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IT'S THE HOW, NOT THE WHAT

Over the next few chapters of this book, we will address the best arguments against commodification, one by one. We examine a variety of such objections to markets and a range of cases where markets in goods and services supposedly introduce wrongness where there wasn't any. In each case, we find the objections unsound. Sometimes these objections rest upon mistaken empirical premises. Sometimes they rest upon bad moral premises. At the end, we conclude that none of the best arguments against markets in everything succeed.

Here, we offer a general challenge to anti-commodification theorists. We hypothesize that their problem is not really with *what* is being sold, but *how* it's being sold. This isn't to say the problem doesn't matter, but that the anti-commodification theorists have misdiagnosed the problem.

We argue that even if selling certain goods and services a certain way might be bad, there is always a different time, place, and manner for selling those goods and services that would remove those objections. So, for instance, if someone complains that selling kidneys would lead to the exploitation of the poor, we can in principle eliminate that problem through regulation.

Our thesis in this book is that if you can give something to someone, then you can normally sell it to that person. If you can take something from someone, then you can normally buy it from that person. There are no inherent limits to markets. There are only incidental limits. If we steal the BMW, we can't sell it to you, not because BMWs are the kinds of things that can't be sold, but because it's not ours to sell. If you're only two years old, we can't sell a tricycle to you, not because tricycles shouldn't be bought and sold, but because you aren't old enough to consent to the purchase. And if we promise not to sell our watches, then we can't sell them, not because watches are not the kind of things that must never be bought or sold, but just because we happened to have promised not to do so. And so on.

Time, Place, and Manner

The United States Constitution includes, as the First Amendment, a guarantee to freedom of speech. The United States Supreme Court has seen fit to distinguish three different kinds of speech, each receiving a different level of protection. “Obscenity” gets very little protection, “Commercial speech,” receives intermediate scrutiny, while political and expressive speech gets the highest level of protection. When it comes to political and expressive speech, the Supreme Court describes the limits and regulations that are permissible as not limits on the content of speech. Apart from cases where a restriction on speech serves a compelling state interest that cannot be served in any other way, the limits that they have found consistent with first amendment guarantees are described as content-neutral. It’s not *what* you say, but *when*, *where*, and *how* you say it.

Consider some famous First Amendment cases:

- 1 *Burning the flag*: Gregory Lee Johnson set an American flag on fire in Dallas, Texas, in 1984. He did it during the 1984 Republican National Convention, which was being held in Dallas. And he did it in order to protest then-president Ronald Reagan’s administration, as well as corporations. The authorities in Texas quickly arrested him, and charged him according to a statute that prohibited the desecration of a “venerated object.” A State Court permitted the charge to go through but the Texas Court of Criminal Appeals reversed the decision. On appeal, the US Supreme Court sided with the latter, and Johnson was set free to burn more flags if he wanted to.¹
- 2 *Rock Against Racism*: New York City’s *Central Park* has an amphitheater. It also has a place called “Sheep Meadow” that the city has designated as a quiet place for reading, walking, and relaxing. Rock Against Racism is a group that had, since 1979, used Central Park’s amphitheater for anti-racist speeches and concerts. On many occasions, people at Sheep Meadow, and at some apartment buildings on the edge of Central Park West complained about the volume from the anti-racist concerts. In 1984, the concert was still too loud, leading to two citations, and, eventually, the police cut off the power to the concert altogether. The next year, the city decided that the best way to regulate the volume was to require everyone to use city-provided sound equipment that was to be operated by an independent sound technician, rather than permitting each event host to provide their own equipment and technician. Rock Against Racism took the city to court, insisting that these requirements violated their first amendment rights. But the Supreme Court ruled for the city, arguing that the city had a substantial interest in limiting sound volume, that the particular regulations were sufficiently narrowly-tailored to this goal, and that these regulations were content-neutral.
- 3 *Public political meetings*: In the 1960s, Baton Rouge, Louisiana had segregated lunch counters. The segregation led to pickets and protests. At one point,

