

## The Dark Side of Commodification Critiques: Politics and Elitism in Standardized Testing

Kimberly D. Krawiec \*

In *Testing as Commodification*, Katharine Silbaugh argues that debates within the standardized testing literature represent a split similar to the one witnessed in traditional debates on the commodifying effects of market exchange: those who extol the virtues of a common metric by which to make comparisons and evaluations, on the one hand, versus those who argue that test scores have swallowed other notions of the public good in education, on the other.<sup>1</sup> Though the analogy is imperfect, as Silbaugh acknowledges, I agree that the objections to markets and to standardized testing are sufficiently similar to render the comparison fruitful.

However, the analogy shows more than Silbaugh acknowledges. Whereas Silbaugh concludes that her comparison demonstrates the failure of standardized testing, I contend that it primarily demonstrates the politically driven and elitist nature of much of the standardized testing debate.

Politics and elitism in commodification-like protests to standardized testing should not be terribly surprising. Almost since their inception, commodification objections have held an elitist flavor and—because they are more likely to resonate with audiences than narrower appeals to self-interest—have been invoked for political gains. If standardized testing debates bear similarities to market commodification debates, it is only natural that the parallels extend to these traits as well.

Part I isolates three conceptions of commodification identifiable in the literature on markets—cognitive (or value) incommensurability, constitutive incommensurability, and corruption

---

\* Katharine Robinson Everett Professor of Law, Duke University.

1. Katharine Silbaugh, *Testing as Commodification*, 35 WASH. U. J.L. & POL'Y 309 (2011).

—arguing that, although the standardized testing literature bears hints of the cognitive incommensurability and corruption objections, the widespread moral outrage typically associated with constitutive incommensurability is largely absent. As a result, some objections to standardized testing may be addressable through system modifications in ways that objections to markets are not.

Part II focuses on the most striking similarities between the standardized testing debate and more traditional commodification debates. First, commodification objections in both settings are political, meaning that they are often invoked by constituencies in pursuit of a self-interest that is at odds with broader social goals. Second, they are often elitist, in the sense that the freedom to ponder the value of social goods other than individual economic betterment is a luxury not available to all. Finally, they are a catch-all—not all of the objections to markets (or standardized testing) that are packaged under the commodification rubric are necessarily about commodification, nor are they the inevitable result of market exchange or standardization. Part III concludes that this dark side of commodification critiques casts doubt on the extent to which Silbaugh’s commodification analogy undermines the case for standardized testing.

### I. THREE CONCEPTIONS OF COMMODIFICATION

It is worth specifying at the outset precisely what it means to object to markets (or standardized testing) on commodification grounds. The task is not an easy one, as the term is often loosely employed to cover a range of objections to particular markets.<sup>2</sup> Moreover, as Silbaugh notes, the comparison between the testing movement and the commodification literature is not perfect, rendering the definitional question yet more complex.<sup>3</sup>

In this section, I identify three different, but related, commodification objections to markets: “value” or cognitive

---

2. See generally I. Glenn Cohen, Note, *The Price Of Everything, the Value of Nothing: Reframing the Commodification Debate*, 117 HARV. L. REV. 689 (2003) (noting the imprecision with which the term commodification is invoked in market debates and proposing a categorization).

3. Silbaugh, *supra* note 1, at 332, 336.

incommensurability, constitutive incommensurability, and corruption.<sup>4</sup> Hints of the cognitive incommensurability and corruption objections to markets can be found in the standardized testing literature. However, the moral outrage that characterizes constitutive incommensurability and typically is associated with taboo markets such as babies, sex, and human organs is largely absent in the standardized testing debate. As a result, some standardized testing critiques may be addressable through tweaks to the system in ways that objections to certain markets are not.

