The ethics of marketing to vulnerable populations

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ABSTRACT

An orthodox view in marketing ethics is that it is morally impermissible to market goods to specially vulnerable populations in ways that take advantage of their vulnerabilities. In his signature article "Marketing and the Vulnerable," George Brenkert (1998) provided the first substantive defense of this position, one which has become a well-established view in marketing ethics. In what follows, we throw new light on marketing to the vulnerable by critically evaluating key components of Brenkert's general arguments. Specifically, we contend that Brenkert has failed to offer us any persuasive reasons to think that it is immoral to market to the vulnerable in ways that take advantage of their vulnerability. Although Brenkert does highlight the fact that the specially vulnerable are at greater risk for being harmed by already immoral marketing practices (e.g., deception, manipulation), he fails to establish that the specially vulnerable are a unique moral category of market clients or that there are special moral standards that apply to them. Moreover, even if Brenkert's position were theoretically defensible, the practical implications of his position are far less tenable than he suggests. If our criticisms are sound, then Brenkert and others who endorse his position are seriously mistaken regarding how one can permissibly market products to vulnerable populations and, in addition, they have improperly categorized certain morally permissible marketing practices as being immoral.

Key words: Ethics; Marketing; Vulnerability; Market Clients; Exploitation; Consumer Interests.

<u>The ethics of marketing to vulnerable populations</u>

Is it morally permissible to market goods to vulnerable populations – the elderly, the young, the poor, and so on? Almost anyone will agree that a view of marketing ethics that eliminates *all* marketing to these groups would be too restrictive, but most believe that there is at least one method of marketing to these groups that is morally impermissible. As Klein (2007) observes, "the ethics and social responsibility communities seem to agree that targeting vulnerable groups with marketing campaigns *that take advantage of their vulnerability* is unjust" (p. 40; emphasis added). But is this consensus well-founded? And if so, what is it *about* taking advantage of a vulnerable person's vulnerability that makes such a marketing practice immoral or unjust? George Brenkert (1998) was perhaps the first to provide a substantive defense of this position, one which has become a well-established view in marketing ethics. In his signature article "Marketing and the Vulnerable," Brenkert argues that it is morally wrong to market goods to these people in ways that *take advantage* of their vulnerability, although Brenkert leaves it open that it *can* be morally permissible to market goods to vulnerable populations if the marketing is not done in these ways.

Brenkert's work has proven influential for two reasons: it provides a concise, illuminating categorization of vulnerable people, and it advances arguments that morally criticize the practice of marketing to vulnerable groups. However, while his categorization of vulnerable people has received significant discussion and expansion,[1] his arguments against marketing to the vulnerable have not been subjected to much critical scrutiny.[2] In this article, we throw new light on marketing to the vulnerable by critically evaluating key components of Brenkert's general arguments. Specifically, we contend that Brenkert has failed to offer us any persuasive reasons to think that it is immoral to market to the vulnerable in ways that take advantage of their vulnerability. Although Brenkert does highlight the fact that the specially vulnerable are at greater risk for being harmed by already immoral marketing practices (e.g., deception, manipulation), he fails to establish that the specially vulnerable are a unique moral category of market clients or that there are special moral standards that apply to them. Moreover, even if Brenkert's position were theoretically defensible, the practical implications of his position are far less tenable than he suggests. If our criticisms are sound, then Brenkert and others who endorse his position are seriously mistaken regarding how one can permissibly market products to vulnerable populations and, in addition, they have improperly categorized certain morally permissible marketing practices as being immoral.

I

Brenkert defines a vulnerable population as one that is susceptible to harm by others. Of course, as he points out, we are *all* susceptible to harm by others to one degree or another, but surely we are not *all* vulnerable in the sense that is relevant to the ethics of marketing. With this in mind, Brenkert isolates the "specially vulnerable" as the relevant population. According to Brenkert, the specially vulnerable are characterized by the following three conditions (pp. 13-14):

(1) They suffer from at least *one* of the following vulnerabilities which separates them from the normal adult population:

(a) physical vulnerabilities (e.g., allergies, sensitivity to chemicals),

(b) cognitive vulnerabilities (e.g., cognitive immaturity, senility),

(c) motivational vulnerabilities (e.g., grave illness, grief), or

(d) social vulnerabilities (e.g., poverty).

(2) These vulnerabilities are due to factors largely beyond their control, and

(3) These vulnerabilities make them *more* susceptible to harm by others than normal adults.

With this categorization in hand, Brenkert argues that there are three significant upshots concerning the ethics of marketing to specially vulnerable populations (pp. 14-15). *First*, the specially vulnerable are significantly less able than ordinary market clients – individuals who participate in the market as consumers – to *protect* (and in some cases *identify*) their own interests. *Second*, to market goods to the specially vulnerable in ways that take advantage of their vulnerability is to treat them unfairly, and it is morally wrong for precisely this reason. *Third*, marketers *can* target the specially vulnerable, but *not* in ways that take advantage of their vulnerability. In the next sections, we challenge Brenkert's second and third claims.