23 students from a black college were arrested. After the arrest, B. Elton Cox, a minister, organized a protest at the courthouse which drew 2000 protesters across the street from the courthouse. On the other side of the street, between 100 and 300 whites gathered. Cox gave a speech urging the protesters to sit at the segregated lunch counter, which resulted in grumbling amongst the counter-protesters, and then the sheriff to try and disperse Cox's crowd. When they didn't, the sheriff ordered Cox's arrest and he was charged with breach of peace, picketing near a courthouse, and obstruction of a public passageway. The Supreme Court overturned all of these convictions, but did insist that their reason for so-doing had a lot to do with the fact that the protest was peaceful until the police showed up, and because the protesters did not actually obstruct a public passageway. If there had been a breach of peace, or if the protesters had gathered at a time when the thoroughfare had been particularly busy with commuters and thereby obstructed the public, the outcome would have been different.

In each of these cases, the Supreme Court insisted that the First Amendment prohibits legislating against the content of the speech. In this sense, when it comes to political and expressive speech, Americans legally have "speech without limits." There are no speech-specific, or content-specific restrictions on speech. Whatever you want to say, you can say. At the same time, the Court imposed or upheld *incidental* limits having to do with the time, place, and manner of speech.² In effect, the Courts have said that it's the how, not the what.

When it came to Johnson, the Court said that even though his activity caused deep offense, he had the right to burn a flag as a form of expression. This case turned, in part, on the manner of the activity. Had Johnson burned the flag in a way that might provoke a reasonable person to violence, then the Texas authorities would have been right to arrest him.

The Rock Against Racism case was also about the manner of the speech, not its content. Of course people are free to host a concert in opposition to racism. But if you're going to host a concert in a place like Central Park, you have to do it in a manner that is in keeping with the State's sound-amplification requirements.³ And of course people are free to urge their friends and neighbors and even strangers to vote for a particular candidate. But you can't go into a suburban neighborhood in the middle of the night and promote your candidate with a noisy megaphone. Similarly, you can have a political meeting in a public place like a sidewalk adjacent to a courthouse, but you can't "insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech".⁴

There are no legal inherent limits on political and expressive speech in the US, only incidental limits having to do with the time, place, and manner of that speech. So, too, might there be analogous time, place, and manner restrictions on markets that are similarly incidental, having nothing to do with the moral permissibility of a market in this or that good or service.

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Demonstrating this means that at least some anti-commodification theorists are over-generalizing. They are confusing incidental with inherent limits. Demonstrating this would also mean that we would thereby deflate the anti-commodification thesis into a question about business ethics.

Some Cases

Consider the following cases:

Case 1: Life (insurance) and death

Suppose your friend has recently passed away. He was a close friend, but he never bothered to buy life insurance, despite the fact that you sell life insurance. He has left his wife with a very significant price tag for the funeral. So significant, that his wife and children will now be destitute. He could afford insurance, he just didn't bother getting it. You attend the funeral, and you bring your business cards. Meeting all sorts of people, you tell them about your friend's circumstances, hand them your business card and say, "Here. Buy some life insurance. Don't let what happened to James happen to you."

Case 1 presents a case of bad timing. Very few of us now think that there is anything morally problematic about selling life insurance. Indeed, it is a mark of responsible people that they purchase life insurance at some point. What we object to in case 1 is not the buying and selling of life insurance, but the *timing*. There is an appropriate time for a market in life insurance, and selling it at a funeral is just really bad timing.

Case 2: Location, location, location

Real estate agents are fond of the expression, "Location, location, location." What they mean is that the value of a piece of property is very often determined by where it's located. Something similar might be said about certain markets.