#### A. Value, or Cognitive, Incommensurability

When values are cognitively incommensurable, people are unable or unwilling to evaluate certain comparisons because they have no basis by which to determine how much of X to give up in exchange for Y; in other words, X and Y are measured on different scales.<sup>5</sup> As Silbaugh notes, “We might call a person adventurous and another loyal, recognize that these are different values, struggle to compare them, but in the end recognize that they will not be pressed into an agreeable ordering.”<sup>6</sup>

This seems a clear point of commonality between objections to standardized testing and objections to markets, as Silbaugh suggests. Elizabeth Anderson, for example, argues that “[b]ecause people value different goods in different ways,” borders must be erected between the market and “other domains of self-expression.”<sup>7</sup> Market critics thus argue against the valuation of many goods, services, or relationships in monetary terms, contending that the market valuation of sex, friendship, and reproductive services, among others, is inappropriate.<sup>8</sup>

---

4. Many also raise coercion objections to markets. This objection rests on the purported need to protect vulnerable populations from financial lures that might encourage unwise risk-taking or otherwise induce bargains that the seller would never agree to in the absence of radically unequal economic conditions. See, e.g., Kimberly D. Krawiec, *A Woman's Worth*, 88 N.C. L. REV. 1739, 1742–43 (2010) (distinguishing commodification from coercion).

5. JOSEPH RAZ, *THE MORALITY OF FREEDOM* 321–28 (1986) (defining and discussing incommensurability in great detail).

6. Silbaugh, *supra* note 1, at 333.

7. ELIZABETH ANDERSON, *VALUE IN ETHICS AND ECONOMICS* 141 (1993).

8. See generally Krawiec, *supra* note 4 (discussing commodification objections to

Critics raise similar objections to standardized testing. How do we compare reading or math ability to team-building skill, leadership, or ethics, to borrow the examples employed by Silbaugh? We might recognize that all are valuable, yet irreducible to a common metric. This is one hurdle (though, as I elaborate below, not an insurmountable one) to the meaningful use of standardized testing data—it can be reductionist in precisely this way.<sup>9</sup>

### *B. Constitutive Incommensurability*

But cognitive, or value, incommensurability is only part of what is at work in most commodification-based objections to markets. My offer to Silbaugh of \$500 to be my friend is likely to make her angry, not just confused. Offers of cash for her children or organs are likely to elicit even stronger emotions, prompting outrage and a desire for norm enforcement.<sup>10</sup> As Joseph Raz observes, “[F]or almost every person there are comparisons that he will feel indignant if asked to make, and which he will, in normal circumstances, emphatically refuse to make.”<sup>11</sup>

In other words, there are comparisons that elicit more than the mere confusion or inability to compare values associated with value incommensurability, instead engendering anger, moral outrage, and a desire for norm enforcement. Such comparisons are constitutively incommensurable—not just confusing, but so immoral that merely to consider them compromises the individual’s self-image as a member of the relevant social community.<sup>12</sup>

My offer of \$500 in exchange for friendship is troubling, not simply because most people are unable to compare friendship along

---

prostitution, commercial surrogacy, and compensated oocyte donation); VIVIANA A. ZELIZER, *THE PURCHASE OF INTIMACY* (2005) (demonstrating that the intermingling of economic transactions with intimate relations causes discomfort both for individuals and for U.S. law, despite the fact that such intermingling occurs with great frequency).

9. See *infra* Part II.C (arguing that many objections to standardized testing are really implementation critiques, rather than critiques of standardized testing itself).

10. Alan Page Fiske & Philip E. Tetlock, *Taboo Trade-Offs: Reactions to Transactions that Transgress the Spheres of Justice*, 18 *POL. PSYCHOL.* 255, 256 (1997).

11. RAZ, *supra* note 5, at 346; see also ANDERSON, *supra* note 7, at 44–64 (discussing incommensurability of this sort).

12. RAZ, *supra* note 5, at 345–53 (introducing the concept of constitutive incommensurables); Fiske & Tetlock, *supra* note 10, at 256.

the monetary metric but because *we are not supposed to*. My failure to realize this fact immediately confirms that we cannot be true friends—I have already signaled my failure to understand the meaning of that relationship.

Many commodification objections to markets are of this constitutive variety. For example, commercial surrogacy implies to many market critics a society that fails to understand the unique importance of motherhood, prostitution a culture that insults the intimate nature of sexual relations, and cost-benefit analysis a world that fails to grasp the significance of human life.<sup>13</sup> Some reactions to market pricing mechanisms—for example, organ sales—may reflect a visceral sense of pure repugnance.<sup>14</sup>

Do standardized testing objections stem from a similar sense of constitutive incommensurability? I suspect not. The comparison of standardized testing to markets seems much more tenuous here. Though Silbaugh mentions anecdotes that hint at potential constitutive incommensurability concerns, there is little in the paper—or elsewhere—to suggest that standardized testing prompts the widespread sense of moral outrage typically associated with markets in sex, body parts, children, or other traditionally taboo exchanges.

