer, Spheres of Justice 100–103 (1983).

21. See Radin, Contested Commodities, *supra* note 1, at 154. *Cf.* Martha C. Nussbaum, *Taking Money for Bodily Services,* J. of Legal Studies 693, 723 (Jan. 1998).

22. *Compare* Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability, One View of the Cathedral,* 85 Harv. L. Rev. 1089 (1972) *with* Radin, *Market-Inalienability, supra* note 16, at 1851.

23. Radin, Contested Commodities, *supra* note 1, at 124.

24. See *Id.*

25. See Radin, *Market-Inalienability, supra* note 16, at 1945–1946.

26. Radin, Contested Commodities, *supra* note 1, at 102–114; Margaret Jane Radin, *The Pragmatist and the Feminist,* 63 S. Cal. L. Rev. 1699 (1990); Sunder, *Property in Personhood,* this volume; Anupam Chander & Madhavi Sunder, *The Romance of the Public Domain,* 92 Cal. L. Rev. (forthcoming 2004).

27. See Arjun Appadurai, *Introduction: Commodities and the Politics of Value, in* The Social Life of Things: Commodities in Cultural Perspective 3 (Arjun Appadurai, ed., 1986).

28. See Igor Kopytoff, *The Cultural Biography of Things: Commoditization as Process, in* The Social Life of Things: Commodities in Cultural Perspective (Arjun Appadurai, ed., 1986).

29. See Appadurai, *supra* note 27, at 25.

30. Joan Williams & Viviana Zelizer, *To Commodify or Not to Commodify: That Is* Not *the Question,* this volume.

31. *Id.*

32. See generally Cary Nelson et al., *Cultural Studies: An Introduction, in* Cultural Studies (Lawrence Grossberg et al. eds., 1992); Richard Johnson, *What Is Cultural Studies, Anyway?,* 16 Social Text 38 (Winter 1986/87); John Fiske, *Cultural Studies and the Culture of Everyday Life, in* Cultural Studies 154 (Lawrence Grossberg et al. eds., 1992).

33. Claudia Strauss & Naomi Quinn, A Cognitive Theory of Cultural Meaning 5 (1997) (quoting Ulf Hannerz, Cultural Complexity: Studies in the Social Organization of Meaning (1992)). *See also* Clifford Geertz, The Interpretation of Cultures 5 (1973).

34. Appadurai, *supra* note 27, at 16.

35. See, e.g., Radin, Contested Commodities, *supra* note 1, at 102–114.

36. Appadurai, *supra* note 27, at 13.

37. Cf. Duncan Kennedy, Sexy Dressing Etc. 192–208 (1993).

38. Regina Austin, *Kwanzaa and the Commodification of Black Culture,* this volume.

39. Martha M. Ertman, *What's Wrong with a Parenthood Market?,* this volume.

40. Tanya Hernández, *Sex in the [Foreign] City: Commodification and the Female Sex Tourist,* this volume.

41. Ann Lucas, *The Currency of Sex: Prostitution, Law, and Commodification,* this volume.

42. Sarah Harding, *Culture, Commodification, and Native American Cultural Patrimony,* this volume; Madhavi Sunder, *Property in Personhood,* this volume.

43. Appadurai, *supra* note 27, at 30.

44. Williams & Zelizer, *supra* note 30.

45. Ertman, *supra* note 39.

46. Michael Walzer, *Spheres of Justice* (1983), this volume. For a different critique of Walzer's "separate spheres" model, see Radin, Contested Commodities, *supra* note 1, at 46.

47. Williams & Zelizer, *supra* note 30.

48. *Id.*

49. Teemu Ruskola, *Home Economics: What Is the Difference between a Family and a Corporation?,* this volume.

50. Carol M. Rose, *Giving, Trading, Thieving, and Trusting: How and Why Gifts Become Exchanges, and (More Importantly) Vice Versa,* 44 Fla. L. Rev. 295 (1992), this volume.

51. See Miranda Joseph, *The Multivalent Commodity: On the Supplementarity of Value and Values,* this volume.

52. See Radin, Contested Commodities, *supra* note 1, at 101 (asking whether the domino theory is in fact true); see *id.* at 102–114.

53. Lucas, *supra* note 41.

54. Deborah Stone, *For Love nor Money: The Commodification of Care,* this volume.

55. Austin, *supra* note 38.

56. We use this word noting that a realm of pure, noncommodified sex likely does not exist; that is, noncommodified sex relationships may not actually be all that noncommodified.

57. Lucas, *supra* note 41.

58. *Id.*

59. See Martha C. Nussbaum, *Taking Money for Bodily Services,* 27 J. of Legal Studies 693, 723 (1998), this volume.

60. See Joseph, *supra* note 51.

61. See Radin, Contested Commodities, *supra* note 1, at 120–122; Madhavi Sunder, *Piercing the Veil,* 112 Yale L. J. 1399, 1466–1471 (2003).

62. Radin, Contested Commodities, *supra* note 1, at 223.

63. See generally *id.* at 154–163.

64. Hernández, *supra* note 40.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Ertman, *supra* note 39.

71. Patricia J. Williams, *In Search of Pharaoh's Daughter, in* The Rooster's Egg: The Persistence of Prejudice (1995), this volume.