The story of Jesus knocking over the tables and wares of the Pharisees in the Temple is a good illustration of the point. Jesus did not, on his way to the Temple, knock over the tables and wares of outdoor shopkeepers in the town; he restricted his upsetting of tables to Temple grounds. In effect, Jesus was saying to the merchants, "Location, location, location"—sometimes, there's a wrong place for market behavior. And while neither of us are theologians or Biblical scholars, we don't see the point of this story as supporting a supposed conflict between the "sacred" Temple and the "profane" market. We suspect that if the Pharisees were practicing Yoga or playing Bocce ball at the Temple, Jesus would have been similarly upset and would have similarly upset the Yoga mats or Bocce balls. The Temple was for contemplation and prayer, not for anything else. As for commercial activity, Jesus probably had no problem with Pharisees and

others selling things, he just had a beef with the ones who chose to do it on Temple grounds.

Similarly, a shopkeeper can't go out in the middle of a road to display her wares. It is not an objection to markets when we agree that homeowners are not required to accept door-to-door vacuum salesman into their homes or to host Tupperware sales parties if they don't want to. It's not because there's something wrong with the buying and selling of Tupperware or vacuums, it's just that *where* you choose to do it is sometimes bad. For speech purposes, US courts distinguish between traditional public forums, limited public forums, and nonpublic forums as part of their place-relevant test. When it comes to speech, there are different kinds of places, and the kinds of places impose sometimes fewer and sometimes greater restrictions. They are still content-neutral; they merely discriminate on the basis of location.

This is part of our much broader point: often, the problem is not *that* something is sold, but *how* it's done that matters. Sometimes the timing is bad, and other times the location is not the right one. Anti-commodification theorists see this fact. They recognize that time and place restrictions on commercial activity are not restrictions on commercial activity as such. What they fail to recognize, we will argue, is that there is not one way that something is sold on the market, but very many very different ways of buying and selling the very same thing—markets come in different modes. Adjusting the mode of the market is a way of adjusting the manner in which a market operates. Sometimes, the problem may very well be that a particular kind of market, with its particular features, is inappropriate for some good or service. The manner of selling it is objectionable (or is more repugnant, even if that repugnance turns out to be not morally relevant). In short, it's the *how*, not the *what*.

The analogy to the first amendment test might be misunderstood, so let's get it right. The analogy is not that political and expressive speech acts are like market exchanges. Instead, market exchanges are better seen as speech acts performed in some specific language, like English or French. The broader category of speech acts as such would be similar to the broader category of exchanges as such. So an argument about the moral limits of markets is similar to an argument about the moral limits of English speech acts, not speech acts as such. This is important for the following reason. We have already ruled out objections to markets that are really objections to exchanges as such. We can't have slaves for sale or murder for hire, but that's not because the market somehow makes what would otherwise be morally right into something immoral. These things are inherently wrong, and their wrongness has nothing to do with their being exchanged as gifts, as part of communal sharing, or on the market. It's the "slaves" part not the "for sale" part that is objectionable, the "murder" part not the "for hire" that is repugnant to our conscience.

If we were to write a book about the moral limits of English speech acts, we could similarly rule out the expression of content that it is inherently wrongful to

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express in any language, as saying nothing of significance about the English language as such. We could then go on to discuss how time, place, and manner restrictions on non-inherently wrongful English speech acts make all the difference to the wrongfulness of the act. Altering these variables can turn non-inherently wrongful speech acts from wrongful to non-wrongful (and sometimes rightful) speech acts. It would be wrong of us to scream “fire” in a crowded theater when there is no fire. But now imagine that there is a fire, then it would be right for us to do so. It would be wrong of us to sincerely express racist sentiment, but it could be non-wrongful if we are saying so sarcastically or ironically or satirically, in a context where listeners understand the satirical or sarcastic upshot. The fake documentary about the Confederate States of America, for example, expresses racist sentiment but does so in a way to poke fun at that sentiment, to satirize people with such views. If it were expressed sincerely, it would be wrongful, but as a piece of satire, it is not.