This difference carries implications for the viability of standardized testing. As Al Roth has noted, repugnance can be a serious constraint to both markets involving money and allocation procedures that do not involve monetary transactions.<sup>15</sup> Constitutive incommensurability concerns are difficult to overcome because they are resistant to welfare analysis or arguments regarding means to contain or minimize any harms or downsides associated with the activity in question.<sup>16</sup> But if commodification objections to

---

13. See generally Kimberly D. Krawiec, *Show Me The Money: Making Markets in Forbidden Exchange*, 72 L. & CONTEMP. PROBS., Summer 2009, at i (discussing a range of “taboo trades”).

14. See Alvin E. Roth, *Repugnance as a Constraint on Markets*, J. ECON. PERSP., Summer 2007, at 37 (discussing the traditional repugnance toward certain exchanges).

15. *Id.* at 50–54.

16. *Id.* This is not to suggest that constitutive incommensurability objections cannot be overcome. Indeed, resistance to constitutively incommensurable transactions is malleable and context-dependent, varying across time and cultures. Krawiec, *supra* note 13, at iv. Individuals adopt a variety of coping strategies to relieve the cognitive discomfort caused by constitutively

standardized testing are largely of the cognitive, rather than constitutive, incommensurability variety, then those objections may be addressable through tweaks, rather than abandonment, of the system.

### C. Corruption

The third variant on the commodification objection is corruption: the notion that valuation or exchange metrics from one sphere, relationship, or setting will necessarily invade or crowd out other modes of valuation or comparison.<sup>17</sup> Silbaugh correctly hones in on an unresolved tension in the corruption debate, asking (but not answering) the question of “why market valuation is particularly unifying.”<sup>18</sup> Michael Sandel describes the corruption problem as follows:

[T]he argument from corruption appeals to the character of the particular good in question. In the cases of surrogacy, baby-selling, and sperm-selling, the ideals at stake are bound up with the meaning of motherhood, fatherhood, and the nurturing of children. Once we characterize the good at stake, it is always a further question whether, or in what respect, market valuation and exchange diminishes or corrupts the character of that good.<sup>19</sup>

Silbaugh argues that corruption fears play a large role in standardized testing debates. She contends, moreover, that such fears are warranted, stating:

Here the need to make items commensurable . . . actually transforms the character of the item. The description is self-

---

incommensurable choices and comparisons, including the ready acceptance of smoke screens and redefining the transaction. Philip E. Tetlock, *Thinking the Unthinkable: Sacred Values and Taboo Cognitions*, 7 *TRENDS COGNITIVE SCI.* 320, 320–21 (2003).

17. Michael J. Sandel, Prof. of Gov't, Harvard Univ., What Money Can't Buy: The Moral Limits of Markets, Lecture at Brasenose College, Oxford (May 11–12, 1998), in *THE TANNER LECTURES ON HUMAN VALUES* 89, 94–95 (1998), available at <http://www.tannerlectures.utah.edu/lectures/documents/sandel00.pdf> (discussing corruption).

18. Silbaugh, *supra* note 1, at 315.

19. Sandel, *supra* note 17, at 104.

fulfilling: education becomes the thing we have tools to measure about education.

In the context of education, it is difficult to argue that this commensurability has *not* corrupted the character of the item, because what schools do has changed since we began forcing schools to measure and compare along a common metric.<sup>20</sup>

Numerous objections have been raised against the corruption argument, including its unproven empirical assumptions and potential essentialism.<sup>21</sup> Even advocates of the corruption objection recognize these difficulties.<sup>22</sup> I put that debate to one side, however, for the purposes of this Article, because it is tangential to the primary lessons to be drawn from the comparison between standardized testing disputes and traditional commodification debates. In the following section, I proceed to the heart of the problem with commodification objections generally and their specific application to standardized testing: they are often political, elitist, and a catch-all category for implementation critiques that are not an inevitable consequence of standardization or of markets.

