2

IF YOU MAY DO IT FOR FREE, YOU MAY DO IT FOR MONEY

We're going to spend some time clarifying just what our thesis is and what the commodification debate is about. We need to do so in part because many of the people who participate in the debate get the debate confused. Simply by clarifying what's at stake, we'll take care of perhaps half of the cases we've seen the anti-commodification critics complain about.

Our Thesis

No one thinks that literally everything and anything should be for sale under any circumstances, no matter what. Everyone thinks there are at least some cases in which certain things should not be for sale.

Despite this admission, our title *Markets without Limits* is not misleading. There is an important sense in which we do advocate markets with unlimited scope. Our view of the scope of the market can be summarized as follows:

> Markets without Limits:
>
> If you may do it for free, then you may do it for money.

To put it in a more long-winded way, if you may have, use, possess, and dispose of something (that does not belong to someone else) for free, then—except in special circumstances—it is permissible for you to buy and sell it. Another way of expressing our thesis is that the market does not *transform* what were permissible acts into impermissible acts. It does not *introduce* wrongness where there was not any already. Yet another way of expressing this is that, in the debate on commodification, to produce a successful argument for a limit on markets, the fact

that something is on the market must cause or contribute to the wrongness. It must feature in an explanation for why it is wrong.

To illustrate these ideas, consider the following two markets:

1 *Child Porn*. A market in which people sell pornographic images of young children.
2 *Nukes*. A market in which arms dealers sell nuclear weapons.

We agree that child porn and nuclear weapons should not be for sale. But the problem with these markets isn't the markets themselves—it's that the items for sale should not be possessed, period. It's wrong to possess child pornography even if you acquired it for free. The wrongness of markets in child pornography does not originate in the market, but in the existence of the traded item in the first place.

We think the same goes for nuclear weapons, though this claim is more controversial, and we will not defend it here. We think no country should have nuclear weapons. But suppose we are wrong—suppose relatively peaceful countries like England and France may permissibly have nuclear weapons, even if Myanmar and the average citizen may not. If so, then our view is that England and France may sell nuclear weapons to one another, but not to Myanmar or the average citizen.

So, we agree that buying and selling is wrong in cases 1 and 2, but this is because *possessing* the items in question is wrong, not because buying and selling introduce wrongness where there was none to begin with. That it's wrong to buy and sell these items is a trivial consequence of their being wrong to *have*.

Thus, we agree to the following principle:

> The Principle of Wrongful Possession:
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> If it is inherently morally wrong for someone to possess (do, use) X, then (normally) it is morally wrong for that person to buy or sell X.[1]

As far as we can tell, everyone in this debate agrees to the Principle of Wrongful Possession. It follows trivially, on that principle, that if someone inherently shouldn't have something, then he or she should not sell it or buy it. Because child porn shouldn't exist, it also shouldn't be for sale.

Similarly, consider the case of dog fighting. For the sake of argument, let's agree that dog fighting wrongfully mistreats dogs. If so, then we agree that people shouldn't sell tickets to dog fights or bids on dog fights. But, again, the reason people shouldn't sell dog fight tickets is that dog fights shouldn't exist. It would be wrong to host dog fights *for free*. Selling tickets doesn't *introduce* wrongness where there wasn't any to begin with.

Or, to take another obvious example, it's wrong to pay someone to murder someone else, but that's just because it's wrong to murder people, period. Perhaps paying someone to kill another person might *amplify* the wrongness, under certain

circumstances, of killing, but it's not that the market in killing introduces wrongness into what was otherwise a permissible act.

Or, to take another example, Michael Sandel complains about parents trying to sell naming rights to their children. He worries children might end up being named "Pepsi Peterson" or "Jamba Juice Jones."[2] But, in our view and in Sandel's, the problem here is that these names are humiliating. If so, then parents shouldn't give their kids these names, period, for free. If so, the market for naming kids Pepsi is wrong because naming kids Pepsi is wrong. The problem isn't the *market*. In contrast, Brennan named his children Aiden and Keaton. Since it was permissible for him to do so for free, it would be, in our view, permissible for him to do so for a fat check from Pepsi.

Or, as a final example, drawn from the list above, we agree that it's wrong for students to buy essays from AstonishingPapers.com and then submit those papers as if they were their own. But the problem here isn't the *buying*. It's that the students plagiarize. We've both seen plenty of students plagiarize essays they acquired for free. The market in academic dishonesty is wrong only because academic dishonesty is wrong. A fortiori, if the students purchased papers from AstonishingPapers.com without any intention to pass these papers in as their own, they would do nothing wrong at all. But if the students acquired those same papers for free and then passed them in as their own, they would act wrongly. Thus, imagine that we decided, as an experiment, to pay AstonishingPapers to write a five-page essay on some silly topic, such as "the importance of purple fruit." We have no intention of submitting this work as our own; we just want to see what they come up with. If we never try to pass off someone else's work as our own, then it is perfectly permissible to buy a paper from them.

