

Commodification and Human Interests

Julian J. Koplin 

Received: 28 June 2017 / Accepted: 14 March 2018 / Published online: 25 May 2018
© Journal of Bioethical Inquiry Pty Ltd. 2018

Abstract In *Markets Without Limits* and a series of related papers, Jason Brennan and Peter Jaworski argue that it is morally permissible to buy and sell anything that it is morally permissible to possess and exchange outside of the market. Accordingly, we should (Brennan and Jaworski argue) open markets in “contested commodities” including blood, gametes, surrogacy services, and transplantable organs. This paper clarifies some important aspects of the case for market boundaries and in so doing shows why there are in fact moral limits to the market. I argue that the case for restricting the scope of the market does not (as Brennan and Jaworski assume) turn on the idea that some things are constitutively non-market goods; it turns instead on the idea that treating some things according to market norms would threaten the realization of particular kinds of human interests.

Keywords Commodification · Market boundaries · Market design · Moral dumbfounding · Semiotic arguments

The philosophical literature on commodification includes three broad schools of thought about how the

moral limits to markets should be defined (Walsh 2013).¹ Market abolitionists advocate replacing the market with alternative arrangements for producing and distributing goods. Moral boundary theorists accept the use of markets in some contexts but argue that some things ought not to be treated as market commodities. A third school of thought, most commonly associated with libertarianism, holds that it is impermissible to restrict the scope of the market by blocking exchanges between consenting adults.

In *Markets Without Limits*, as well as a series of related publications, Brennan and Jaworski (2015a, 2015b, 2016, 2017, Jaworski and Brennan 2015) seek to show that the concerns of moral boundary theorists are misplaced. They begin from the position that market institutions are “the best thing that ever happened to humanity” (Brennan and Jaworski 2016, 1) and set out to defend markets not from market abolitionists (who, they suggest, simply fail to realize that prosperity can only be achieved in market societies) but instead from the more qualified criticisms of moral boundary theorists. Brennan and Jaworski position themselves as “the critics’ critics”; they seek to “show anti-commodification theorists that their complaints about the scope of the market are misplaced” (Brennan and Jaworski 2016, 7). Indeed, Brennan and Jaworski regard these complaints as nothing more than rationalizations of moral boundary theorists’ feelings of disgust towards the sale of things not traditionally regarded as commodities. Brennan and Jaworski ultimately defend the thesis that it is morally permissible

J. J. Koplin (✉)
Melbourne Law School, University of Melbourne, Carlton,
Victoria, Australia
e-mail: julian.koplin@gmail.com

J. J. Koplin
Biomedical Ethics Research Group, Murdoch Children’s Research
Institute, Parkville, Victoria, Australia

¹ *Markets Without Limits* uses the term “anti-commodification theorists” to refer to both market abolitionists and moral boundary theorists.

to buy and sell any goods or services which are morally permissible to possess and exchange outside of markets.

Brennan and Jaworski's thesis has major implications for several key areas of bioethical debate. For example, it suggests that the bioethical literature on commercial surrogacy need only concern itself with the question of how a market in surrogacy services should be regulated (if it should be regulated at all), not whether such a market should exist in the first place. Similarly, it suggests that the literature on the ethics of paid living kidney donation ought only to consider what form the market should take, not whether financial inducements to sell one's organs are ethically acceptable. By the same token, it should be taken for granted that markets in gametes, blood products, bone marrow, and breast milk ought to be allowed, with future ethical inquiry on these topics restricted to matters of market design. In short, Brennan and Jaworski's thesis entails that many of the perspectives that have animated discussions of commodification within bioethics (and that have, to date, been taken seriously even by their critics) can be dismissed outright. It is a thesis that would radically reshape future discussions of commodification and the moral limits of markets.

This paper adopts the unwieldy role of criticizing the critics' critics. I argue that *Markets Without Limits* mischaracterizes the body of work that it sets out to criticize, and I show how various moral boundary theorists have anticipated many of the concerns raised by Brennan and Jaworski. I further argue that the book's central thesis—that nothing is *inherently* the kind of good that should not be bought and sold—is actually compatible with the case for market boundaries. This is because the case for restricting the scope of the market does not turn on the idea that some things are constitutively non-market goods; it turns on the idea that subjecting some kinds of things to market valuation and exchange would threaten the realization of particular kinds of human interests. *Markets Without Limits* ultimately rejects the case for market boundaries not because it offers a fundamentally new account of the moral limits of markets but rather because Brennan and Jaworski are more optimistic about the consequences of commodification than their argumentative opponents. I conclude by arguing that it is important for bioethicists to (continue to) consider how the commodification of different goods affects human interests.