II

According to Brenkert, marketing goods to the specially vulnerable in ways that take advantage of their vulnerability is unfair. Moreover, this unfairness is the reason why marketing goods to these people in this way is morally wrong. But *why* is it unfair to market goods to the specially vulnerable in these ways? What reason is there to think that such marketing is unfair? Brenkert does not directly address these questions. The nearest he comes to answering them is in the following passage:

> "…to market to [the specially vulnerable] in ways which take advantage of their vulnerabilities, i.e., to seek to engage them in competitive effort to sell them goods through the weaknesses characterizing their vulnerabilities, is to treat them unfairly.

> Regardless of whether they are actually harmed, they are being taken advantage of. They have little or no control over these features of their behavior" (p. 14).

It appears that Brenkert is arguing as follows:

(1) To market goods to the specially vulnerable in ways that take advantage of their vulnerability is to take advantage of some fact about them – their vulnerability – over which they have little or no control.

(2) It is unfair to take advantage of a fact about someone over which she has little or no control.

(3) Therefore, it is unfair to market goods to the specially vulnerable in ways that take advantage of their vulnerability.

This argument, however, is unsound. Premise (2) is false. Sometimes it *can* be fair to take advantage of a fact about someone over which she has little or no control. At first glance, the following example would seem to show that (2) is false. Imagine a boxer who takes advantage of his opponent's bad chin by punching him to try to knock him out. The opponent has little or no control over the strength of his chin. It is something determined by his biology. But we don't *therefore* think that it is unfair for the boxer to target, and take advantage of, his opponent's chin in this way. In fact, we think that it is entirely appropriate for him to do so. Moreover, we would think that it was strange if, knowing that his opponent's chin was weak, the boxer did *not* target his chin as a way to try to knock him out. ("Wait," we would say, "you *knew* his chin was weak, but you didn't try to punch him there? Why not? You need a new coach!") So, this example seems to show that, contrary to premise (2), it *can* be fair to take advantage of a fact about someone over which that individual has little or no control.

Counterexamples similar to our case of the boxer are fairly common: minimally, similar cases could be instructed involving any competitive sport. But Brenkert might object to this strain of counterexamples by appealing to their context. Perhaps the plausibility of these counterexamples is derived from an assumed agreement between athletic competitors – namely, both parties agree that, so long as they do not violate the competition's established rules, they can do anything to win, including taking advantage of their opponents' weaknesses (even if these weaknesses exist for reasons beyond the opponents' control). This tacit agreement renders premise (2) false in this particular context, but since no similar agreement exists between marketers and consumers, these counterexamples do not show that the argument fails in the context of marketing.

We respond to this objection by proposing a second counterexample, one that occurs in the context of marketing and thereby eludes the objector's concerns. Consider the owner of a 'big and tall' store, a shop that sells clothes to individuals who are bigger and taller than normal. We don't typically think that a person's height is something over which he has any control. Like the boxer's chin, a person's height is determined largely (if not wholly) by his genes, but we don't *therefore* conclude that it is unfair for the store owner to target especially tall individuals in marketing campaigns. That is, we don't tend to think that it is unfair for the owner to take advantage of the fact that these individuals are unusually tall in deciding what groups in the community she should market to. It fact, we don't just take it to be permissible for the store owner to determine her marketing strategy in this way – we think that it's the *right* thing for her to do. To motivate this intuition, imagine how we would react if we found out that the owner was marketing to persons of *all* shapes and sizes, including very short and very skinny people. "What are you doing?" we would say. "That marketing strategy doesn't make any sense!"

Again, this example shows that premise (2) is false. Sometimes it *can* be fair to take advantage of a fact about someone over which that individual has little or no control.

To clarify, our aim in offering this further counterexample to (2) is to sidestep an objection that Brenkert might make to our original counterexample—namely, that its plausibility derives from the fact that it occurs in a *sporting* context (where there's a tacit agreement between competitors that it's morally okay to take advantage of facts about people over which they have little or no control) rather than in a marketing context (where there's presumably no such agreement between marketers and consumers). Our 'big and tall' store example avoids this problem since, unlike the boxer case, it *does* occur in the context of marketing.

Clarifying this aim of the 'big and tall' store case helps to see why a possible objection to this case won't succeed. Brenkert might respond to it by drawing on his distinction between *disadvantaged* groups and *specially vulnerable* groups, and arguing that since tall people are merely disadvantaged and not specially vulnerable, the example doesn't show that (2) is false in the pertinent context, since what's at issue in the present argument is the unfairness of marketing to specially vulnerable populations, and not the unfairness of marketing to (merely) disadvantaged groups.[3] In reply, though, given that our aim in positing this new counterexample to (2) is simply to respond to the possible objection that Brenkert might make of our original boxer counterexample, we don't *need* a case in which the group being marketed to is specially vulnerable and not simply disadvantaged. To show that (2) is false in a way that sidesteps Brenkert's possible objection to the boxer case, we only need to provide a case where (2) is false *in the context of marketing*. We think that the 'big and tall' store case does just this. Whether the people being marketed to are specially vulnerable or (merely) disadvantaged is irrelevant here.[4]

In reply, Brenkert might concede the point but offer a *further* argument for the claim that it's unfair to market goods to specially vulnerable individuals in ways that take advantage of their vulnerability, one that doesn't turn on the claim that marketing goods to these people in this way would be taking advantage of something over which they have little or no control. To this end, consider the following later passage from his article:

> "In short, if a group is specially vulnerable, the use of unfair techniques which would not ultimately cause them harm is still the use of techniques which treat such individuals unfairly through manipulating them through their vulnerabilities" (p. 17).