When critics of the market, such as Sandel or Satz, write books about what should not be for sale, what they intend to do is to identify things that are normally permissible for adults to possess, own, have, occupy, provide, or use, but which are not permissible for those adults to trade, sell, and/or buy. They intend to discuss cases where markets really do transform otherwise permissible activities into wrongful actions. They intend to identify cases where the wrongness of buying and selling an object originates in the buying and selling, not in the object itself.

So, for instance, Sandel of course thinks it is permissible for you to stand in line at Disney World. He even thinks it is permissible for you to hold a spot in line for your kids, only to jump out at the last minute so they can ride the roller coaster in your place. But he doesn't want people to sell line-standing services. You can hold the line for free, but you can't sell your spot.

Elizabeth Anderson has no problem with you having casual sex or with you serving, for free, as a pregnancy surrogate for your infertile sister. But she doesn't want people to sell sex or surrogacy. For her, you can give it away, but you can't sell it—and others shouldn't buy it.

Sandel and Anderson would have no problem with you deciding to donate a kidney to a needy stranger for free. But they think that selling your kidney would

show disrespect for the human body, as you would be treating your body like a mere commodity.

Filmmaker Morgan Spurlock has no problem with *Iron Man* series writers deciding to have Tony Stark drive an Audi supercar, so long as the *Iron Man* series producers do this for free, because they happen to like Audis or because they think Tony Stark would drive a car like that. But Spurlock thinks it is problematic for the producers to turn their movie into a paid advertisement.

We disagree in every case. We will argue that if you can do it for free, you can sell it.

Incidental Vs. Inherent Wrongness

There are many cases where—thanks to special circumstances—it can be wrong for particular people to buy and sell certain things that would otherwise be permissible to buy and sell. We want to explain here why this does not conflict with our thesis. In fact, it's just an extension of it.

Consider two new cases

3 *Civic Duty, for Profit.* It's November 8, 2016, election day in the United States. Mary doesn't plan to vote. Her friend Natalie—a long-time activist—says, "What if I pay you $100 to vote a straight Democrat ticket?" Mary agrees and votes accordingly.
4 *But You Promised!* Kevin and Jane are in the process of moving. Kevin wants to have a yard sale to reduce the amount of stuff they have to pack. Jane is sentimental and wants to keep as much stuff as possible. After some discussion, Kevin promises Jane that he will not sell any of his vintage cameras, even though he does not want to keep them all. However, during the yard sale, he sells one for $50 behind her back. Jane never notices, but he knows she would be enraged if she learned he'd sold the camera.

Most people believe that selling is wrong in both cases. They think it is wrong for Mary to sell her vote (and for Natalie to buy it) and wrong for Kevin to sell the vintage camera.

But most people also think the cases are importantly different. Most people would say that selling a vote is *inherently* wrong. Votes are simply not the kind of thing that should be for sale. (We disagree, but right now we're just reporting what others tend to think.)

In contrast, most people think there is nothing inherently wrong about selling a vintage camera. Instead, what makes selling wrong in this particular case is that Kevin promised not to do so. So, it's just incidental, accidental, or contingent that selling a camera was wrong here. In short, the difference here, most people would say, is that votes are just *not the kind of thing that should be for sale*, while cameras are the kind of thing that may be sold, except in special circumstances.

Consider another example:

5 *Batterer*. Orin appears at Dick's Sporting Goods and asks for a baseball bat. He loudly explains that he plans to use the bat to beat his cheating girlfriend to death.

This case is more like case 4 than case 3. It's wrong to sell Orin the bat, but that's just because we know Orin plans to kill someone with it. Bats are not the kind of thing it's wrong to sell; it's just wrong to sell one to someone you know will use it to harm an innocent person.

Consider another example:

6 *Hot iPad*. Suppose you are walking down the street, when a shady-looking guy offers to sell you a used iPad for half price. You ask if it's stolen, and he says, "So what if it is? Do you want it or not?"

Again, in this case, most people would judge that it's wrong to buy the iPad and wrong for the thief to sell it. However, it's not because iPads are inherently the kind of thing that should not be for sale, but because the iPad *isn't his to sell.*

Consider a final case:

7 *Hurt Kid*. Nate's child is badly hurt. But, rather than take him to the hospital, Nate spends the next hour trying to sell his car.