## II. THE DARK SIDE OF COMMODIFICATION CRITIQUES

Regardless of the above similarities and differences between commodification objections in the market and standardized testing contexts, the commodification objection bears three similarities across the two settings that, understandably, are not explicitly raised by commodification critics, and are not raised by Silbaugh. These similarities inspire the reference to “the dark side of commodification critiques” in this Article’s title and cast doubt on whether Silbaugh’s commodification analogy demonstrates that standardized testing is the problem for public education that she contends.

---

20. Silbaugh, *supra* note 1, at 325.

21. See MARTHA C. NUSSBAUM, *SEX AND SOCIAL JUSTICE* 290–93 (1999) (challenging commodification, coercion, and related objections to prostitution specifically, and to the sale of bodily services more generally); Krawiec, *supra* note 4 (criticizing commodification objections to sex work and the sale of reproductive services).

22. See Sandel, *supra* note 17, at 105–07.

Specifically, commodification objections to markets are often: (1) political, in that they are sometimes raised by constituencies in pursuit of a self-interest that is at odds with broader social goals; (2) elitist, in that the freedom to ponder the value of social goods other than individual economic betterment is a luxury not available to all; and (3) a catch-all, in that not all of the objections to markets (or standardized testing) that are packaged under the commodification rubric are necessarily about commodification, nor are they the inevitable result of market exchange or standardization. As I demonstrate in this section, the same is true of many of Silbaugh's objections to standardized testing.

#### A. Politics

The first unstated similarity between commodification objections in the market and standardized testing settings is their political nature: commodification objections are sometimes raised by constituencies in pursuit of a self-interest at odds with broader societal goals. Commodification concerns, by tapping into individual emotions and social norms, may be employed for strategic purposes more effectively than narrow appeals to selfish ends, such as rent seeking.

For example, the insurance industry lobby objects to commodifying life and gambling on death through various secondary markets in life insurance, though annuities commodify life and gamble on death in a similar fashion.<sup>23</sup> Coincidentally, secondary life insurance markets are an economic threat to the insurance industry, which priced existing premiums on an assumption that many insureds would allow policies to lapse or trade them in for a fraction of face value, rather than selling them on the secondary market to investors.<sup>24</sup>

---

23. Roth, *supra* note 14, at 53. For an exhaustive, and fascinating, treatment of available insurance vehicles, as well as gaps and asymmetries in insurance options, see Lee Fennell, *Unbundling Risk*, 60 DUKE L.J. (2011).

24. Jenny Anderson, *Wall Street Pursues Profit in Bundles of Life Insurance*, N.Y. TIMES, Sept. 5, 2009, at A1 (noting the insurance industry's objections to securitized life settlements as "a gambling product" and not "what life insurance is supposed to be" and further noting that the insurance industry would lose money as a result of the innovation because investors would continue to pay premiums and collect on the policies, rather than allowing them to lapse as do many insureds).



Similarly, the fertility industry defends its price controls on oocytes—the same type of professional price fixing agreement that has long been considered per se illegal in less politically charged industries—on commodification, among other, grounds.<sup>25</sup>

Given the ease with which narrow self-interest can, in certain settings, be repackaged as broader commodification concerns, it is hardly surprising that many of the commodification-like objections to standardized testing emanate from educators themselves. As Silbaugh notes, the entire point of the standardized testing program in public education was to establish a metric by which educators and districts could be held accountable for performance failures.<sup>26</sup> Not surprisingly, educators as a group prefer self-control to such accountability to outsiders. Teachers and school districts alike have less autonomy and flexibility under the current standardized testing system and are now subject to more outside scrutiny. Educators' resistance to standardized testing is thus consistent with their own collective self-interest and with their opposition to merit pay, vouchers, and a variety of other mechanisms that would subject educators and school systems to competitive forces or outside evaluation.<sup>27</sup>

Silbaugh discusses teacher resistance to merit pay, but as evidence of “the cultural differences between schools and policy makers” and as a “potential insight into the intrinsic motivations of educators and the alternative (non-market) values in the school’s culture.”<sup>28</sup> While it is, of course, possible that the divide between the public’s and educators’ views on the appropriate role of market forces and competition in education is attributable to cultural differences or divergent understandings of intrinsic motivations, the more obvious possibility is that teachers, as a collective body, benefit from an insulation from competition.

