

Person to Person: A Note on the Ethics of Commodification

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1. Introduction

In *Markets without Limits* (Routledge, 2015) Brennan and Jaworski argue that “If you can have it, you can buy it; if you can give it away to someone, you can sell it to her. [...] if it is permissible to do X for free, then you may do X for money.” (16, see also 10, 19, 149, 156, 224)

Their thesis addresses an important question about the role and limits of markets; the question about what sorts of things and activities we should allow to be commodified, that is, allow people to exchange through markets. As Brennan and Jaworski note, we live in market societies, but have questions about what sorts of market society we should live in (4). One of these normative questions is about the extent to which we should use markets for the distribution of goods and services. Brennan and Jaworki argue that markets may be used for goods that people may hold (own) or give to others. Thus, markets in bodily organs, permissible activities (including sex), votes, human eggs, surrogacy, and babies are permissible.

If sound, their argument defeats worries about commodification based on the belief that there are some things or activities that simply or as such should not be commodified, a belief that Brennan and Jaworki find in the writings of prominent moral philosophers such as Michael Sandel, Elizabeth Anderson, and Debra Satz. Indeed, Brennan and Jaworski claim this is the main philosophi-

cal disagreement: “The main philosophical debate about commodification is about whether *markets introduce wrongness where there wasn't any to begin with*. [...] about things which one may permissibly possess and acquire, but which cannot be bought and sold.” (156) They argue that there are no such things.

There are good reasons to pay careful attention to their argument. As they note, “markets won” (3), but many people worry about the increased commodification that attended this victory and agree with the above mentioned moral philosophers that the commodification of some goods and services is morally troubling. Brennan and Jaworski offer a diagnosis of these concerns and argue that they are (for the most part) unfounded. At best, they are concerns about badly regulated markets, or about how business is done (business ethics), or about the consequences of commodification; justifiable as a concern about incidentals (bad markets, bad marketeers, bad consequences), but not as concerns about commodification itself.

Here is an overview of Brennan and Jaworski’s argument for this conclusion:

- I. Either it can be shown that there are cases where you may hold something or give it to others, but may not buy or sell it, or we should conclude that persons may buy and sell (i.e. may treat as a commodity) what they may have or give for free.
- II. All the known arguments that try to establish such a case fail.
- III. Therefore, persons may buy and sell what they may hold or give for free.

The argument is a disjunctive syllogism. The first premise is the disjunct: either we have reason to reject their thesis, or we should accept it. The second premise negates the first disjunct, which justifies inference to the second.

In the following I argue, first, that even if sound, this argument does limited damage to anti-commodification arguments; second, that the first premise flirts with the *onus probandi* fallacy; and third, that we should doubt the second premise, since Brennan and Jaworski fail to consider an important sort of argument against commodification.

2. For the most part, normally, realistically, and contextually

Aristotle famously said that we should not look for more precision in our arguments or principles than the subject matter allows and that in ethics the truth is rough and principles hold for the most part, not for every possible instance. Jaworski and Brennan seem to hold anti-commodification arguments to a higher standard and by that standard these arguments fail, but I'm not sure that anti-commodification theorists would agree to the standard or be too worried that they fail by it.

Take, for example, the following passage from Brennan and Jaworski's discussion of prostitution and the problem of exploitation:

In real life, it's possible that most sex trading has been exploitative. However, if so, it's not, as far as we can tell, because sexual markets are inherently exploitative. [...] If prostitution is often or even always exploitative, it is exploitative only due to the presence of certain conditions that in principle could be absent. [...] prostitution may often or usually be exploitative, but it is not essentially exploitative. The imperative to avoid exploitative sex markets does not translate into an imperative to avoid sex markets, period. (151-2)

It is, of course, true that there is no necessary connection between prostitution and exploitation, so in principle there can be a market for prostitution with no exploitation. But is this really the

relevant question? Most who argue that we should worry about prostitution because of its connection to exploitation would likely say that the link need not be necessary for their argument to work. If, for the most part, in normal circumstances, and in our reality prostitution tends to build on and aggravate exploitation, then that is a strong argument against prostitution. It is not a sufficient argument, for there might also be really strong arguments in favor of the decriminalization of sex work.¹ Even if prostitution is (contingently) tied to exploitation, we might still favor decriminalization, but such favoring should (and does) come with the recognition of the connection between prostitution and exploitation.