There's nothing wrong with selling cars. The problem with Nate isn't that he's trying to sell something that should not be for sale, but that he should be doing something else at that moment other than trying to sell his car.

But You Promised, Batterer, Hot iPad, and *Hurt Kid* are each cases where it would be wrong to sell something, but not because the thing being sold is inherently the kind of thing that should not be for sale. Rather, in each case, there is some other moral duty—a duty to respect promises, a duty not to cause harm, a duty to respect property, or a duty of care—that incidentally attaches to that particular transaction or that situation. We accept that these kinds of case are genuinely cases where it is wrong to buy and sell certain things. So, we agree that it's wrong to sell the items in question in cases 4 through 7. So, in that sense, we accept limits to markets.

But, call these *incidental limits*. In each of the cases, the good in question is normally something that it's permissible to sell.

In case 4, Kevin promised to keep the cameras, so he should keep them. That's not very interesting. Almost any otherwise permissible act can be rendered impermissible if one promises not to do it. It's permissible for us to listen to thrash metal today, but if we promised our loved ones that we'd abstain from listening to thrash metal today, it would then become wrong to listen to it. That doesn't

show there are limits to what kinds of music it can be permissible to listen to—it just shows that promises can introduce obligations where there were none. It's permissible for you to sing in the shower, but not if you promise not to. It's permissible for you to eat spaghetti, but not if you promise not to. It's permissible for you to use a red toothbrush, but not if you promise not to. Etc.

In case 5, it would be wrong to give Orin a bat for free, because Orin will use it to hurt someone. In case 6, it would be wrong to give away or take the iPad for free, because the iPad is stolen. In case 7, it would be wrong to spend that time trying to give away one's car, because doing so means one will neglect one's child. But these are clearly special cases. It's not that the things in question are inherently wrong to buy and sell, but just that these special circumstances where buying and selling *anything* would be wrong.

Almost any otherwise permissible act can be rendered impermissible by such circumstances. So, again, it's normally permissible for me to listen to thrash metal, but not if doing so comes at the expense of feeding my hungry child. Here, the issue isn't that listening to thrash metal is inherently wrong, but rather that, in my special circumstances, I should be doing something else.

In contrast, when people say that votes or organs should not be for sale, they mean that votes or organs just are the kind of thing that people should not buy or sell. Even if we specify that no one will be harmed by Mary selling her vote to Natalie, most people would still judge that it is wrong to buy and sell individual votes. (We disagree.)

Three Kinds of Limits

To summarize, we have so far discussed three kinds of limits to markets:

A *Limits Due to the Principle of Wrongful Possession*: There are some things that people inherently should not have—indeed, that should not even exist—and, as a consequence, people should not buy or sell.

B *Incidental Limits to the Market:* There are cases where particular people should not sell particular things—things that normally would be permissible to sell—because of special circumstances, such as that they promised not to sell those items, or the items will be dangerous in these special circumstances, or because they have pre-existing duties that require them to do something else other than engage in buying or selling.

C *Inherent Limits to the Market:* There are some things that people are normally allowed to own or possess in some way, but which should not be for sale.

A and B are in some sense limits on the market, but only in boring, trivial ways. A and B are not what anti-commodification theorists have in mind when they say we ought to limit the scope of the market. C is where the action is.

We accept A and B, but reject C. We think there are no *inherent* limits to the market. If you can have it, you can buy it; if you can give it away to someone, you can sell it to her.

To illustrate, we think that if it is morally permissible for you to vote a particular way, then it is also morally permissible for you to be paid to vote that way or to pay someone to vote that way.[3] We think that if it is permissible for you to have sex with someone for free, then it is permissible to buy and sell sex with that person. We think that if it is permissible for you to stand in line at the amusement park, then it will by default be permissible for you to accept money to stand in line for someone else. We think that if it is permissible for you to choose to act as someone's slave for the rest of your life for free, then it would also be permissible for you to take money to do so.

Notice that many of these claims take a conditional form: if it is permissible to do X for free, then you may do X for money. In many of these cases, we don't know whether it is permissible to do X for free. So, for instance, we aren't sure whether it is morally permissible for you to choose, voluntarily, to become someone else's slave for the rest of your life. We can come up with good arguments for and against this. We don't know how to balance these arguments. That said, we think that whatever wrongness exists in voluntary *paid* slavery emerges from voluntary slavery, not from the payment. If it turns out to be wrong for you to voluntarily accept $1 million to be someone's slave, then what makes it wrong is that you shouldn't choose to be someone's slave period, not that you received $1 million to do so. The market does not figure into the explanation of what makes this transaction wrong.