72. Ertman, *supra* note 39.

73. *Id.*

74. Radin, *Market-Inalienability, supra* note 16, at 1873.

75. See, e.g., Williams & Zelizer, *supra* note 30.

76. Salman Rushdie, *Excerpts from Rushdie's Address: 1,000 Days 'Trapped Inside a Metaphor,'* N.Y. Times, Dec. 12, 1991, at B8 (excerpts from speech delivered at Columbia University).

77. As the white rapper, Eminem, happily sings of how he makes his living:

Though I'm not the first king of controversy
I am the worst thing since Elvis Presley
To do Black Music so selfishly
And use it to get myself wealthy
Hey, there's a concept that works[.]

Eminem, "Without Me," on *The Eminem Show* (Aftermath Records 2002), available at http://homepage.ntlworld.com/alan.stuart/music/uslyrics/withoutm.html.

78. Austin lauds Kwanzaa because it is about blacks "building [their] own businesses" and "control[ling] the economics of [their] community." Kwanzaa "accepts the market as a site of conflict and recognizes that if blacks do not compete and consume, they will die." Austin concludes that creating and controlling markets is necessary for blacks to break "the economic and social bonds of white supremacy." Austin, *supra* note 38.

79. *Id.*

80. Madhavi Sunder, *Cultural Dissent,* 54 Stan. L. Rev. 495 (2001).

81. Madhavi Sunder, *Intellectual Property and Identity Politics: Playing with Fire,* 4 J. Gender Race & Just. 69 (2000).

82. Dereka Rushbrook, *Cities and Queer Space: Staking a Claim to Global Cosmopolitanism,* this volume.

83. *Id.*

84. *Id.*

85. bell hooks, *Eating the Other: Desire and Resistance,* this volume.

86. Anne Neville, *Fashion Police Meet the Frumpy,* Buffalo News, Mar. 5, 2004, at B1.

87. Christopher Kelly, *Gay TV Making Great Strides in Exactly the Wrong Direction,* Miami Herald, Aug. 26, 2003. *See also* Josh Ferris, *Gay Presence in the Media Helpful, Stereotypes Harmful,* Pitt News, Dec. 4, 2003; Neil Steinberg, *Closer Look at "Queer Eye" Reveals An Ugly Stereotype,* Chicago Sun-Times, Oct. 10, 2003, at 24; Lisa de Moraes, *The TV Column,* Wash Post, July 9, 2003.

88. See David Teather, *Gay Team Flings TV Closet Door Wide Open: A Hit Reality Show Seems to be Changing Attitudes to Homosexuality on American TV. Is This the Dawn of a New Era?,* The Guardian, Aug. 11, 2003, at 5.

89. See Timothy Egan, *An Indian Without Reservations,* NY Times, Jan. 18, 1988, at 16.

90. See, e.g., *'Barbershop' Attacked by Reverend Jesse Jackson,* available at http://www.mtv.com/news/articles/1457788/09252002/ice_cube.jhtml (last visited Jan. 8, 2004) (describing the Reverend Jesse Jackson's outrage at the film's critical and comical discussion of such black luminaries as Martin Luther King, Jr., Rosa Parks, and Jackson himself). Lead actor Ice Cube responded, "Just because we talk about people doesn't mean we don't love these people too." *Id.*

91. *Bend It Like Beckham* (Twentieth Century Fox 2003). See also *Fire* (New Yorker Pictures 2000) (highlighting lesbian relationship within middle-class Indian family); *Monsoon Wedding* (Universal Studios 2003) (exploring theme of sexual abuse by family members in Indian family).

92. See generally Sunder, *Cultural Dissent, supra* note 87, at 499.

93. Michael J. Sandel, *What Money Can't Buy: The Moral Limits of Markets,* this volume.

94. Alexandra Chasin, Selling Out: The Gay and Lesbian Movement Goes to Market (2001), this volume.

95. See Appadurai, *supra* note 27, at 25.

96. See generally Sally Engle Merry, Law and Empire in the Pacific: Fiji and Hawaii (2003).

97. Radin, Contested Commodities, *supra* note 1, at 62.

98. *Head of UCLA Cadaver Program Is Arrested,* Mar. 7, 2004, available at http://news.yahoo.com/news?tmpl=story2&cid=519&u=/ap/20040307/ap_on_re_us/body_p... (last visited Mar. 7, 2004).

99. Nicholas D. Kristof, *Loss of Innocence,* N.Y. Times, Jan. 28, 2004, at A25.

100. *Id.*

101. Nicholas D. Kristof, *Stopping the Traffickers,* N.Y. Times, Jan. 31, 2004, at A17.

102. *Id.*

103. The Declaration of Independence para. 2 (U.S. 1776).

104. See Margaret Jane Radin, *Regulation by Contract, Regulation by Machine,* 160 J. Instit. & Theoretical Econ. 1 (2004).

105. See Sunder, *Cultural Dissent, supra* note 80, at 551.