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What Limits Should Markets be Without?

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A COMMENTARY ON Jason Brennan and Peter M. Jaworski (2016), ***Markets Without Limits: Moral Virtues and Commercial Interests*** (New York: Routledge)

ABSTRACT

In *Markets Without Limits* Brennan and Jaworski defend the view that there are "no legitimate worries about what we buy, trade, and sell." But rather than being a unified defense of this position Brennan and Jaworski unwittingly offer *three* distinct pro-commodification views—two of which are subject to counterexamples. This Commentary will clarify what should be the thesis of their volume and identify the conditions that any counterexample to this must meet.

IN ***MARKETS WITHOUT*** *Limits* Jason Brennan and Peter Jaworski defend the "pro-commodification" view that there are "no legitimate [moral] worries about what we buy, trade, and sell" provided that the items that are being bought, traded, and sold are items that it is morally legitimate for persons to possess (Brennan and Jaworski 2016: 7). This appears to be a straightforward – if provocative – thesis. But closer examination of *Markets Without Limits* reveals that rather than being a unified defense of one pro-commodification position Brennan and Jaworski (apparently unwittingly) defend *three* distinct pro-

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commodification theses—two of which are subject to counterexamples.

The aim of this Commentary is thus to clarify what should be the thesis of *Markets Without Limits*. This will serve two purposes. First, it will help prevent critics of *Markets Without Limits* developing counterexamples to the two false theses that Brennan and Jaworski defend and from these erroneously believing that they have refuted their position. Second, this Commentary will identify the conditions that any successful counterexample to Brennan's and Jaworski's position must meet.

I. Three Different Pro-Commodification Theses

Brennan and Jaworski (2016: 16) express their view that "there are no inherent limits to the market" in three different ways. First, they state that their view of "the scope of the market" is "If you may do it for free, then you may do it for money" (Brennan and Jaworski 2016: 10). Second, they add a clause to this view, offering the compound claim that "If you can have it, you can buy it; if you can give it away to someone, you can sell it to her" (Brennan and Jaworski 2016: 16). Third, they state that they reject the view that "There are some things that people are normally allowed to own or possess in some way, but which should not be for sale" (Brennan and Jaworski 2016: 15).

Brennan and Jaworski seem to believe that these three theses express the same pro-commodification position. But they do not. The first thesis is a simple conditional claim (with the form "$F \rightarrow M$"). The second is a conjunction of this first conditional claim ("if you may do it for free, then you may do it for money" being equivalent to "if you can give it away to someone, you can sell it to her") with the claim that "if you can have it, you can buy it" (this conjunctive thesis has the form "$[H \rightarrow B] \bullet [F \rightarrow M]$"). These first two theses focus on the permissibility of the market transfer of services that persons can perform free (the first thesis) or goods that persons can have or give away (the second thesis). The third thesis is similarly concerned with the permissibility of the market transfer of things that persons can have or give away. But this thesis is different in kind from the previous two for its focus is not on the permissibility of particular acts of buying or selling. Instead, its focus is on the question of whether there are certain things that can be owned or possessed but which owing to their nature should never bought or sold.

Lest one think that this distinction between the third thesis and the previous two is one without a difference note that the falsifiability conditions of the third thesis are different from those of the first two (and hence they are different claims). It is true that all three theses could be falsified by showing that a person could transfer a particular good or service freely but that it would impermissible for her to transfer it for money, and in this respect they are similar. However, the falsification conditions for the first two theses are weaker than those for the third. The first two theses would be falsified by a single case (e.g., in situation P) in which it would be permissible for a person to transfer a good or service freely but it would not be permissible for her to transfer the same good or service for money. (Such a case would falsify "F $\rightarrow$ M" rendering both the first and the second theses false.) The falsity of these theses is thus compatible with it being the case that in some *other* situations (e.g., Q and R) the same good or service that it would be permissible to transfer freely but impermissible to sell in P could (in Q and R) be permissibly both given freely and sold. This is because these two theses focus on the permissibility of particular *acts* of sale, not on the *nature* of the thing sold—and the permissibility of particular acts of sale could vary according to context even when the nature of the things sold remains constant. By contrast, for the third thesis to be false there would have to be certain things that should *never* be for sale *no matter what* the circumstances were. Unlike the first two theses the third would *not* be falsified by showing that in at least *one* situation a certain good or service could only permissibly be given away freely and not permissibly sold. Instead, it could only be falsified by showing that in *all* situations a certain good or service could only permissibly be given away freely and never permissibly sold.