We agree that, say, a married man should not buy sex from a prostitute without his spouse's permission. But this is because he should not have sex with someone else, period, without his spouse's permission. The problem here isn't *prostitution*, but *cheating* on his spouse.

Or, to extend this example, we agree that a person should not buy sex from pimps who deal with involuntarily enslaved, trafficked women. But here the problem is one of wrongful possession—the trafficker shouldn't *own* the women to begin with. The market doesn't introduce wrongness where there wasn't any. It would be wrong to have sex with the trafficked women against their will even if the pimp offered them to you for free, and even if he never tried to make any money from the women.

We think you may buy or sell line-standing services, unless there are incidental reasons or special circumstances that explain why not. One such special circumstance would be if the park forbade such services. In that case, you would have promised not to sell line-standing services as a condition of buying your admission ticket. But this is incidental—it's no different from promising not to sell your cameras in case 4. Another special circumstance would be if, during the time you are standing in line, you promised to attend your friend's birthday party. Here, you shouldn't sell line-standing services at that time, not because it's inherently wrong

to sell line-standing services, but because (incidentally) you promised to be at a birthday party instead.

We think it is permissible for you to sell a kidney. Indeed, we hope you do. (It's illegal in most places to do so, but we hope you break this law if you can get away with it.) Many people are convinced that kidney selling is inherently degrading and inherently expresses disrespect for the human body, but, we will argue, they are mistaken.

Similarly, we think buying a subscription to WatchMyGF.com is immoral, but not because it is inherently immoral to buy and sell pornographic images of adults. *Playboy*, *Penthouse*, and *QXMen* are permissible businesses, while WatchMyGF.com is not. The problem with WatchMyGF.com is that the images are stolen. Our opposition to WatchMyGF.com is the same as our opposition to the sale of stolen watches. Buying and selling stolen watches is wrong because it's wrong to exchange stolen items for free, not because it's wrong to buy and sell watches. In the case of WatchMyGF.com, buying and selling the stolen images doesn't transform what was otherwise a permissible action into a wrong action. It would be wrong of you to view the images on WatchMyGF.com for free.

We think it is wrong to sell crystal meth to fifth graders, but it's not because the market corrupts what was otherwise a permissible act. You shouldn't give crystal meth to fifth graders for free. In contrast, if there are cases where you could permissibly possess crystal meth and give it to someone else, then in those cases, we would view it as permissible to buy and sell crystal meth.

And so on. Our view is that—except in weird circumstances, like when one promises not to buy and sell—if it is permissible to have, possess, and give away something, then it's permissible to buy and sell it. Sure, there are incidental limits to what we can buy and sell, but there are exactly the same incidental limits to all actions that would otherwise be permissible.

Bad to Worse, If Not Okay to Bad

There are certain activities people shouldn't do and things they shouldn't have, period, and markets in those activities might make them worse. Incentives incentivize. Child pornography is bad even when not traded on a market, and it's likely that a market in it makes it worse, by increasing the number of children who are harmed.

While we don't think a market transforms permissible activities into wrongful activities, we agree that markets in wrongful goods and services can sometimes make things even worse. Murder is bad, and a market in murder might compound the problem. We don't want to industrialize the production of murder.

On the other hand, in principle, there could be cases where markets in bad things might make things better. Imagine that some new drug is developed, a drug that, suppose, everyone ought to avoid. People only give the drug to each other as gifts. The drug is poorly made, and, as a result, causes additional health problems

from impurities. It's at least possible in this case that a fully legal, regulated market in that drug would make things better, not worse. Suppliers might produce higher quality, higher purity drugs in order to avoid lawsuits. And use might go down, not up, after the drug is legalized, just as drug use and its associated dangers dropped in Portugal and Colorado after they legalized certain drugs.

Our point here is that even if there are goods and services that ought not be possessed in the first place, it's an open, empirical question whether commodifying those goods and services might improve upon the status quo. To find out, we'd need to see how such markets would operate in practice. Examining just when this is so goes beyond the scope of our book. Still, we want to note that the question, "Is it a good idea to commodify things that no one ought to have?" doesn't wear its answer on its sleeve.

Notes

1 The word "inherently" is doing work in this principle. After all, consider a case where Bob promises to sell his cameras, but then does not. Here, Bob should not possess his cameras any longer, but it is permissible, indeed, obligatory, for him to sell them. Without the "inherently" qualifier, this principle would be false.
2 Sandel 2012a, 188.
3 Brennan first argued for this position in Brennan 2011, 135–60.