This is what we intend to now do for markets. We intend to demonstrate that our attitudes and judgments about markets often depend not on inherent or essential features of all markets, but on the specific features of particular markets. When we alter the time, place, and manner of a market, we do not thereby change the nature of the exchange from a market to a non-market exchange. Selling t-shirts at 5 p.m. is a market activity just as surely as doing so at 10 p.m. So is selling iPods in an Apple store, or at a university. Selling a horse at auction or through Craigslist are both examples of different kinds of market exchange. We are saying that anti-commodification theorists need to be careful to distinguish objections to this or that market from objections to markets as such.

Our claim here is that the time, place, and manner of markets can change our attitudes towards the objects of sale and the people we engage in market exchanges with, can alter the allocative outcomes, can remove concerns about exploitation, and so can remove or eliminate the wrong-making features of a particular market exchange.

Designing the Manner

We don't merely have markets in different kinds of things, we have different *kinds* of markets for the very same thing. Some markets have a fixed price, like at your local Walmart. Other markets have prices that you are expected to haggle over, like at a garage sale. Sometimes you are required to enter into a pool of buyers at a clearinghouse. Some require you to make a secret bid, with the highest or second-highest bidder getting the goods. Sometimes you have to buy the bids separately before you can place a bid. Sometimes you have to join a club before you can buy anything, like at Costco. Some markets prohibit money, like at bartering websites. Other markets prohibit mass manufacture, and require items to be hand-made, like on Etsy. Still other markets are constructed such

that you are expected to become at least somewhat familiar with a product before you can buy it, like test-drives at car lots. Sometimes, we restrict the sale of some good to those with licenses, or to those in certain professions, like with health care.

With respect to some goods, our objection may not be to the buying or the selling of the thing itself, but, rather, to the *way* that something is bought or sold. When Debra Satz and others worry about the endogenous effects of certain kinds of markets on the character, virtues, and cognitive abilities of the participants, they should recognize that different kinds of markets for the very same good or service will have different endogenous effects. This is a problem with market design⁵ or what we'll call "market architecture", rather than a problem with markets as such.

A simple and common example is this. Suppose you want to distribute pie between your two children. One way to design a pie-splitting game is to make one child cut the pie, while the other child gets to choose the slice. This has the benefit of reducing complaints, as well as making it more likely that the eventual distribution will be regarded as fair by both parties. Here, we can regard the sense of unfairness and the bitterness of complaints from the parties as negative outcomes of pie distribution. Designing the distribution in this way minimizes (or eliminates) those negative outcomes. Now imagine for a moment a critic of pie splitting before anyone had invented this clever way of splitting the pie. The critic might complain that we should not split pies, because pie splitting made people feel bitter and angry and sometimes led to fights. The critic might confuse the negative outcomes of one way of splitting a pie with splitting pies as such. "There are some things that ought not be split," he might say, "especially pies." But the criticism would fail, precisely because there are other ways of doing the very same thing, of splitting pies without the attendant negative effects.

We will show that many of the objections to money and markets raised by anti-commodification theorists can be conceived of as complaints about particular markets, rather than about markets as such. If so, we will ask, are there ways of altering market architecture that reduce or eliminate these complaints? Our answer to that question is "yes." For the very different kinds or modes of markets, there is a sociology of that particular market. People have constructed different meanings that correspond with different *kinds* of markets. In Part II, we argue that purely semiotic objections to markets fail. However, suppose we are mistaken. Here, in this chapter, we argue that even if it's wrong to sell certain goods through certain kinds of markets, it remains permissible to sell those goods through *other* kinds of markets.

Holding those social conventions about meaning constant, we will conclude that anti-commodification theorists ignore the heterogeneity of market modes, and too often confuse objections to one way of exchanging something with an inherent conflict between markets as such and the inherent features of some object, good, or service.