These remarks suggest that Brenkert might have in mind a different argument for the claim that it is unfair to market goods to specially vulnerable individuals in ways that take advantage of their vulnerability. They imply that what makes it unfair to market goods to these people in these ways is that the marketing, even if it does not cause them harm, manipulates them, and there's something unfair about being subject to this sort of manipulation.

This appeal to the unfairness of manipulation has clear Kantian roots. Let's recall Kant's second formulation of the Categorical Imperative: "*Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means*."[5] With this idea in mind, one might read Brenkert as claiming that to manipulate someone in this way is to treat her as a 'mere means' to one's own ends rather than treating the person as an end in herself. Brenkert suggests this line of reasoning in his explicit rejection of a consequentialist approach to marketing to vulnerable populations (pp. 10-11). He argues that even if such marketing were to maximize total utilities and the customers were not dissatisfied, this type of marketing would be unacceptable because of considerations that a purely consequentialist approach overlooks. Specifically, the vulnerable groups being targeted "are not competent to evaluate the product marketed to them," and thus, a consequentialist justification of this marketing practice "permits treating some individuals merely as means to the ends of others" (p. 10). Such an action is wrong because it fails to treat the specially vulnerable with moral respect.

With these ideas established, Brenkert could deploy the following argument:

(1') To market goods to the specially vulnerable in ways that take advantage of their vulnerability is to treat them as a mere means to one's own ends.

(2') It is unfair to treat someone as a mere means to one's own ends.

(3') Therefore, it is unfair to market goods to the specially vulnerable in ways that take advantage of their vulnerability.

Is this any better than the first argument? We don't think so. For the sake of argument, we will grant that premise (2') is true. The key claim here, we think, concerns the claim expressed in premise (1') – the claim that taking advantage of someone's vulnerability entails treating him as a mere means to one's own ends. This claim seems false. Consider again the case of the owner of the 'big and tall' store. In marketing to individuals who are unusually tall, the store owner *does* seem to be taking advantage of the fact that these individuals are unusually tall. But – here's the crucial question – in taking advantage of the unusual height of these individuals, is the store owner treating these individuals as a mere means to her own end? We doubt it. While it is true that she is using these individuals as a *means* to her own end (i.e., as a means to the end of making a profit), it does not seem she is treating them as *merely* a means to this end. After all (and assuming that she's an otherwise moral store owner), the owner treats these individuals with respect when they come into her shop. She doesn't coerce or compel them to enter her store, nor does she coerce or compel them into buying anything. She gives them the best advice that she can about which clothes best fit them (in her honest opinion) and which clothes look good. She would seem to be treating these individuals with respect – and, hence, *not* treating them as a mere means to her own end. (Of course, if she were to *lie* to these individuals or to *coerce* them into purchasing goods, then she no doubt *would* be treating them as a mere means to her own ends. But this, of course, is a different matter.) So, the mere fact that the store owner is taking advantage of the height and size of these individuals in her marketing does not entail that she is treating these individuals as a mere means to her own end. Hence, premise (1') in this revised argument is false. To market goods to the specially vulnerable in ways that take advantage of their vulnerability does *not* entail treating them as mere means to a marketer's own ends.

What if Brenkert were to press the objection again that tall people are *not* specially vulnerable – they're simply disadavantaged? In reply, we offer a further counterexample to (1'), one that *all sides* would agree involves a specially vulnerable group. Take, for example, a marketer who markets healthy food to young children as part of a government-sponsored marketing campaign to improve children's health. Suppose the marketing is done *entirely* altruistically: the marketer's sole motive for the campaign is to benefit the children; the company's financial considerations are not relevant. Given that the marketer is acting solely in the children's own interests, it seems a stretch to say that she is treating them merely as a means to her own end even if she *does* market to them in a way that takes advantage of their (say, cognitive and motivational) vulnerabilities. After all, given that she's acting solely in their own interests when marketing to them, for their own benefit, it seems that she is according them the proper moral respect. After all, a parent who acts in these ways to encourage healthy habits in her children is not condemned for somehow treating them as a mere means to her own end, even if (for example) their increased flossing results in lower dental bills for her. If our reasoning here is correct, then this type of marketing campaign shows that (1') is false while using a *clearly* specially vulnerable group. So, we conclude that, contrary to (1'), marketing goods to the special vulnerable in ways that take advantage of their vulnerability does *not* entail treating them as a mere means to one's own ends.[6]

Nevertheless, there may be another way that marketing to the vulnerable fails to show the targeted groups appropriate moral respect. Perhaps Brenkert views marketing to these groups as a type of exploitation – the act of using another's disadvantaged bargaining position to secure a disproportionate benefit for oneself. On this view, the vulnerable are exploited because marketers use the disadvantaged bargaining position caused by their vulnerabilities to secure higher profits than they otherwise could.

