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WHAT THE COMMODIFICATION DEBATE IS AND IS NOT ABOUT

Seven Kinds of Objections to Commodification

In this book, we will consider and refute a wide range of arguments against “commodification,” i.e., against allowing certain things to be for sale. Here, we provide a taxonomy of the kinds of objections people raise. We will explain each of these kinds of objections, and the arguments behind them, in greater detail in subsequent chapters.

- A *Rights Violations*: Markets in some goods or services might violate people’s rights. So, for instance, there should not be markets in stolen watches, child porn, or slaves, because these violate people’s rights.
- B *Harm to Others*: Markets in some good or service might lead to greater violence or might cause harm to innocent bystanders. So, for instance, perhaps people should not be able to sell pit bulls, because pit bulls are extremely dangerous, and pit bull owners impose too much risk upon their neighbors.

We accept that A and B can impose limits on the market, but only because A and B determine what kinds of things people can have in the first place. A and B explain not why commodifying pit bulls or child porn are wrong, but instead explain why people should not have pit bulls or child porn at all. A and B limit not the scope of the market in particular, but instead the scope of what can be possessed or done, period. As we’ve said before, if you can have it for free, you can buy it; if you can give it to someone for free, you can sell it to her. Anti-commodification theorists intend to find limits to the market in which the market itself is the thing that introduces wrongness where there wasn’t any to begin with.

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C *Exploitation*: Markets in some good or service might encourage the strong to exploit (to take unjust advantage of) the vulnerable. Some anti-commodification theorists oppose markets in women's sexual services or in organs for these reasons—they worry that such markets will allow the rich to take advantage of the poor. Some Marxists oppose *all* wage labor, because they think paying people to work is inherently exploitative.

Our view is that there is a *prima facie* duty to avoid exploitation. (As a result, we think certain contracts are unconscionable and should not be enforced.) However, this duty will only incidentally make certain market transactions immoral. There are no *kinds* of goods and services that are inherently exploitative. Instead, there are just particular cases where a particular transaction involves immoral exploitation. Anti-commodification theorists who rely upon exploitation objections want to say that certain kinds of things—such as women's sexual labor—should not be for sale, period. For them, it will be important to prove that all such sales inherently involve wrongful exploitation. Otherwise, at best, they will not have shown that it's wrong to buy that *kind* of thing, but just that it is being sold the wrong way, and is in principle something that could be for sale.¹

D *Misallocation*: Markets in certain goods and services might cause those goods to be allocated unjustly. So, for instance, Michael Sandel thinks line-standing services and paying to avoid queues are immoral because they are inegalitarian—rich people can pay to avoid standing in line, but the poor often cannot. Or, consider that Ivy League schools and their analogs sometimes admit lower quality students—students who would normally be denied admission, because the students have rich or celebrity parents. Legacy children—children of alumni—have lower admissions standards, because the schools expect the parents will donate more money to the schools. One might describe this pejoratively as the parents “buying” their children admission to prestigious colleges.

E *Paternalism*: Markets in some good or service might cause people to make self-destructive choices. So, for instance, the Center for Science in the Public Interest lobbies the government to prohibit the sale of many different food items that people want to consume, on grounds that people will make unhealthy choices if such foods are available. Or, one might think it is immoral to buy and sell crystal meth, because using crystal meth is harmful to oneself.

As with exploitation arguments, we will show that whenever these kinds of arguments appear to succeed, they succeed only incidentally, or they just show that certain things should not be possessed at all. Anti-commodification theorists will not be able to show, however, that there are certain kinds of things that it is acceptable to have or do for free but which must not be placed on the market.

- F *Corruption*: Participating in certain markets might tend to cause us to develop defective preferences or character traits. So, for instance, some people think we should avoid buying Disney Princess dolls for our daughters, because this will reinforce certain defective gender norms. Others think we should avoid participating in information markets, because these markets might cause us to develop immoral preferences. Still others think that participating in the market, period, generally tends to make us more selfish and callous.