II. Why the First and Second Theses are False

It might be tempting to object to the first two theses by noting that there are some goods that can be had or given away but whose nature precludes buying or selling them. Certain goods are partially constituted by their modes of acquisition, with some – such as competitive prizes, medals, and similar honors – only being able to be acquired through the recognition of past meritorious actions rather than by market means. Such goods can be given away by those who are in a position to distribute them, but not sold. The Royal Swedish Academy of Sciences, for example, can give away the Nobel Prize for physics but not sell it, for the good of the Prize consists of the proper recognition of the recipient's scientific accomplishments. It is thus neither true that "If you may do it for free, then you may do it for money" nor "if you can give it away to someone, you can sell it to her." The existence of such uncommodifiable goods also falsifies the first conjunct of the second thesis ("if you can have it, you can buy it") for such goods could be had, but not bought. The recipients of Nobel Prizes can have them but not buy them, for then they would be Nobel *Purchases* and not Nobel *Prizes*. (Although, of course, the trappings of these Prizes – the medals and the diplomas – could be bought by anyone.) There are thus some goods that persons can have but which cannot be bought, and which can be given away but which cannot sold.

Yet this first objection misfires. Although they are concerned with "the inherent limits of the market" Brennan and Jaworski are concerned only with the inherent *moral* limits of the market, i.e., whether there are any goods that *ought never* to be commodified. Since "ought" implies "can" they are only concerned with goods that it is *possible* to commodify. (The "can" and "may" in the two different versions of "F → M" are thus to be read normatively, rather than ontologically.) That there are goods whose nature precludes them from commodification is thus no objection to either of their two first theses.

But these two theses are still subject to counterexamples for there are cases where it would be permissible for a person to perform a particular act free but impermissible for her to ask to be paid to do it. (Thus, neither the first thesis that "[i]f you may do it for free, then you may do it for money" nor the second conjunct of the second these are true.) Consider a person who has a moral obligation to perform a particular action for another. (For example, to save him from drowning when she could do so at little cost to herself.) Since she is morally obliged to perform this act it would clearly be permissible for her to do it. However, since she is morally obliged to perform it she (morally) owes its performance to its recipient. If she were to demand payment from him to perform it she would be charging him for something that is already owed to him (i.e., her act of saving him) and hence his by right. Since it is not morally permissible to threaten to retain something that is already owed to another unless he pays for its provision it would not be permissible for a person to charge for the performance of an action that she is already morally obligated to do free (a version of this objection has been developed by Wells, forthcoming). It is thus not true that if you may do something for free (i.e., save this person, at this time) then you may do it for money. Both the first thesis and the second conjunct of the second thesis (and hence the second thesis itself) are thus false.

III. The Defensible Thesis of *Markets Without Limits*

Given the falsity of the first and the second theses for Brennan's and Jaworski's view in *Markets Without Limits* to be correct the third pro-commodification claim must be defensible. This claim is the rejection of the view that "There are some things that people are normally allowed to own or possess in some way, but which should not be for sale." This third thesis is thus:

> There are no goods or services that could be bought or sold for money whose nature renders such purchases or sales impermissible.

The first objection that was outlined above to the first and second theses would not hold against this thesis. (Indeed, the caveat noting that the goods or services in question must be ones that could be bought and sold for money is introduced here as a result of the above discussion.) And the second objection that was outlined above to the first and second theses would also not hold against this thesis. That it would not be permissible for a person to sell her life-saving services when she is morally obligated to provide them does not entail that she could not permissibly sell them in other circumstances (e.g., as a professional life guard). Thus, of the three pro-commodification claims that Brennan and Jaworski offer in *Markets Without Limits* this is that which should be taken to be the thesis of their volume.

To object to *this* thesis (and *not* the first two) the critics of markets would have to provide an example of a good that meets four conditions: (1) it could be legitimately owned or possessed; (2) it can be bought or sold (i.e., it is not partially constituted by its inability to be acquired by market means); (3) its possessor has the discretion to dispose of it by market means; and (4) it would always be morally wrong for her to do so.

Since it seems highly unlikely that any good would meet all four of these conditions, it is likely that the *actual* thesis of *Markets Without Limits* is correct—even if the two "companion" theses that Brennan and Jaworski mistakenly offer alongside it are false.

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