Admittedly, exploitative actions can generate great feelings of moral unease in us. Consider the following case, which we call *Quicksand*:

> One day, while trekking through the jungle, Allan encounters a man trapped in quicksand. The sinking man begs for Allan's help, but Allan is reluctant to offer it. He lacks the proper equipment and could not pull the man out without at least a little risk of falling in himself. After some deliberation, however, Allan offers to help the sinking man on the condition that if Allan helps him escape the quicksand, the man will become Allan's servant for the remainder of his life. As he sinks deeper, the man reluctantly agrees. Allan saves him and then demands that the rescued man adhere to their agreement.

Allan's behavior is morally condemnable: he has taken advantage of someone else's unfair bargaining position to secure a benefit for himself that he would otherwise have never been able to obtain. Indeed, it is hard to imagine any scenario beyond impending death where someone would forego all his other commitments to become someone else's servant. Our moral repulsion to these kinds of actions might explain why contracts made under such circumstances (i.e., extreme duress) are not legally enforceable.

But as clear as the verdict in *Quicksand* might seem, almost no actual cases of exploitation are this extreme or clear-cut. Other factors often render it more difficult to discern whether an action is properly classified as exploitative. To illustrate this point, consider some examples from Altman and Wellman (2009):

> "[I]magine a number of scenarios in which a taxicab company might offer to give people rides from Jericho to Jerusalem. In the first instance, imagine that masses of people walk the road from Jericho to Jerusalem, and that many of them get so tired by the midway point that they would gladly pay handsomely to be driven the rest of the way. There is no objection to a taxi company capitalizing on this fact, even if it charged very high rates for its service. The morality of these prices would be very different, however, if the desire for rides sprang from a different source. Imagine that the owner of the company set up a taxi stand halfway between Jericho and Jerusalem only because she knew that there was a gang of hoodlums who routinely attacked and broke the legs of people on that road. Under these circumstances, it would be impermissibly exploitative for the taxi company to charge the victims of the gang exorbitant prices for its services. The central idea here is that it is wrong to gain from charging prices which others accept only because they are the victims of injustice" (p. 155).

One of the most basic observations to make from these cases is that the *cause* of a person's disadvantageous bargaining position plays a crucial role in whether someone else taking advantage of this person's bargaining position qualifies as exploitation. There are limits to the influence of these factors, of course. Suppose in *Quicksand* that the pit was surrounded by signs reading "TURN BACK! QUICKSAND AHEAD!" Even if the jungle explorer became trapped because he was too hasty (or irrational) to properly heed these warnings, Allan still seems despicable for trying to take advantage of the explorer's pending death to acquire a servant. Nevertheless, a more general point still holds: when one enters a disadvantaged bargaining position as a result of one's voluntary actions, this can make an otherwise exploitative act morally permissible. Thus, exploitation is most likely to occur when one's being in a disadvantaged bargaining position is the result of the unjust actions of others or other factors which are beyond one's control.[7]

Here, Brenkert's view gains some plausibility because he establishes that the vulnerabilities possessed by the specially vulnerable are largely acquired through factors entirely beyond their control. Thus, Brenkert could use these observations about exploitation to present a third argument:

(1*) Marketing to the specially vulnerable uses their disadvantaged bargaining position to secure greater profits than the marketers could otherwise attain.

(2*) The specially vulnerable are in a disadvantaged bargaining position largely because of factors beyond their control.

(3*) It is unfair use a person's disadvantageous bargaining position to secure additional benefits for oneself when the other party's bargaining position results from factors largely beyond her control.

(4*) Therefore, it is unfair to market to the specially vulnerable in ways that take advantage of their vulnerability.

While this argument is formidable, we argue that it should be rejected because (3*) is false.

Let's return a final time to the owner of the 'big and tall' store. It is surely true that the store owner secures greater profits by marketing to unusually large and tall customers than she would if he did not target these individuals in his marketing campaigns. These individuals find themselves in a disadvantaged bargaining position with regard to these products because of factors largely beyond their control: being unusually large or tall, their clothing options are more limited than typical consumers, so a specialty store of this nature will appeal to them. However, despite these considerations, there does not appear to be anything wrong with the store owner marketing to these individuals. It even seems permissible for her to charge more for these clothes than the prices of similar products at more common retail stores. After all, it is common practice to charge a higher price for specialty products which are of a higher quality than those one could find at more general stores, and since these stores are catering to a smaller population of consumers, these higher prices are often necessary for their proprietors to make a profit and stay in business.[8]

Now, as a point of clarification, there is no doubt that the owner of a 'big and tall' store *could* engage in exploitative practices. If she discovered that she owned the only store selling certain sizes of clothes with a 100-mile radius and starting charging $300 for T-shirts in those sizes, we could very well accuse her of exploiting her customers. We might also accuse her of exploitation if her marketing campaigns contained misleading information or she tried to swindle her customers after they entered her store. But these practices of price gouging, deception, and manipulation are wrong *regardless* of what the targeted population is: their wrongness does not give us any reason to think that the ethics of marketing to the specially vulnerable is any different from the ethics of marketing to the general population.