More generally, Brennan and Jaworski repeatedly show that there is no necessary or “in principle” relation between something being commodified and semiotic confusion, corruption, or unfairness; we can imagine a market in the good or service in question that does not suffer the alleged problem. Indeed, at the end of the book, Brennan and Jaworski challenge readers to find a case where we can say that there is something that it would be permissible to have or give away, and where our objection to commodifying that thing works for every imaginable variety of time, manner, and place of selling. For an objection to commodification to work, one has to “demonstrate that there is no way of designing the market that would overcome the objection.” (225, see also 40)

This bar is too high. The relevant question is not whether we can imagine markets that are free of problems, so that the objection works in all imaginable contexts; but whether the markets we are considering can be expected to have the problems that we worry about. Real possibility is not the relevant modality (better would be some sort of “open-minded actuality”); universality is not the

¹ Cf. Amnesty International’s call for decriminalization sex work, cf. <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

relevant quantification (“for the most part” is better); in all imaginary accessible contexts is not the relevant universe of discourse (“strictly feasible contexts” would be better). Many of the anti-commodification arguments seem strong with the relevant modality, quantification, and feasibility. So, even if Brennan and Jaworski’s argument is sound, it does limited damage to most anti-commodification arguments.

3. *Onus probandi* (vs. I)

Brennan and Jaworski discuss and reject a number of anti-commodification arguments that could be (and have been) offered for the conclusion that there are some things and services that can be given or rendered for free, but not traded as commodities. In these arguments they frequently, and skillfully, assign the burden of proof. The anti-commodification theorists must show that commodification necessarily leads to this or that semiotic or corrupting or exploitative result, and since they cannot, we should not assume that it does (e.g. 90-1, 156).

Alas, Brennan and Jaworski fail to carry their own burden of proof. The refutation of arguments against their thesis is not an argument for it. While skillfully assigning the burden of proof to others, Brennan and Jaworski themselves commit the *onus probandi* fallacy and affirm their conclusion because they do not find a good argument against it.

Brennan and Jaworski might reply that their thesis has such an intuitive and obvious appeal that they do not need to argue for it. I am not sure this reply works, even if the thesis had the alleged appeal (after all, in the final part of the book they debunk our intuitions), but I also do not think that it does.

In spite of its apparent simplicity and moral innocence, the thesis is complicated and relies on some unspecified moral theory. Here, again, is the thesis: “If you can have it, you can buy it; if you can give it away to someone, you can sell it to her.” (19) Now the “can” in this quote and other relevant passages is deontic (moral permissibility). Moreover, the conditional implied by “if” carries no causal claim or a claim about the antecedent being the sufficient condition of the consequent; rather, the implication is one of co-extension, so that a more precise (if cumbersome) rendering would be: “There is no thing or service such that it is permissible to have it, but not to buy it; nor is there any such thing or service such that it is permissible to give it away, but not to sell it.”² So, Brennan and Jaworski’s thesis is really two claims about co-extension, the first about coextension of the permissibility of holding and buying; the second about the coextension of the permissibility of giving and selling.

To further complicate matters, the thesis is ambiguous between two sorts of permissibility: moral and legal. A claim about what it is permissible to hold / buy / give / sell can either be about what we have permission to do apart from the question of what sort of legal system we should have, or a claim about what sort of legal system we should have. Insofar as markets are legal constructs and the activities in question have to do with rights of property and contract, the thesis seems to focus on the latter of these questions, but Brennan and Jaworski mostly conduct their argument in the universe of the former. In other words, the question is about how we should define the rights of property and contract, but Brennan and Jaworski discuss the straightforward ethical profiles of instances of holding / buying / giving / selling. The problem is that ethical profiles do not translate directly into legal profiles (we might say that infidelity is impermissible, but should be legal; that victimless wrongs are permissible, but should be illegal).