Note that most philosophers who make corruption objections to markets mean to make a general complaint about the market. They do not simply mean to say that it's wrong for individuals who are corrupted by particular markets to participate in those markets. Rather, they usually mean to say that because the markets in question usually corrupt most people, no one should participate in them. Thus, suppose buying and selling sex has a negative effect on everyone's character, except for two unusually imperturbable individuals. Most, if not all, anti-commodification theorists would say that those two individuals should also refrain from buying and selling sex, even from each other.

The claim that markets corrupt us is serious indeed. If and when such complaints are true, the markets thereby implicated are lamentable if not downright damnable. We will take these claims very seriously, to a point of wanting to be very sure that the damnations are not mere witch-hunts. We will ask, what kind of evidence would it take to make good on the claim that possessing or trading in certain commodities genuinely is corrupting?²² And what does that evidence actually show?

In response to corruption objections, we will show again that when there is a problem, it is not the market per se that is causing the problem. But, more strongly, we will argue that corruption objections are usually false or that those advancing such objections lack sufficient empirical evidence to justify their claims. On the contrary, we will argue, the best available empirical evidence suggests that the market is ennobling rather than corrupting.

- G *Semiotic*: Participating in markets can express or communicate certain negative attitudes, or is incompatible with holding certain positive attitudes. A semiotic objection to commodification holds that, independently of objections A–F, to allow a market in some good or service X is a form of communication that expresses the wrong attitude toward X or expresses an attitude that is incompatible with the intrinsic dignity of X, or would show disrespect or irreverence for some practice, custom, belief, or relationship with which X is associated. So, for instance, some hold that organ sales communicate the idea that the human body is a mere commodity—a piece of meat—and thus fail to show proper reverence for the body. Others say that markets in surrogacy services express the idea that women are mere incubation machines.

Against semiotic objections, we will argue that the meaning of markets is largely a social convention, and that such conventions can be judged by their consequences. Thus, whenever allowing a market in *X* would produce good consequences, but our culture's semiotics imply that markets in *X* are bad, rather than this giving us reason to forbid markets in *X*, it instead requires us to change our semiotics. So, for instance, American culture views organ sales as vile and disgusting degradation of the human body. In turn, we will argue that this is because American culture disregards the sanctity of life—if Americans treated life with more respect, they would not imbue organ sales with such negative meaning. Anyone who raises a semiotic objection to organ sales is, in our view, glorifying vice.

Our Strategy

So far, we have just been focused on explaining what the debate is and what our position is in that debate. We have not yet articulated the best arguments the anti-commodification theorists have. Nor have we yet argued for our thesis and explained why we think the critics are mistaken. This will form the bulk of the book, and we'll get to that shortly.

Our strategy in this book is, for the most part, to articulate, explain, and then debunk the various arguments anti-commodification theorists have produced to try to show that commodification is wrong. We know of no general permissibility proof for all possible trades and markets that, in our mind, succeeds on the terms provided by the anti-commodification theorists. But, if we can repeatedly show that the critics' complaints are unfounded, this builds a case for our thesis. It's always possible that the critics will produce a good criticism down the road, but we're pushing the burden of proof back onto them.

Part of our strategy will be to accept most of the moral commitments of the anti-commodification theorists and still debunk their conclusions. We want to play and win in their ballpark. We're not going to base our arguments on controversial political or moral theories. Rather, we'll base our arguments as much as possible on 1) commonsense moral principles that most people accept and 2) the best available social science. While our conclusion is not itself commonsensical, we're going to use the good parts of commonsense to fix the broken parts.

A different book might attempt to argue that we need to play in a different ballpark. So, for example, some market enthusiasts want us to first agree that a controversial moral view is correct, and then go on to demonstrate that markets "without limits" follows from that view. Many libertarians, for example, argue that we have certain negative rights, and that these rights are such that voluntary capitalist acts between consenting adults should all be considered morally permissible. If this is our guiding slogan, it follows that we ought to permit prostitution, the sale of kidneys and blood, sale of line-standing services, and so on, the only limit being coerced trades and transfers. And since coercion violates the definition of what a market is in the first place, it is correct to say that this limit is a conceptual, rather

than a moral, limit on markets. Many other contemporary libertarians attempt to first argue that the truth about ethics reduces to self-ownership, natural rights, non-aggression, consent, and/or contract. The guiding slogan for these libertarians is “anything consensual” or, as a bumper sticker for the US Libertarian Party once read, “we are pro-choice on everything.” So long as the adults consent to an exchange, without coercion or fraud, that consent is sufficient to make the exchange morally permissible. Worries about exploitation from weak agency, misallocation like inequality, and other worries that anti-commodification theorists raise, simply don’t register as genuine moral worries. Rights violations are the only category of real moral force. Everything else fails to take seriously the singular importance of agreement to terms between two or more adults.