---

25. See generally Kimberly D. Krawiec, *Sunny Samaritans and Egomaniacs: Price-Fixing in the Gamete Market*, 72 L. & CONTEMP. PROBS., Summer 2009, at 59 (discussing price controls in the oocyte market).

26. Silbaugh, *supra* note 1, at 311.

27. See William Howell, Paul E. Peterson & Martin West, *Education Next-PEPG Survey 2010*, EDUC. NEXT (Aug. 25, 2010), [http://educationnext.org/files/Complete\\_Survey\\_Results\\_2010.pdf](http://educationnext.org/files/Complete_Survey_Results_2010.pdf).

28. Silbaugh, *supra* note 1, at 321.

Research indicates, for example, that pay dispersion is lower among unionized workers than among the non-unionized for a variety of reasons, including that unions traditionally have opposed merit pay schemes.<sup>29</sup> Although there are several potential explanations for this opposition, one is:

[T]he principle that employees can collectively bargain with their employer over pay . . . . Where pay is determined by a set of performance indicators, rather than through collective bargaining, trade unions and the workers they represent lose vital influence over pay and related matters.<sup>30</sup>

This is not to suggest that educators have no valid objections to standardized testing (or to vouchers and merit pay, for that matter). Teachers are, after all, education experts and are also well positioned on the front lines of public education to render useful insights. But, given the interests at stake, it would be naïve to accept their objections to standardized testing at face value.

### *B. Elitism*

A second similarity between commodification objections to markets and those to standardized testing is their frequently elitist nature. Kenneth Arrow raised this point in 1972, when comparing Richard Titmuss's views on the impersonal altruism of the small number of blood donors in the United Kingdom to an "aristocracy of saints."<sup>31</sup> Martha Nussbaum reaffirmed it when she argued that much commodification-based opposition to sex work fails to appreciate the "other realities of working life of which it is a part."<sup>32</sup>

---

29. See generally David Metcalf, Kirstine Hansen & Andy Charlwood, *Unions and the Sword of Justice: Unions and Pay Systems, Pay Inequality, Pay Discrimination and Low Pay*, 167 NAT'L INST. ECON. REV. 61 (2001). Other reasons include that unionized jobs are more homogenized than nonunion jobs and that unions negotiate over the minimum wage, truncating the lower end of the pay scale. *Id.*

30. *Id.* at 63 (quoting Internal Policy Document, Communication Workers Union, Performance-Related Pay—Panacea or Pain? (1999)). Median voter models also predict that over half of employees will favor a redistribution of wages towards the lower end of the pay scale. *Id.*

31. Kenneth J. Arrow, *Gifts and Exchanges*, 1 PHIL. & PUB. AFF. 343, 360 (1972).

32. NUSSBAUM, *supra* note 21, at 297.

Silbaugh mentions repeatedly that difficult-to-test topics such as art, music, physical education, critical thinking, and the like are being dropped from the curriculum in favor of those subjects more amenable to standardized testing, emphasizing that the burden falls hardest on poorer school districts because more affluent suburban districts can afford to retain these subjects, while still attaining “adequate yearly progress.”<sup>33</sup> Assuming that it is true that art, music, critical thinking, and similar topics were systematically more likely to be included in the curricula of poorer school districts prior to the standardized testing movement, the empirical question of whether similarly situated students from poorer districts are better off learning art, music, and physical education than their more testable substitute topics remains an open empirical question.

The reality of differential educational funding across school districts in the United States necessarily means that poorer districts are faced with choices and trade-offs: choices among students, choices among subjects, and choices among the various means to deploy scarce resources. Silbaugh’s argument that scarce time and resources are being spent on Subject A, rather than on Subject B, proves nothing in the absence of evidence that—given the necessity of choice—students would be better off learning B instead of A. If children in poorer school districts are being deprived of valuable education opportunities, the problem would appear to lie with the differential funding of public education in the United States and the consequent consistent poverty of some school districts, rather than with standardized testing.