Brenkert might mention here that the specially vulnerable are at greater risk of being exploited than the general population because they have more weaknesses for marketers to take advantage of. For various reasons, the specially vulnerable are not as able to recognize or resist marketing campaigns that are deceptive or manipulative. This point seems correct, but it is not enough to ground Brenkert's position. At most, these observations might justify being more cautious about what *kinds* of marketing to the specially vulnerable we permit, but they do not suggest that there is anything uniquely unfair either with marketing to the specially vulnerable or with marketing to them in ways which take advantage of their vulnerabilities. The specially vulnerable are not a unique moral category of market clients: the factors that make marketing to the specially vulnerable wrong are the same factors that will make *any* marketing wrong. If such marketing practices are *more* wrong when they target the specially vulnerable, then while the *degree* of wrongness may be higher (because the specially vulnerable are less able to resist these immoral marketing tactics than ordinary market clients), the *kind* of wrongness is nevertheless the same. Therefore, if the standards for marketing to the specially vulnerable are no different than the standards for marketing to ordinary market clients, then concerns about exploitation do not seem sufficient to ground an argument establishing that marketing to the specially vulnerable is unfair, even if it is done in ways which use the vulnerabilities of the targeted group to generate increased profit.

At this point, Brenkert might argue that we have missed the point. It's not *just* that the specially vulnerable have a disadvantaged bargaining position but also that they have a degree of incompetence as market clients that the marketer is aware of. This degree of incompetence as market clients is crucial, he might suggest, because it makes the specially vulnerable significantly less able than ordinary market clients to protect their own interests. With this idea in mind, Brenkert could argue that what makes it unfair to market to specially vulnerable people in ways that take advantage of their vulnerability is that marketing to these people in these ways takes advantage of individuals who are significantly less able than normal market clients to protect their own interests and that *this* is what makes these marketing practices unfair. In other words, it is unfair to market to specially vulnerable people in ways that take advantage of their vulnerability because in doing so we take advantage of people who are significantly less able than ordinary market clients to protect their own interests.

However, we don't find this argument convincing. To see why not consider the following question: why might it be unfair to take advantage of people who are significantly less able than ordinary market clients to protect their own interests? Brenkert suggests two responses, neither of which is sufficient for his needs. According to the first response, it's unfair to take advantage of people who are significantly less able than ordinary market clients to protect their own interests because such people have a "special liability (or susceptibility)…to be swayed, moved or enticed in directions which may benefit others but which may harm their interests" (p. 14). However, to reiterate an earlier point, the mere fact that such people are more likely to be swayed or moved in ways that benefit others but harm their own interests doesn't entail that there's anything *uniquely* wrong or unfair in marketing to the specially vulnerable in ways that take advantage of their vulnerability. At most, what it shows is that such people are at a greater risk than ordinary market clients of being harmed by *already immoral* marketing practices, practices such as misleading or deceptive marketing that are morally wrong for *all* market clients, whether specially vulnerable or not.

Hence, the most we can conclude from the observation that the specially vulnerable are significantly less able to protect their own interests (and thereby more likely to be swayed or moved in ways that benefit others but harm their own interests) is that we need to be even more careful when marketing to them to be sure that we're not engaging in *generally immoral* marketing practices: deception, price-gouging, and so on. But this conclusion does not entail the claim that Brenkert seeks to defend: it does not show that there's anything *uniquely* wrong or unfair about marketing to the specially vulnerable in ways that take advantage of their vulnerability. At most, it only shows that immoral marketing practices may wrong the specially vulnerable *more severely* or *more often* than these same practices would wrong normal populations.

However, Brenkert hints at a second reason that it may be unfair to take advantage of those who are significantly less able than ordinary market clients to protect their own interests. He suggests that people who are significantly less able to protect their own interests in this way might "not qualify or pass a certain threshold for market competition…[and] if the fulfillment of these conditions or threshold is required to be treated as a market client, then these individuals may not morally be treated as other clients in the market" (p. 14). This statement can be interpreted in two ways, but ultimately, neither one establishes that there is anything uniquely unfair (or otherwise immoral) about marketing to the specially vulnerable in ways that take advantage of their vulnerability. Suppose Brenkert means that the specially vulnerable are significantly less able to protect their own interests because they are no longer market clients. If this is the case, then the conclusion is *not* that marketing to such people would be morally *wrong* but rather that marketing to such people would not even be *possible*. Given that they're not market clients *at all* under this interpretation, then it follows that the specially vulnerable are not the kind of beings to whom the activity of marketing can even apply.

We consider this conclusion unacceptable for two reasons. First, it directly contradicts Brenkert's claim (which we analyze in section III) that it *can* be morally permissible for marketers to target the specially vulnerable, just so long as they don't do so in ways that take advantage of their vulnerability. Second, if it turns out that we can't market to the specially vulnerable at all, then Brenkert's view would have implausible implications. As we argue in the next section of the paper, there are strong consequentialist reasons in favor of marketing to the vulnerable: it is to their benefit, as well as to the marketers'. We have to be allowed to market to the vulnerable somehow, or else a lot of useful products that would help them will remain utterly unknown to them.