But we didn’t write that book. We wrote this book. We didn’t write that book for two reasons. First, anti-commodification theorists do not accept libertarian political morality, and neither do the majority of professional philosophers and others whose profession obliges them to think long and hard about foundational issues in ethics. We want to have a conversation with them not about foundational issues in ethics, but about the moral limits of markets. We want to meet them on their moral diamond, rather than stomp our feet and threaten to take our ball and go home unless they come to a different ballpark.

More importantly, we did not write that book because neither of us agree with libertarian political morality. We have classical liberal sympathies, but we are not cartoon libertarians. We are in this ballpark, on this moral diamond, because this just happens to be our ballpark as well. We share similar, often identical, basic moral convictions as the anti-commodification theorists we strive to have a conversation with in this book.

So, instead, we aim to show that the anti-commodification theorists’ complaints are mistaken, ill-grounded, confused, missing the point, or that they lack sufficient philosophical or empirical evidence for their positions. We defend our position—that if you may X for free, you may buy it; if you may give X away to someone for free, you may sell it to her—by debunking theirs.

Business Ethics Vs. What Can Be For Sale

We want to make sure people, including the anti-commodification theorists themselves, do not confuse the question of this book—what kinds of things may be for sale—with another closely related issue.

Sometimes people say we should not buy certain things because of how companies run their businesses. For instance, many people advocated boycotting Chik-fil-A when they learned that Chik-fil-A’s owners donated money to fight same-sex marriage rights. Others advocate boycotting Apple because one of its subcontractors—FoxConn—has bad working conditions for its employees. Others might advocate boycotting payday loans stores for predatory lending practices, or boycotting certain car dealerships for being dishonest or too aggressive in their sales techniques.³

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For the sake of argument, suppose that in these cases, we should boycott the businesses in question. In that sense, there would be a limit to markets. However, this is not what the anti-commodification theorists have in mind when discussing what should and should not be for sale. The problem with these businesses, according to their critics, is not that their products—chicken nuggets, iPhones, payday loans, or used cars—are inherently the kind of thing that should not be for sale. Rather, the problem, according to the critics, is just that these particular businesses are not being run according to ethical business practices.

Now, it might even turn out that all the businesses of a particular sort have such bad business practices that they all should be boycotted. So, for instance, imagine it turned out that, for some bizarre reason, *all* extant chicken nugget sellers were homophobes who donate half their profits to fight against civil rights. In that case, perhaps, one might have grounds not to buy the products in question, but that's just *incidental* to the products. It would not show that the nuggets are the kinds of things that should not be for sale, but rather that they are not being sold the right way, or that they are being sold by unscrupulous people whom one should avoid.

We both teach business ethics classes. We don't tell our students that businesses may just do as they please. Instead, businesses are bound by a wide range of negative duties—to avoid coercion, harm, exploitation, dishonesty, and so on—and can also acquire a wide range of positive duties. We agree that in some cases, when businesses egregiously violate the basic principles of business ethics, one should stop buying from or selling to those businesses.

But the debate over commodification is not about business ethics. (Anti-commodification critics frequently get this issue confused.) It is about whether certain things should not be for sale, period. It's important not to get these distinct issues confused. If buying Chik-fil-A nuggets is wrong, it's not because it's wrong to buy nuggets, but because Chik-fil-A is unscrupulous. If they sold carpets instead of nuggets, the issue would be the same. So, in this case, it's not the product being sold, but the seller that's the problem. In contrast, when anti-commodification theorists say it's wrong to buy line-standing services, the problem for them is not *who* sells the services, or *how* the services are sold, but the product itself.

Consider the following three claims:

- 1 It is immoral to lie.
- 2 It is immoral to cheat.
- 3 It is immoral to steal.

