

BOOK REVIEWS

Markets without Limits: Moral Virtues and Commercial Interests

Jason Brennan and Peter M. Jaworski
New York: Routledge, 2016, 239 pp.

Are there some things that should be beyond the market, that is, which should not be permitted to be bought and sold? Jason Brennan and Peter Jaworski think, “No, for the most part.”

Brennan and Jaworski, both philosophy professors at Georgetown University’s McDonough School of Business, dedicate *Markets without Limits* “to the authors, supporters, and readers of the *Business Ethics Journal Review*.” *BEJR* editors Chris MacDonald and Alexei Marcoux paid \$275 for this dedication. Yet, far from a frivolous exercise, this is an example of both the practical seriousness the authors bring to their premise and the good humor with which they go about making their case. The acknowledgments list a couple of dozen other well-wishers who paid for their names to be included, and who, as the authors put it, “greatly assisted us by putting their money where our mouths are.”

First, I should offer a clarification on the title. Brennan and Jaworski’s arguments in favor of the moral nature of market exchange, while very broad in terms of what may be legitimately bought and sold, do not necessarily advocate a market without any limits whatsoever. This is not, as some of their anti-market critics would have it, a tome of “market fundamentalism” that promotes absolute laissez-faire as the only, or even the most, moral economic

system. As the authors point out in the text—and have tried to remind hostile interlocutors since the book's publication—the heart of their argument is, “If you may do it for free, you may do it for money,” not that all goods and services *must* be sold without any restrictions or regulation.

The idea of responding to critics is very much at the heart of this project. In the opening chapter, the authors describe the flood of books in recent years that have attacked markets as inherently immoral or selectively corrupting in dangerous ways. The first three years of the current decade alone saw the publication of *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (2010) by Stanford's Debra Satz and *What Money Can't Buy: The Moral Limits of Markets* (2012) by Michael Sandel of Harvard. Sandel's attacks on markets, in particular, have received dramatic accolades, including a *Newsweek* contributor describing him as “possibly the world's most relevant living philosopher.”

The critics attacking market transactions, then, are not a club of marginal cranks, but represent some of the nation's most praised and frequently published public voices. Brennan and Jaworski refer to them collectively as the “anti-commodification theorists” and posit themselves as “the critics' critics.” They review several of these theorists' major objections, including concerns about exploitation, misallocation, and corruption, and proceed to examine those thematic critiques in individual chapters through examples of specific controversial products and services.

The authors do a good job of separating incidental objections from the fundamental moral questions at the heart of the anti-commodification debate. In a section titled “Business Ethics vs. What Can Be for Sale,” we are asked to consider objections to a couple of scenarios. Some critics of the fast food chain Chick-fil-A, for example, object to the company's political opposition to marriage equality. Other critics have been appalled at reports of abusive working conditions at facilities operated by Apple's Chinese contractor FoxConn. If we deem these companies' products to be worthy of a boycott, that would represent a kind of limit on the market for chicken and smartphones, but not the kind of limit that concerns the authors. Their primary question is whether there are things that categorically cannot be legitimately bought and sold. They are not concerned, in this book at least, with the objectionable actions or business practices of particular companies. To date, the anti-market

critics have not yet argued that chicken sandwiches and iPhones are inherently immoral items to sell.

That distinction, along with the understanding that Brennan and Jaworski are not necessarily arguing for unregulated markets, sets the stage for considering the anti-commodification theorists' real objections. And while ultimately they conclude that all of those objections can be answered and refuted, they do take them seriously. For example, Brennan and Jaworski engage in fascinating discussions on whether public betting on the likelihood of future terrorist attacks should be legal, as well as on more well-trod debate topics like legalizing sex work and the moral status of surrogate motherhood.

By conceding that a highly regulated market can legitimately address some people's concerns about unethical market practices, the authors are able to answer a wide range of objections to allegedly problematic market exchanges. A highly regulated market is still a market, after all, and thus market exchanges are allowed if the regulations are met. The question for them is, "When are market exchanges permitted?" not "What are the correct regulations for a permitted market exchange?" For every accusation that a certain kind of transaction might generate a negative outcome, they suggest a market structure or legal safeguard to alleviate the concern. If you're worried that the interests of the baby in a surrogacy agreement won't be adequately represented, require an independent legal advocate for the baby. If you're worried about the ethics of arranging surrogacy through a paid broker, forbid brokers. If you're worried that prospective mothers won't be adequately compensated, institute a minimum compensation package. A market would still exist under these, or even far greater, restrictions.