Brenkert is sensitive to the benefits of marketing to the specially vulnerable, and this first interpretation of his remarks contradicts one of his key claims. Thus, we suspect that this interpretation deviates from his intended meaning. There is, however, a second interpretation that appears more consistent with Brenkert's other claims: perhaps he means that the specially vulnerable *are* market clients but that they are a special category of market clients to which separate moral standards apply.[9] Their difficulty in protecting their own interests generates special moral obligations that are not present when marketing to ordinary market clients, but it may still be possible to market to them.

Intuitively, the specially vulnerable do seem like a unique population that raises special moral concerns, but we believe the preceding sentiment rests on a misdiagnosis of what makes this population unique. The specially vulnerable are unique because their existence raises concerns about recklessness and negligent marketing that are not raised by the presence of ordinary market clients. Marketing practices that are ordinarily permissible may prove deceptive or manipulative when aimed at the specially vulnerable. Deception, manipulation, coercion, and other similar practices are *always* wrong, however, so we once again reach the following conclusion: while the specially vulnerable are *at greater risk* for being harmed through immoral marketing practices, there is no unique class of moral concerns that applies to them. Accordingly, there is nothing uniquely unfair about marketing to them in ways that take advantage of their vulnerability: such practices will sometimes be wrong, but they will be wrong for reasons that apply to all market clients. If, for example, marketing to them in this way manipulates them into purchasing a product, then this act would be wrong for the same reason it would be wrong to manipulate an ordinary market client into purchasing a product—because (at least *prima facie*) manipulating *anyone* is wrong. Consequently, it is inappropriate to classify the specially vulnerable as a distinct moral group, although marketing to them will often demand that we be more cautious than we would be toward other populations.

Recall that this fourth argument rests on the following claim: marketing to the specially vulnerable is wrong because it is unfair to take advantage of those who are less able than ordinary market clients to protect their own interests. Since we have been unable to find adequate support for this claim, we conclude that this fourth argument does *not* show that marketing to the specially vulnerable in ways that take advantage of their vulnerability is unfair.

Having now refuted the four different arguments that we can extract from Brenkert's article, we conclude that Brenkert has failed to establish the claim that marketing goods to the specially vulnerable in ways that take advantage of their vulnerability is unfair. Moreover, since he claims that this unfairness is what makes the activity morally wrong, then for all Brenkert has shown, it is morally *permissible* to market goods to specially vulnerable populations in ways that take advantage of their vulnerability.

III

We now turn to Brenkert's claim that it *can* be morally permissible for marketers to target the specially vulnerable so long as they don't do so in ways that take advantage of their vulnerability. Brenkert writes:

> "What are the implications of … [my] analysis? A first interpretation might be that marketers may not market to the specially vulnerable at all. This is mistaken. There are obviously cases in which those who are specially vulnerable, e.g., the elderly or the grieving, require various products and services and would benefit from learning about them. The preceding argument contends that any marketing to the vulnerable cannot morally be undertaken in a way which trades upon their vulnerabilities" (p. 15).

To be clear, we take the issue here to be whether it is ever morally permissible for marketers to target the specially vulnerable *as a single group*. The issue is not whether marketers may target them *as part of the larger target population*. To see what we mean, distinguish between goods whose intended audience is the general population (a population which would *include* the specially vulnerable) – goods such as apples, lawnmowers, and washing machines come to mind – and goods whose intended audience is solely the specially vulnerable. An example of the latter kind of good is panic buttons designed for the elderly to be able to call for help in cases of emergency. Panic buttons are not intended for any other group besides the specially vulnerable.

With this in mind, Brenkert wants to allow that it can be morally permissible for marketers to market panic buttons to the elderly, so long as they don't do so in ways that take advantage of their vulnerability. In response, we ask whether such marketing is even *possible*: is it even possible for panic buttons to be marketed to the elderly without at least *some* advantage being taken of their vulnerability (e.g., their frailty, their increased likelihood of falling down and being without immediate help)? We don't see how this can be done. Moreover, if it is impossible for marketers to market goods to the specially vulnerable without taking advantage of their vulnerabilities, then surely it is a moot point for Brenkert to claim that it is morally permissible for marketers to market to these individuals so long as they don't take advantage of their vulnerability. His claim about when it is moral permissible for marketers to target the specially vulnerable would have no practical import whatsoever.[10]

In reply, suppose the target audience for marketing panic buttons was not the elderly themselves but their *families* instead. Would *this* be an example of marketing goods for the specially vulnerable (since they're the intended recipients of the panic buttons) in ways that do not take advantage of their vulnerabilities (since the elderly are not among the target audience of the marketing)? We don't think so. Imagine the following advertisement slogan: "What if your elderly mother falls down the stairs when she's alone? How would she get help?" While we might grant that this does not take *direct* advantage of the elderly's vulnerability (since they're not the target audience of the marketing), it surely takes *indirect* advantage of their vulnerability. It does this by taking advantage of the vulnerability of the family members themselves; it trades on their fear of losing their mother, seeing her injured, and so on. But it is hard to see how taking *indirect* advantage of the elderly's vulnerability could be any better morally than taking *direct* advantage of their vulnerability. Hence the marketing of panic buttons to families of the specially vulnerable would be just as morally wrong, on Brenkert's view, as marketing them directly to the elderly themselves.