Elizabeth Anderson's Surrogacy Market

Elizabeth Anderson says,

Commercial surrogacy substitutes market norms for some of the norms of parental love. Most importantly, it requires us to understand parental rights no longer as trusts but as things more like property rights – that is, rights of use and disposal over the things owned. For in this practice the natural mother deliberately conceives a child with the intention of giving it up for material advantage. Her renunciation of parental responsibilities is not done for the child's sake, nor for the sake of fulfilling an interest she shares with the child, but typically for her own sake (and possibly, if “altruism” is a motive, for the intended parents' sakes). She and the couple who pay her to give up her parental rights over her child thus treat her rights as a kind of property right. They thereby treat the child itself as a kind of commodity, which may be properly bought and sold.⁶

Anderson's objections to surrogacy arrangements are varied. She objects to the attitude that surrogates take towards the child. She objects to the attitude she discovers towards women's reproductive labor that she believes is inherent to surrogacy arrangements.⁷ She objects to the contractual features that require a woman to give up her baby despite the fact that women may change their minds. They change their minds, when they do, partly because of a gross lack of information—surrogates do not now know how much they will bond with the child once it comes time to fulfill the contract. She objects to the fact that no one represents the interests of the child, just as “no industry assigns agents to look after the ‘interests’ of its commodities.”⁸ Finally, she objects to the role that brokers play in contemporary surrogacy arrangements, which can be corrupting. The broker, says Anderson, is motivated and incentivized to try and get the surrogate to release the product of her labors, even if she becomes attached, or changes her mind.

In order for Anderson to get the conclusion that she wants—that we ought to have a full prohibition on surrogacy arrangements—it must be the case that there is no way of forming or creating a surrogacy market that is consistent with taking the right attitude toward women's reproductive labor or towards the child. Perhaps a case like this can be made, but this case has not been made. Instead, and at best, what Anderson has demonstrated is that women's reproductive labor (and the children that are the product of that labor) are wrongfully and disrespectfully commodified in a market *like the one we currently have*, with brokers, and so on.

In order for the argument that markets, as such, are inappropriate for surrogacy to be successful, she would need to demonstrate either that the form that the market currently takes with respect to surrogacy is a necessary and not merely contingent form given the kind of thing that surrogacy is, or that there does not exist a possible form that a market could take that would not wrongfully

commodify women's reproductive labor and the children that are the product of that labor.

Consider: the broker is a contingent, and not a necessary element to the surrogacy market. Brokers probably make the market more "efficient," and permit us to economize on information and transaction costs (brokers are, after all, experts of a sort). Nevertheless, they are hardly constitutive of markets. We could have surrogacy arrangements without brokers, and these arrangements would still rightly be called "markets." So the broker objection can be overcome by designing brokers out of a surrogacy market. Alternatively, we might distinguish between "mean" and "nice" brokers. Mean brokers are brokers that prioritize making money rather than ensuring that each party is treated as an end, and gives genuine and uncoerced consent to the transaction. So we shouldn't have commercial surrogacy arrangements with mean brokers, but it would be the meanness, and not the broker-ness, that would be objectionable.

The nature of the contract is also contingent. Anderson worries that the terms of contemporary surrogacy arrangements require that a woman give up the child even if she becomes attached, or changes her mind. We note, as a side issue, that courts have not required specific performance, preferring, instead, to grant parental rights to the surrogate as well as the biological or genetic father of the child when surrogates have changed their mind. We can put this worry about surrogacy aside merely by redesigning the terms of the contract in order to include a "change of mind" clause: if, for any reason, the surrogate changes her mind, the contract is null and void. It would still be a market. So, again, Anderson's objection to surrogacy markets seems to be about the how, not the what.

The fact that no one represents the interests of the child is not a necessary feature of the market. We could institute a rule that requires an agent to function on behalf of the child's interests in all surrogacy arrangements. We do precisely this during disputes over inheritance if the inheritor is a child who happens to be too young to defend her own interests, and we could do the same for surrogacy arrangements.