Finally, Silbaugh criticizes the flattening effect of standardized testing, arguing that:

[t]he testing trend takes multiple values that have co-existed and reduces them to the one value, which even in its best light can only be expressed as competence in math, reading, and writing, without reference to other necessary skills for a fulfilling life or citizenship. Not only is this a flat choice among the numerous values public education serves, it fails to

---

33. Silbaugh, *supra* note 1, at 319–20.

reach the citizenship values that have long helped to justify the public investment in free education.<sup>34</sup>

But the freedom to focus on education's role in citizenship values and an otherwise fulfilling life—rather than simple workforce readiness—is a luxury that many communities cannot afford. Indeed, the ability to view education as anything more than a means of individual (or familial) economic betterment is an indulgence not available to all, nor is any real ability to participate in the broader collective “community” or exercise the rights and obligations of full citizenship associated with it.

Silbaugh's argument in this regard brings to mind Arrow's 1972 critique of Titmuss:

[Titmuss] is especially interested in the expression of impersonal altruism. It is not the richness of family relationships or the close ties of a small community that he wishes to promote. It is rather a diffuse expression of confidence by individuals in the workings of a society as a whole. But such an expression of impersonal altruism is as far removed from the feelings of personal interaction as any marketplace. Indeed, the small number of blood donors in the United Kingdom suggests, if I were to generalize as freely as Titmuss does, the idea of an aristocracy of saints.<sup>35</sup>

All else being equal, life may be richer, more robust, and better-lived with a knowledge of art, music, and critical thinking. In an ideal world, these tools would be available to all. But Silbaugh fails to show that, in our far from ideal public education system, their neglect in favor of the deployment of scarce resources toward competence in reading, math, and writing is an unwise decision, much less an irrational one.

---

34. *Id.* at 332.

35. Arrow, *supra* note 31, at 360.

### C. Commodification as a Catch-All

Finally, not all of the objections to markets typically packaged under the commodification rubric are necessarily about commodification, nor are they the inevitable result of market exchange. Instead, “commodification” often operates as a catch-all complaint to encompass a variety of concerns, many of which could be addressed through a better market (or better-regulated market).<sup>36</sup>

Similarly, many of Silbaugh’s objections to standardized testing are not necessarily about commodification, nor are they the inevitable result of standardization. For example, Silbaugh cites to “government statistics showing an increase in time spent on language arts and math and a decrease in time spent on science and social studies,” as evidence of the negative effects of standardized testing.<sup>37</sup> She laments:

[T]he consensus is that schools across the country have adapted their curricula to focus on subjects that are tested by reducing the time spent on subjects that are not a part of the testing program, such as social studies, and ones that are not susceptible to standardized testing at all, such as music, art, and physical education.<sup>38</sup>

As discussed in Part II.B, above, Silbaugh never demonstrates why an increased focus on language arts and math is necessarily negative, even if it occurs at the expense of time spent on science and social studies. But assuming that she is correct, the problem she has identified is not one of commodification, nor even of standardization, but of implementation. She suggests no obvious reason why social studies, science, or even physical education could not successfully be implemented into the standardized testing program, or why those

---

36. Peggy Radin argues, for example, that any corrupting effect of market exchange on sex can be reduced by interventions that fall short of banning the market. *See generally* MARGARET JANE RADIN, *CONTESTED COMMODITIES* (1996) (arguing for incomplete commodification of certain contested market exchanges). Radin contends that measures such as licensing, zoning, and advertising restrictions can keep sex markets in their properly cabined place where they are out of sight and thus potentially out of mind. *Id.* at 132–36.

37. Silbaugh, *supra* note 1, at 324.

38. *Id.*

school districts with the resources to teach at a level above the floor required by standardized tests have failed to do so. Thus, if the system has failed on this front it would appear to be because of faulty program design, not because of standardized testing itself.

#### CONCLUSION

In *Testing As Commodification*, Katharine Silbaugh compares debates within the standardized testing literature to more traditional debates on the commodifying effects of markets. Though the analogy between commodification-like arguments across the two settings is imperfect, the comparison yields more insights than, I suspect, Silbaugh realizes. In particular, though Silbaugh concludes that her analysis demonstrates the failures of standardized testing, her analogy primarily reveals the politically driven and elitist nature of the standardized-testing debate.

No doubt there are costs, inefficiencies, and failures associated with standardized testing, and Silbaugh may well have identified elements of the program in need of reform. But, far from demonstrating that today's educational system is systematically inferior to the pre-testing status quo, she has primarily shown why the objections of many standardized-testing critics should be viewed with skepticism, rather than accepted at face value.