² Formally: $\sim\exists x(\text{PHx} \ \& \ \sim\text{PBx}) \ \& \ \sim\exists y(\text{PGy} \ \& \ \sim\text{PSy})$

Moreover, to properly assess either of the claims about coextension, we need an account of what system of legal rules should govern holding and giving if we are to then test whether there are counterexamples to the claim about coextension. We need a moral theory for distinguishing between what we may and may not hold and may and may not give, and then test whether, *by the same moral theory* some of those things that may be held, but not bought; given, but not sold. Brennan and Jaworski's discussion proceeds as if we have a clear understanding of what things and services we may hold or give, but we do not – and even if we did, what matters is that we agree on the principles that define these extensions. It would be a pleasant surprise if we did, but Brennan and Jaworski never touch upon this underlying question that their argument presumes we have already answered.

4. *Person to person (vs. II)*

Here is the brief version of Brennan and Jaworski's argument in favor of II:

- IV. There are three known types of arguments for why commodification introduces wrong where there was none in cases of doing or giving: semiotic, corruption, and fairness.
- V. All three known types of argument fail (argued, respectively, in parts II, III, and IV of *Markets without Limits*).
- VI. Therefore, all the known arguments that try to establish such a case fail (= II).

The problem is that IV is false. Brennan and Jaworski overlook a fourth type of argument, namely, arguments objecting to commodification because of how commodification relates persons to persons.

It is notable that the first two types of worries that Brennan and Jaworski discuss – semiotic and corruption objections – are about the relation between marketeers and the commodified things or activities. Semiotic objections are about the attitudes of marketeers towards goods or services; corruption objections are about the effects of markets on personal preferences or character. Only the third set of worries – those that have to do with unfairness and exploitation – are about interpersonal relations. Here the worries are that markets misallocate goods as measured by some standard of fairness, since they distribute the goods or services in question according to the function of supply and demand; or that markets enable exploitation (as mentioned in connection with prostitution above).

There is, however, a fourth type of worry about commodification which has to do with interpersonal relations, which is not covered by the worries about unfairness or exploitation, and which is, I think, the type that underlies most of these worries.

The general form of this worry is that commodification relates persons in a manner that may be morally objectionable. The differences between having and buying, and giving and selling, are not primarily differences in how the holder / buyer / giver / seller relates to *the object or service* in question; it is primarily a difference in how persons relate to persons through the activity in question (holding, buying, giving, selling).

Take, again, the question of prostitution. The worry about prostitution is not primarily the semiotic worry that the prostitute or the client express a mistaken attitude to sexual activity, or that the buying or selling sex corrupts buyers or sellers, or even that prostitution breeds exploitation (though all three are legitimate worries), but that prostitution relates persons inappropriately to persons. There are four relationships one could worry about (excepting third parties for simplicity, though this simplification leaves out what is clearly relevant): buyer-buyer, buyer-seller, sell-

er-buyer, and seller-seller. Most obviously, we should worry that the buyer relates inappropriately to the seller, insofar as the buyer mistakenly treats the prostitute as a thing rather than as a person, as a means rather than as an end, as having a price rather than worth, use-value rather than dignity. Does prostitution *inherently* and *necessarily* relate buyers and sellers of sex in this (let's say, immoral) fashion? Perhaps not, but it certainly invites this relationship, and that should be enough to worry. Alternatively, we can make the move Brennan and Jaworski make (16) and say that *if* prostitution relates buyers inappropriately to sellers (or to themselves, or *vice-versa* for the sellers), then we should worry about the commodification of sex. The point here is not whether prostitution should be legally permitted (I agree with Amnesty that it should be decriminalized, which is close to but not quite the same), but that Brennan and Jaworski disregard the main cause for concern about it.

Similarly with the debate about the commodification of voting (chapter 19). As Brennan has persuasively argued elsewhere, voting is a mode of interpersonal coercion and therefore should be done responsibly (soberly, after due consideration, with adequate information, etc.).³ The worry is that a market in votes would be a market in coercive power, giving some (buyers) more authority to coerce than others (sellers), and thereby failing the democratic requirement of political equality (how to satisfy this requirement is a question that I shall not try to deal with; the point is that it is a requirement about correct relations among citizens that commodification of the vote might undermine).