The more significant objections, the ones that come closest to being genuine in-principle objections to markets in surrogacy, are the objections to the attitudes people either take, or are seen as taking, towards the child and women's reproductive labor. As Anderson sees it, she appears to think that it is an inherent feature of any and all markets that the participants view the child and women's reproductive labor in the wrong way. They conceive of the child as a profit-possibility, rather than as a creature with a dignity; and conceive of women's reproductive labor not as a special form of labor, but merely as an abstract input in an economic process that delivers a product.

At first, we want to register our skepticism about this sort of claim. We want to note the similar worries that people used to have towards children's insurance. Once upon a time, people objected to such insurance schemes as "putting a price on children's lives," as "commodifying children."⁹ Maybe, for a time, this is the

attitude that people took towards their own children when taking out insurance, and maybe the insurance companies had this attitude as well. But times have changed. We now rightly regard these attitudes as being inessential, indeed bizarre and unusual, to children's insurance. People who take out such insurance are no longer regarded with mistrust, we no longer believe that getting children's insurance *means* that you regard the child as a commodity, as a profit-possibility, or that you are pricing human life. Is it possible that the attitudes Anderson takes to be constitutive of surrogacy arrangements is merely an artifact of the novelty of these arrangements, rather than intrinsic parts of these kinds of exchanges? We're skeptical, but on Anderson's behalf, let's put this skepticism aside.

We can register a different kind of skepticism as well. We don't see the connection between our attitudes and property rights. Many of us have property rights in objects that we do not regard as mere commodities. I (Peter) have a watch that I received as a gift from my grandfather who has now passed away. My attitude is deeply sentimental toward it. In no way do I regard that watch as a mere commodity, despite the fact that I recognize and am aware of my property rights in the watch. So I am able to hold two thoughts in my mind—"this watch is my property" or "I have property rights in this watch" and "this watch is not a mere commodity to me"—that simply are not incoherent or in any way in conflict. But, again on Anderson's behalf, let's put this skepticism aside as well.

Our more significant response accepts Anderson's worries. Let us suppose, for the sake of argument, that the current surrogacy market really does generate or produce a disrespectful attitude towards the child and towards women's reproductive labor. And we of course agree with Anderson that these attitudes are the wrong attitudes, that it would be immoral to regard a child or the capacity for childbirth as primarily or exclusively a mere commodity. Let us suppose that this continues to be the case even if we prohibit brokers and include a "change of mind" clause in the contract. Let us also agree to hold the socially constructed meanings of markets constant as well. But suppose you are not persuaded, or suppose that surrogacy is not the kind of thing that generates sufficiently positive consequences to give us grounds to object to the contingent cultural practice of attaching the social meaning to surrogacy that Anderson sees in surrogacy. Are there other variables that could be adjusted in order to overcome the repugnance of such a market based on the commodification attitude that, as we are supposing, is generated by this market?

The Manner of Exchange

Guitar amplifiers have a bunch of knobs on the front, knobs that control the volume, the equalization, the gain (also called "overdrive" or "distortion"), and other factors. Some amplifiers are "touchy" or "hard to dial in"; that is, they sound good only with very specific settings. For instance, the Mesa Boogie Mark series of amplifiers—a famous type of amplifier you have heard on thousands of rock,

metal, and jazz songs—only sounds right with very specific settings. (Specifically, one needs to keep the bass knob almost off, the midrange knob fairly low, the treble and gain knobs high, and must make a V-shape with the included five-band equalizer.) Another example: legendary guitarist Steve Vai's signature Carvin Legacy amplifier needs to have the “presence” knob at 7; any higher and the amp sounds shrill, any lower and it sounds flubby. Other amplifiers are “easy to dial in”. For instance, the legendary Marshall Super Lead—another amp you've heard thousands of times in thousands of recordings—sounds good at basically any setting.