From 1–3, we can deduce 4–6:

- 4 It is immoral to lie while wearing a hat.
- 5 It is immoral to cheat while wearing a hat.
- 6 It is immoral to steal while wearing a hat.

4–6 follow logically from 1–3—if 1–3 are true, then so are 4–6. But suppose someone wrote a book called *The Moral Limits of Hats*, which tried to argue against universal hat-wearing by arguing for 4–6. We’d realize that the problem isn’t with wearing hats, but with lying, cheating, and stealing. Wearing a hat is incidental. Similarly, in the debate here, we’re considering what the moral limits of markets are. As we keep stressing, it’s imperative, in discussing the limits of markets, that the *market* be the problem, rather than be incidental, like wearing a hat in 4–6.

Regulated Vs. Free Markets

We once watched one of our colleagues debate an anti-commodification theorist over whether certain goods or services should be for sale. The anti-commodification theorist said that free markets in certain goods and services would be bad in various ways. Our colleague took the bait, and spent his time trying to show that free markets in those goods and services would not be so bad.

We bring up this example in order to clarify the debate. The question of whether it is morally permissible to have a market in some good or service is not the same as the question of whether it’s permissible to have a *free, completely unregulated* market in that good or service. Our thesis is that there are no inherent limits to what can be bought and sold. But that’s compatible with thinking that some things, or even *all* things, should only be bought and sold in highly regulated markets. The question of whether or not markets should be free and unregulated is a red herring in the anti-commodification debate.

To illustrate, notice that the following two positions are coherent:

- A *Anti-Market Libertarian*: G. A. Rothbard, the genetically engineered child of Marxist G. A. Cohen and libertarian Murray Rothbard, thinks markets are bad, and that we should never buy or sell anything. He opposes all commodification, even of mundane items, such as books and pencils. However, G. A. Rothbard also believes that people have absolute negative rights against being interfered with when they buy and sell goods. Just as our rights of free speech allow us to say things that are wrong to say, he thinks we have rights to buy and sell even though doing so is always immoral. Thus, G. A. Rothbard thinks justice prohibits any coercive regulation of the market, but also thinks nothing should be for sale.
- B *Pro-Commodification Regulation Czar*: Murray Cohen, a different genetically engineered child, believes that literally everything that can be possessed may be bought and sold, but also advocates having extensive government regulation of every transaction.

We don’t know of anyone who takes such positions, but they are positions in the logical space.

Thus, once again, we remind the anti-commodification critics that the commodification question is not about libertarianism or free markets. It's a separate question. It turns out empirically that free market enthusiasts are less worried about commodification, but they remain separate questions.

Law Vs. Ethics

Law and morality are not the same thing, though they sometimes overlap. Thus, when people say that certain things should not be for sale, it's important to distinguish between legal and moral impermissibility.

- 1 *Legal Impermissibility*: The law ought to prohibit the buying and/or selling of X.
- 2 *Moral Impermissibility*: It is morally wrong (regardless of whether it is illegal) to buy and/or sell X.

Sometimes anti-commodification theorists mean just to say that it is wrong to sell certain goods and services. Other times they mean to say it should be illegal to sell these goods and services.

Sometimes anti-commodification theorists believe that the law should let people sell things, but it is immoral to do so. For instance, some anti-commodification theorists think that it is immoral to sell cocaine, but they think that drug prohibition does more harm than good, and so they think governments should let people sell cocaine.

Generally, unless we indicate otherwise, the discussion in this book concerns whether buying and selling a certain thing is morally permissible, not whether the law should allow it. When we get into discussions about what the law should allow, we will explicitly indicate that we are doing so.

The Right to Sell Vs. The Rightness of Selling

Our view is that anything you may do for free, you may do for money. A corollary of that is that if it is permissible for you to own something, then it is permissible for you to sell it.

Here, we want to make sure people avoid thinking that our argument will be predictable and boring. Let's consider what ownership amounts to.