Or take the case of baby buying. Brennan and Jaworski (conditionally) defend a market in babies: if you can adopt a baby, you should be able to sell/buy it. But of course the problem with

³ See *The Ethics of Voting* (Princeton, NJ: Princeton University Press, 2012). This book is summarized in *Markets without Limits*, 185-188.

baby buying is how it relates both sellers and buyers to the potential person that is the baby. The problem is not that they express the wrong attitudes or that it corrupts their persons, it is that it relates them wrongly to the baby.

(Incidentally, the preceding indicates that the semiotic objection is a detour: insofar as the problem here is one of attitudes, the problem is not that their actions *express* the wrong attitude, rather it *is* the wrong attitude – turning the objection into a matter of semiotics confusingly makes the alleged moral wrong a matter of intensional context.)

Finally, Brennan and Jaworski frequently use kidneys as example, perhaps because the consequentialist argument for a market in kidneys is strong: much suffering, avoidable deaths, and black market wrongdoings could be avoided if we allowed people to buy and sell kidneys. However, this consequentialist argument does not remove the worry that markets in organs enable and further wrongful interpersonal relations. The commodification of organs might relate the buyer to the seller as a thing rather than as a person (again, the problem is not that the buyer thereby *expresses* a wrongful attitude *towards the organ*, but that she *relates wrongly to the seller*). Or it might relate the seller inappropriately to herself. Not because her kidney is an object of reverence (it is not), but insofar as and because she views herself a commodity that can be carved up and sold off in parts. We might not think that this is a strong argument, and it does not seem strong enough to outweigh the consequentialist argument in favor of a market in kidneys, but it is a worry that we should give appropriate weight. Perhaps the worry is easier to see in the case of a market in hearts. A market in hearts would allow people to sacrifice their personhood (they would die) for monetary gain (which might be rational, for they might rationally prefer death with financial security for their family to life without it). The Kantian worry is that this is the wrong way to relate to one's personhood.

Such Kantian worries are, of course, defeasible. I share the worries, but nevertheless support the decriminalization of sex work and a market in kidneys, because I believe that the consequentialist arguments in favor of these are strong enough to outweigh my worries about the inter-personal and intra-personal wrongs that such markets enable and can be expected to aggravate. But the worries remain and we should recognize the moral costs, even when we go for the benefits.

So, the main worry about the commodification of these things – sex, babies, votes, body-parts – is that they might relate persons wrongly to other persons or their own personhood. More generally, an important type of worry about commodification is that it enables and supports troubling inter- or intra-personal relations. This is an important and powerful sort of worry – it is, I think, *also* where the action is (cf. 15-6) – but it is not given adequate consideration by Brennan and Jaworski. In short, IV is false and we should doubt II.

5. Conclusion

Morality is not primarily a matter of the attitudes we express towards things, activities, or persons; nor about how our activities influence our moral psychology. Morality is primarily about how we should relate to other persons (or sentient beings, depending on the sources of non-derivative moral standing). The relation of having differs from that of buying; the relation of giving differs from that of selling. One type of worry about commodification is that sometimes the relations of buying and selling relates us inappropriately to other persons or ourselves. Whether these worries are justified depends on the truth about how we should relate to others and ourselves, and on the truth about how commodified relations do or do not violate these moral norms.

Though I have raised concerns about their argument, Brennan and Jaworski nevertheless bring clarity to a confused debate; the debate about the inherent limits of markets. It turns out that this is not the really the debate we should be having. The debate about commodification is not the ethical question of whether it is inherently wrong to commodify some specific goods and services. Rather, it is a political debate about how we should design the rules of our economy (including the use of markets for the distribution of goods and services) in light of truths about how we should relate to each other as persons, given the likely (but not necessary) outcomes of various designs in terms of rights, fairness, efficiency, and the context and sentiments of society.