Markets are a bit like guitar amplifiers. Just as guitar amps have various knobs (gain, volume, bass, midrange, treble, presence, resonance, top cut, boost, mid cut, etc.), so markets might have a range of variables that can be put to different settings. Just as some guitar amps sound good only on very specific settings, some markets might be good only on very specific settings. Or, just as other guitar amps sound good no matter what the settings, so other markets might be good no matter what the settings.

So, if a market is kind of like an amplifier, what are the different knobs and what do they do? What we are calling the manner of a market exchange consists of the following variables, which we can call the seven dimensions of market manner:

- 1 Participants (buyer, seller, middleman, broker, etc.)
- 2 Means of exchange (money, barter, local currency, bitcoins, gift cards, etc.)
- 3 Price (high, low, moderate, etc.)
- 4 Proportion / Distribution (how much each party gets)
- 5 Mode of exchange (auction, lottery, bazaar, co-op, etc.)
- 6 Mode of payment (salary, scholarship, tip, charitable contribution, etc.)
- 7 Motive of exchange (for-profit, public benefit, cost-recovery, non-profit, charitable, etc.)

If each of the seven dimensions had only three options (although there are many more), that would give us 3^7 possible permutations, or 2,187 different kinds of market manner. If we were to add time and place, we would have many, many more. To overcome the anti-commodification objection to commercial surrogacy, we need to find only one out of at least 2,187 different kinds of manners of markets that overcomes the objections to make our point. When it comes to a surrogacy market, we can change the manner in very many different ways. The participants can be (and are) restricted. The price could be different, and the proportion of the money can be distributed between the seller of the service, the broker, any agencies involved, and so on, differently. The payment need not be money that the seller personally receives, she could be paid in a charitable contribution made on her behalf, or the money could go into a scholarship fund for the baby, or for a baby she might have in the future. We could also insist on price floors or ceilings, or a uniform, standardized price consistent across all surrogates.

Apart from the participants, the mode of payment, the price, and the proportion or distribution, we could also change the mode of exchange. Surrogacy arrangements could make use of lotteries, with surrogates receiving a fixed payment from a pool of hopeful parents who enter a lottery with equal odds of ending up with a child. The babies could, perhaps, be auctioned, although we suspect many of our readers will find that especially distasteful. That distastefulness, however, may be a function of not understanding the sociology of auctions, which we will describe in greater detail below. (That is, baby auctions might actually be an especially tasteful market.)

Each of these changes to the variables can change the symbolic meanings associated with the various exchanges. These changes remain consistent with the exchange felicitously being described as a market. It would still count as a surrogacy market, it would just be different. Can we find a market architecture that would result in people having the right attitude towards the child as a predictable feature of some or another market manner? In what follows, we will first address ourselves to a worry that might have occurred to you already. Namely, is our understanding of what makes something a “market” too broad? Aren’t markets necessarily for-profit, and isn’t the use of money, rather than barter or scholarships, as an instrument of exchange an essential feature of modern-day markets? Once we address this worry, we will then try to demonstrate that altering the manner is a real possibility before we turn to the empirical literature. If we find that changes in market architecture have overcome similar problems with other kinds of markets, we should expect that changes in market architecture can overcome problems not only with commercial surrogacy, but in a wide range of other kinds of markets as well.

This is our general challenge to anti-commodification critics. It won’t be enough for them to show us that some markets are bad—morally impermissible—on some or even many “settings”. They need to show us that markets in certain commodities are bad on all the possible settings. Otherwise, if we can find even one “setting” for a particular market, then our thesis stands. So, to take a silly example, suppose it turns out to be permissible to buy and sell kidneys only for exactly \$56,000 in bitcoins, only while the buyers and sellers are singing “When I’m 64,” and only on the fourth Friday of May. Even then, that means that kidneys are properly the kind of thing that can be bought and sold. The anti-commodification critics would be wrong.