There is, however, another way that Brenkert could resist our analysis in this section: perhaps he would argue that it is, in fact, morally *impermissible* to market panic buttons to the elderly precisely because marketing these panic buttons cannot be done without taking (at least, indirect) advantage of the elderly's vulnerability. We earlier mentioned that the specially vulnerable seem more at risk of being manipulated and misled by advertising and that this might justify a cautionary approach to marketing to these populations. Perhaps Brenkert could claim that because the appeal of panic buttons relies exclusively on the vulnerabilities of the elderly, there is no way to market this product in a morally permissible way. Given Brenkert's awareness that some marketing to the specially vulnerable can be to their benefit, this move is surely one he would resist, but it may also be the only maneuver available to him if he wishes to keep his position consistent. In any case, we find this position indefensible for two reasons.

First, if Brenkert's position actually entails that these kinds of products cannot be marketed at all, the negative social consequences will be severe. Panic buttons will not be the only items we cannot market. After all, how could we market life insurance effectively without targeting groups that are more likely to die than others? Moreover, why would we consider *not* targeting those groups – these are precisely the people that need to carefully consider whether they have adequate life insurance. Thus, marketing to these individuals seems quite appropriate. We can make the same observation about marketing panic buttons to the elderly: these individuals seem like precisely the people who have a reasonable need for this service. Because marketing is so often examined with regard to how it increases profits, it can be easy to forget that it has more holistic benefits. Specifically, it raises consumers' awareness of available products and services and causes them to seriously consider whether their lives would be better if they were to purchase a particular product or service. In this way, marketing can be both informative and helpful for consumers, making it potentially beneficial for all parties involved. Although Brenkert may be right to resist a purely consequentialist analysis because of the morally relevant considerations it omits, he appears to have overlooked the salience of the negative social consequences entailed by his position.

Second, there is sometimes nothing objectionable about using facts about a potential customer's special vulnerabilities as a means of making a product appealing to them. Suppose someone tries to sell an elderly woman a panic button by mentioning that her old age puts her at greater risk of personal injury than other people and suggests that these situations can often be life-threatening. The salesperson even cites some statistics to support her claims and then stresses how panic buttons assure that their buyers have some guaranteed assistance should any such situation arise. Is there really anything wrong with this activity? Clearly, the salesperson is highlighting the customer's special vulnerability to try to sell the product, but emphasizing this information seems perfectly appropriate. In the absence of any manipulation or statistical inaccuracies, there is nothing that makes this marketing technique any morally different from trying to sell Gatorade to an athlete by describing its active ingredients and how it helps one's body recover from rigorous exercise. Now if the elderly woman were senile and therefore unable to make a rational decision even after being presented with all the relevant facts, it would be ethically dubious to market to her. However, it would be impermissible to market to her not because it is wrong to market to her in a way takes advantage of her vulnerability but because she is not an individual who can properly participate in the market at all.

As Brenkert mentions, morally justifiable market transactions require that market clients have certain competencies, including the ability to make rational choices after considering the characteristics of various products which they can buy.[11] Brenkert specifically identifies "the severely mentally ill, incompetent elderly and young children" as those who clearly cannot be market clients. Thus, it might appear that Brenkert's position regarding the cognitively vulnerable is correct, but this appearance is misleading for two reasons. First, the reason why it is in fact impermissible to market to these specially vulnerable people in ways that take advantage of their vulnerability has nothing to do with *how* the marketing occurs. Any marketing to these groups is impermissible because they are not market clients – they are not individuals to whom one can market or sell products. Second, Brenkert defines the cognitively vulnerable to include "those who lack education and shopping sophistication" (p. 13). But (unless more is said) these individuals are not so cognitively deficient that they are not market clients: they seem capable of participating in the market as consumers even though they will be unlikely to find the bargains that a keener, more sophisticated shopper would locate. Hence, while it may be impermissible to market to a subset of the cognitively vulnerable (i.e., those who are not market clients), there remain morally permissible means of marketing to others who are specially vulnerable, regardless of whether the marketing takes advantage of their vulnerabilities.

IV

We have critiqued two of Brenkert's (1998) key claims – namely, that marketing goods to the specially vulnerable in ways that take advantage of their vulnerability is morally wrong because it treats them unfairly, and that marketers can target the specially vulnerable but not in ways that take advantage of their vulnerability. We argued against the first claim by examining Brenkert's reasoning and evaluating four different arguments that could establish his conclusion. All of them failed, and we therefore conclude that Brenkert has not given us convincing reasons to regard marketing to the specially vulnerable in ways that take advantage of their vulnerability as any morally different than marketing to the general population.[12] While we acknowledged that the specially vulnerable may be less capable of resisting manipulative or misleading marketing techniques, these techniques are impermissible regardless of which population they target. Thus, the basic concerns about marketing to the specially vulnerable are the same as those that concern the general population: portray the product accurately, do not omit relevant information, do not try to deceive the consumer, and so on. Ultimately, if our goal with respect to the specially vulnerable is to protect them from being victimized by immoral marketing practices, then our task is not to develop a separate moral standard regarding how we can permissibly market to the specially vulnerable but instead to improve our means of identifying and preventing marketing tactics that are deceptive, coercive, manipulative, or otherwise misleading.[13]

To clarify, Brenkert's reasoning supports neither the notion that the specially vulnerable are a special class of people that marketers need to be concerned about nor that a special kind of moral violation can apply to them. Instead, we think that his reasoning reveals that certain marketing practices – those that are manipulative, deceptive, and so on – are wrong regardless of which group they target but that the specially vulnerable are more susceptible to being harmed by these practices. However, while the specially vulnerable will often be at greater risk for being harmed by manipulative or deceptive marketing, the difference here is one of degree rather than kind because ordinary market clients will also be susceptible to this sort of marketing (although generally to a lesser degree).