There are obvious practical limits to this approach, however, both from the free market and the anti-commodification perspectives. Brennan and Jaworski suggest, via a clever analogy to consumer electronics, that certain markets simply need to be "dialed in" correctly in order to be considered morally permissible; that is, they need to have their terms of payment, mode of exchange, prices, or other conditions legally bounded. Under a certain set of regulated conditions, even the most problematic market transaction can theoretically be made acceptable. But those restrictions, while they might answer the objections of certain critics, obviously can create problems of their own by restricting entry, raising prices, increasing inefficiency, and incentivizing black markets.

On the flipside, the legal acrobatics necessary to alleviate all of the anti-commodifiers' concerns may, in effect, render certain exchanges illegal under all but a handful of mostly hypothetical conditions. Why bother, such a critic might ask, creating an elaborate legal and regulatory structure to supervise a transaction with such a narrow range of morally acceptable applications? Even George Mason University's Ilya Somin, no anti-capitalist gadfly, has raised this objection to Brennan and Jaworski's argument that paying someone for his vote should be legally permissible. Somin writes, "It may well be impossible in practice to separate out the (relatively rare) cases of defensible vote-buying from the much more common ones where people are paid for their vote for the purpose of advancing the goals of some narrow interest group or voting the straight party line." The authors claim that "most of the repugnant markets could be 'fixed' rather easily" with sufficiently clever market design, but I'd like to hear from some of the anti-commodification theorists themselves on whether they consider the fixes to be quite so easy.

The authors move most decisively from unlikely hypotheticals to practical public policy when they consider the market for human kidneys. They understandably bring a more forceful case to arguing for the permissibility of markets in life-saving organs than for ones in line-standing services and household chores. They counter objections to organ sales, as they did with paid surrogacy services, with specific policy proposals. They also recognize that many opponents will remain unconvinced even when their announced objections are addressed. The authors describe this state of implacable resistance as "moral dumbfounding."

A large portion of the general public's objections are in this category—a nonrational sense of disgust at the idea of buying and selling human body parts. Contrary to some widely read theorists like Leon Kass, who coined the phrase "the wisdom of repugnance," Brennan and Jaworski suggest that visceral reactions of disgust to certain ideas are not a meaningful guide to moral judgement. They argue that semiotic objections to kidney selling—the idea that, if nothing else, it signals an inappropriate lack of reverence toward the human body—should be discarded.

Therein lies the challenge, of course. To the extent that anti-commodification arguments are really about nonrational dislike of market processes, the practical applications for this insight seem limited. In the United States, allowing a national market for kidney sales

could save thousands of lives a year. If even that hasn't been able to budge public opinion, it's difficult to see how policy advocates will be able to persuade their squeamish fellow citizens to simply "get over" their aversions. That's not Brennan and Jaworski's job, of course, but it does somewhat deflate the enjoyment of their well-reasoned arguments to realize that the task at hand is nothing less than "change American culture." I'll get right on that.

Markets without Limits probably won't, as the authors hope, "put philosophers out of the business of talking about the moral limits of markets" (especially since that seems to be one of the few commercially popular topics in academic philosophy), but hopefully it will help generate better conversations among academics and students. Clarifying the debate on the morality of markets *per se* versus the business practices of particular market actors will, on its own, go a long way towards helping capitalism's critics better frame their objections and capitalism's defenders better respond to them. Brennan and Jaworski's book both clarifies the debate over the limits of markets and shows how honest intellectuals can forthrightly and effectively respond to critics of markets.

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Zoning Rules! The Economics of Land Use Regulation

William A. Fischel

Cambridge, Mass: Lincoln Institute of Land Policy, 2015, 432 pp.

Something has gone terribly wrong in America's cities in the last few decades. Real estate construction has fallen behind demand in cities like New York, San Francisco, Austin, and Miami. Rents are rising, and both current and prospective residents are having a hard time keeping up. The good news is that we know why this is happening. Mainstream economists agree that burdensome restrictions on building new housing in prosperous cities hurt economic growth, exacerbate inequality, and stifle entrepreneurship. The bad news is that it's going to be a huge challenge to fix. This is the lesson that *Zoning Rules!* teaches us.

The book is the magnum opus of Dartmouth economist William Fischel, the follow-up to his acclaimed 1987 book *The Economics of Zoning Laws*. In the nearly 30 years between these tomes, Fischel