One might be tempted to think that if a certain commodity can be permissibly bought and sold only on say, one very specific “setting” of these nine variables, then that market is *close* to being evil. One might think that good commodities are the ones that can be bought and sold with almost any combination of these variables. One might think that as the acceptable “settings” of a particular commodity become more constrained, then that market is for that reason *less* good.

But this doesn’t hold for markets in various goods and services anymore than it holds for amplifiers. Consider again: the Mesa Boogie Mark IIC+, III, and IV

sound right only on a few very specific settings, but they aren't for that reason *bad* amplifiers. On the contrary, they are *excellent* amplifiers, which is why you've heard them thousands of times on thousands of recordings. You just need to know how to dial them in. Similarly, it might be that a market in kidneys is permissible only on very specific "settings," but that market might still be a wonderful market, one that does far more good for the world than most other markets.

That said, we don't want to make it too easy for us to claim victory. After all, suppose a certain market could, in principle, be permissible, but only under highly fantastic conditions, conditions that are highly unlikely ever to obtain.¹⁰ If so, our thesis would remain intact, but would be significantly less interesting. Fortunately, though, as far as we can tell, it seems we avoid this problem in the book. We don't just find, e.g., that selling kidneys could be permissible only if one first flips heads 666 times in a row. Rather, most of the repugnant markets could be "fixed" rather easily.

Outline

In the first few chapters, we clarified just what the commodification debate is about. We've learned through experience—through presenting pieces of this book at over 20 different venues—that clarifying just what the debate is does a lot of work. Many of the people we've met who are inclined to complain about commodification realize, after some prodding, that they are actually concerned with *possessing*, not with *buying and selling*.

In this chapter, we issued a general challenge to anti-commodification theorists: for them to show that some goods (that it is permissible to possess, and to give away or take for free) may not be bought and sold, they need to "fiddle with the knobs" of the market and make sure that those goods cannot be bought or sold on any "setting". It might be that some goods—such as kidneys—can only permissibly be bought and sold under very specific conditions. But, if so, they can still be bought and sold, and our thesis stands.

In Parts II, III, and IV of this book, we will examine and attack a number of arguments that try to meet our challenge. In Part II, we look closely at semiotic objections to certain markets. Part III focuses on corruption objections. Part IV focuses on exploitation, harm, and misallocation objections. In each case, we argue these specific objections are unsound.

By Part V, we've debunked the major arguments against commodification. However, we expect that many readers will still have a gut-level feeling that something is just plain wrong with buying and selling certain goods. Part V takes a close look at this gut-level feeling. We argue that at least some opposition to commodification is based on feelings of disgust, and we argue that such feelings are not reliable indicators of right and wrong.

42 Should everything be for sale?

Notes

- 1 *Texas v. Johnson*, 491 U.S. 397 (1989).
- 2 There is controversy about whether or not this is, strictly speaking, true. The courts have ranked speech in order of importance, with commercial speech, obscenity, and fighting words receiving a lower standard of protection as compared with speech the courts have deemed to be more important, like political speech. But for our purposes here, we will simply accept them at their word. Not much hangs on whether or not, in fact, US courts consistently live up to their own proclaimed standards.
- 3 *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).
- 4 *Cox v. Louisiana*, 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 [1965].
- 5 Market design is a particular kind of mechanism design within game theory. In market design, economists attempt to alter relevant features within a market (or a “game”) in order to generate or avoid some outcome. Most often, economists are interested in increasing the efficiency properties of a market. So, for example, some attempt to minimize transaction costs or reduce negative externalities.
- 6 Anderson 1990, 76.
- 7 “ ... the sale of an infant has an expressive significance which this argument fails to recognize. By engaging in the transfer of children by sale, all of the parties to the surrogate contract express a set of attitudes toward children which undermine the norms of parental love. They all agree in treating the ties between a natural mother and her children as properly loosened by a monetary incentive.” Anderson 1990, 77.
- 8 Anderson 1990, 76.
- 9 Zelizer 1994.
- 10 Thanks to an anonymous referee for this point.