We argued against Brenkert's second claim in two ways. First, we questioned whether it is actually possible to target the specially vulnerable in marketing campaigns in ways that do not (at least indirectly) take advantage of their vulnerability. We suggested that for many useful products, there is no clear way to do this. Second, drawing partially on our earlier arguments, we claimed that it is possible to target the specially vulnerable and highlight their vulnerabilities to make products or services more appealing in ways which are morally permissible.

The upshot of our analysis is that those who have accepted Brenkert's arguments about marketing to vulnerable populations are mistaken. Brenkert and his sympathizers must provide some more substantive reasons for us to conclude that marketing to the specially vulnerable in ways that use their special vulnerabilities to increase profits is any morally different than marketing to the general population in ways which highlight their broader vulnerabilities to increase profits. If this cannot be done, then the most noteworthy objective in marketing to the vulnerable is keeping the marketing as honest, accurate, and non-manipulative as possible, a goal that presumably underlies all ethical marketing practices.

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Notes

[1] For some examples, see Baker, Gentry, and Rittenburg (2005), Walsh and Mitchell (2005), and Mansfield and Pinto (2008).

[2] Gaski (2001) is a notable exception. Smith (2001) bases some of his arguments on Brenkert's ideas and analysis. Gaski raises criticisms against Smith (pp. 29-30) that he believes could likewise be lodged against Brenkert.

[3] On pages 8-9, Brenkert distinguishes between disadvantaged groups and specially vulnerable groups. The difference, roughly, is that while the disadvantaged are (merely) impaired or unequal in some way with respect to others in their attempt to obtain various good and services, the specially vulnerable are (in addition) open to suffering harm from those who market goods to them.

[4] We thank an anonymous reviewer for raising a concern that led to this paragraph.

[5] Kant (2002), p. 230.

[6] What if Brenkert was to respond here by arguing that we're appealing to a utilitarian justification of the permissibility of marketing to young children in this way, a justification that he wants to reject? In reply, Brenkert seems to imply that a justification of marketing based on maximizing "total utilities" is wrong because this sort of justification "permits treating some individuals merely as a means to the ends of others" (p. 10). But as our example of the

government-sponsored healthy eating campaign to young children shows, the mere fact that a justification for marketing is based on maximizing total utilities does *not* entail that the people being marketed to are being treated merely as a means to one's own ends. (We thank an anonymous reviewer for suggesting the example of a government-sponsored campaign to young children.)

[7] Admittedly, whether a particular situation is exploitative may hinge significantly on what theory of exploitation one endorses. For instance, while some may think benefiting from another's disadvantaged bargaining position is sufficient for the action to be exploitative, others may claim that *excessively* benefiting from other's bargaining position is necessary for the act to be exploitative. We do not intend here to commit either ourselves or Brenkert to any particular theory of exploitation. The prior discussion serves only to highlight some general features that should be common to all theories of exploitation (e.g., inequalities between the bargaining positions of the transacting parties, the stronger party taking advantage of the weaker party), and our refutation of this strand of argument does not hinge on endorsing a particular definition of what constitutes exploitation.

[8] Note that the claim that tall persons are (merely) disadvantaged rather than specially vulnerable won't help Brenkert here. All we're trying to do is show that (3*) is false. In order to do this, we need to come up with a situation in which it can be *fair* to use a person's disadvantageous bargaining position to secure additional benefits for oneself when the other party's bargaining position results from factors largely beyond her control. Plausibly, the marketing strategy of the 'big and tall' store owner fits this bill.

[9] We thank an anonymous reviewer for pressing us to address Brenkert's statement in greater detail.

[10] Perhaps Brenkert might argue that the properties we've chosen to highlight the elderly's vulnerability – their fragility, increased likelihood of falling down, and so on – are not the relevant kinds of properties. He might argue that he can allow that it is perfectly permissible – and, indeed, *possible* – to market to the elderly by pointing out this sort of information, but it would be a different matter if the marketers targeted the cognitive difficulties such a population faces, seeking to confuse and instill fear in them. In reply, we wonder whether a marketer could 'point out' this sort of information *without* instilling, and thereby trading on, the elderly's fear of falling down or their fear of being fragile? If not, then our point that it becomes (on Brenkert's analysis) *impossible* to market to the specially vulnerable still stands.

[11] Brenkert also identifies several other competencies that market clients must have (p. 12), such as awareness of legal rights and the ability to shop at more than one place.

[12] In section III, we noted a probable exception to this with regard to marketing to those with cognitive vulnerabilities that prevent rational choice.

[13] Sher (2011) proposes a framework for identifying marketing tactics that are immorally manipulative that serves as a helpful and recent example of how we might approach this task.

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