To own something is to have a *property right* in it. But, as most philosophers of property rights have noted, a property right is not just one right, but a *bundle* of separate rights. As David Schmidtz explains:

Today, the term 'property rights' generally is understood to refer to a bundle of rights that could include rights to sell, lend, bequeath, use as collateral, or even destroy. (John Lewis generally is regarded as the first person to use the 'bundle of sticks' metaphor, in 1888.) The fact remains,

though, that at the heart of any property right is a right to say no: a right to exclude non-owners. In other words, a right to exclude is not just one stick in a bundle. Rather, property is a tree. Other sticks are branches; the right to exclude is the trunk.⁴

A property right is really a collection of separate rights, which generally include the right to sell, to buy, to lease or rent, to destroy, to modify, and to use. The central right of property is the right of exclusion. So, for instance, my right to my house means I have the right to exclude you from using my house—except in special circumstances, you need my permission to occupy my land. If property rights are a bundle, we might think of the right to exclude as the trunk from which the other rights grow as branches.

We want to be clear that we are *not* arguing that it follows, as a matter of logic (from the meaning of the concept of “property right”) that if something is permissibly someone’s property, that she may then sell it. Certain libertarian thinkers might be tempted to make this argument, but we reject it, for three reasons.

First, if we did try to ground our thesis on property rights, it would not really settle the debate. It would just shift the debate to a related debate. If we did insist that to have the right to own something meant a right to sell it, then at best, the question for debate would just become what people have the right to own. Nothing would change.

Second, we think this argument rests on a conceptual mistake in its analysis of property rights. After all, we have the rightful power to determine what happens to different things in different ways—and the bundle of rights that attaches to this rightful power varies. The strength of our rights also varies. I can have property in a cat and a car, but my power over the cat—which may be better understood as “guardianship” rather than ownership—doesn’t allow me to do as much with it as my ownership of the car does. The way I have a property in a cat is different from how I own a car, which is different from how I own a guitar, which is different from how I own a plot of land, etc. So, for instance, my ownership right to my guitar includes the right to destroy it at will for any capricious reason, but my right to my cat does not include such a right. My right to my house includes the right to sell it, but, because of a restricted covenant, it does not include the right to paint it neon orange with neon pink polka-dots.

Now consider the right to sell. Certain property rights come with restricted covenants—you can buy some things, but lack the corresponding right to sell them, or have only limited rights to sell. So, for instance, I (Jason) have a property right to a pool club membership, but I may sell my membership only to someone who buys my house, and only at a price set by the pool club. My ownership over the membership is not the same as my ownership over my guitars, which I have the right to sell at will on any mutually agreeable terms. Another example: you probably own a license to use many forms of software, but you agreed, as part of

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the purchase, that this ownership did not include the right to resell the software when you are finished with it.

Third, we think this argument makes a further conceptual mistake in that it conflates two separate questions:

A What do you have the right to do with your property?

B What is right for you to do with your property?

A and B are distinct. In general, if you have the right to do something, this does not presuppose that it is morally right for you to do it. Rights are not about what's morally permissible for the right-holder to do. Instead, they are more about what's morally permissible for other people to do to the rights-holder. So, for instance, suppose my wife lovingly gives me a new guitar for my birthday. The guitar is mine, and I have the right to destroy it—no one should stop me from doing so. But, if I were to destroy it, I'd act badly, as I would hurt my wife's feelings. Or, as another example, I have the right to join a Neo-Nazi political rally and express hatred of Jews, but it would be immoral to do so. No one should stop me from being a Nazi, but I also shouldn't be a Nazi.

Thus, an anti-commodification theorist could simply agree that people have the *right* to sell certain things (line-standing services, sex, organs, etc.) but then claim that it remains immoral and wrong to buy and sell those things, even though it is within people's rights. The anti-commodification theorists would then conclude that certain markets should be legal, even if they are deeply immoral. Our goal here is to challenge the moral condemnation of these markets. We want to argue that markets in contested commodities like organs and sex are not merely within people's rights, but are morally permissible.

Notes

1 Satz 2012, 153, agrees—she thinks that markets in women's sexual services are only contingently wrong, in light of extant "status inequality between men and women." If this inequality were removed, as it may well be in a few hundred years, then markets in sexual services would be permissible. In that sense, Satz and we fundamentally agree. However, we disagree with Satz on the particulars. We think it is often permissible to buy sex *now*, despite extant status inequality.

2 We owe these sentences to David Schmidtz.

3 For a philosophical discussion of this issue, see Hussain 2012.

4 Schmidtz 2013.