Markets Without Limits is also worth engaging with because it touches on a number of ideas that recur throughout the commodification literature. For example, Brennan and Jaworski's critique of what they label "semiotic arguments" against markets is not only consonant with the arguments of earlier defenders of universal commodification (see e.g. Block 1999), it also echoes criticisms that some moral boundary theorists—such as Debra Satz (2010) and Phillips (2013)—have levelled against competing accounts of the moral limits of markets that appeal to the social meaning of particular goods. Similarly, Brennan and Jaworski's arguments regarding the heterogeneity of markets echoes a common theme in bioethical discussions of specific contested commodities: that rather than outright rejecting markets in goods like gametes, transplantable organs, or surrogacy services, we should regulate the market in ways that address any legitimate concerns (see e.g. Holland 2001; Van Zyl and Walker 2013; Semrau 2017). Likewise, the connection between moral repugnance and commodification has been explored outside of *Markets Without Limits* by bioethicists including Leon Kass (1992) and economists including Alvin Roth (2007), while Brennan and Jaworski's attempt to place the burden of proof on opponents of commodification reflects a common (and arguably problematic) argumentative strategy in bioethics (Koplin and Selgelid 2015). Evaluating Brennan and Jaworski's case against market boundaries can therefore help illuminate how we should think through a series of important topics in the commodification literature—and how we can avoid some common mistakes that have been made in the literature to date.

Semiotic Arguments for Market Boundaries

The first and most substantial section of *Markets Without Limits* discusses and rejects what the authors label "semiotic objections" to organ markets. Brennan and Jaworski (2016, 49) claim that semiotic objections are the "most common class of objections to markets", offered by "[n]early every anti-commodification theorist" (Brennan and Jaworski 2016, 49). Brennan and Jaworski characterize semiotic objections in the following way:

Semiotics: 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. (Brennan and Jaworski 2016, 47)

Semiotic objections (so understood) rest on the idea that allowing certain things to be bought and sold can be disrespectful or degrading. Brennan and Jaworski further hold that semiotic objections are meant to be independent of any concerns about the consequences of allowing market exchange; they hold that even if no other form of wrongdoing is present, some markets should be blocked merely because they communicate disrespectful attitudes towards the good in question.

In response, Brennan and Jaworski point towards evidence that the symbolic meaning of market exchanges can vary across cultures and argue that whether or not market exchanges symbolize something morally objectionable is therefore culturally contingent and morally arbitrary. On this view, the social meaning of market exchange in particular goods and services is a mutable social construct; it does not represent some deep moral truth about how the good in question ought to be valued. Brennan and Jaworski further argue that if we block market exchanges purely because of what such transactions symbolize, we will unnecessarily prevent forms of trade which could prove mutually advantageous or even (as in the case of scarce medical resources such as transplantable kidneys) life-saving. Accordingly, if a particular kind of market would symbolize something degrading or disrespectful despite having no negative consequences, we seek to change our symbolism rather than prevent this good from being traded on the market. They further hold that if the relevant symbolism proves intransigent, we may consciously rebel against it; there is no need to abstain from buying or selling something merely because others believe that doing so *symbolizes* something morally objectionable. Brennan and Jaworski conclude that symbolic considerations have no moral force in and of themselves; pure semiotic objections are unsound.

While Brennan and Jaworski's rejection of semiotic objections may succeed on its own terms, as a criticism of the case for market boundaries it largely misses the mark. None of the authors that Brennan and Jaworski characterize as offering semiotic objections to markets—specifically Elizabeth Anderson, David Archard, Debra Satz, Michael Sandel, and Michael Walzer—

actually defend “pure” semiotic objections to markets, let alone rely on them. The case for market boundaries made by these theorists ultimately appeals not to the symbolic meaning of the good in question but rather to the market's inability to promote (and/or tendency to threaten the realization of) particular kinds of human interests.

Consider Michael Sandel's defence of what he calls “corruption” arguments against markets. As Sandel (2012, 9) defines them, corruption arguments hold that:

Putting a price on the good things in life can corrupt them. That's because markets don't only allocate goods; they also express and promote certain attitudes toward the goods being exchanged.

Corruption arguments “appeal[] to the character of the particular good in question”; they rest on the idea that market valuation and exchange can treat goods “according to a lower mode of valuation than is appropriate to [them]” (Sandel 2012, 34). Perhaps because Sandel adopts the language of goods being “degraded” and “corrupted” by market valuation and exchange, he is often interpreted (including by Brennan and Jaworski) as arguing that some things are constitutively non-market goods, in the sense that they hold symbolic meaning that would render market valuation and exchange inappropriate. Yet this interpretation is mistaken. As Sandel understands them, corruption arguments are ultimately grounded not in the idea that some things are constitutively not commodities but rather in the idea that markets in some things threaten the realization of particular kinds of human interests.

Consider some of Sandel's concrete examples of objectionable forms of commodification. In discussing vote buying (and relevantly similar practices), Sandel begins from the idea that political participation is:

... not just a means to securing a regime that enables people to seek their own ends [but also] an essential ingredient of the good life ... [T]he purpose of politics is to call forth and cultivate distinctive human faculties that other pursuits, such as work or art, do not cultivate in the same way. (Sandel 2000, 109)

For Sandel, commodifying voting is problematic in part because vote buying and vote selling are inconsistent with, and will plausibly undermine, this republican ideal

of citizenship. This is morally significant because a republican ideal of citizenship, and the practices which sustain it, are thought necessary to achieve particular kinds of human goods. The *symbolism* of a market in votes is not held to be morally significant in and of itself.

A second example, discussed by both David Archard (2002) and Michael Sandel (2012, 122–126), is that of blood donation. One criticism of commercializing the blood supply holds that the sale of blood will contaminate the way we view blood donation more generally. Where blood is often seen as a “gift of life” in an altruistic system, the opportunity to receive cash in exchange for one’s blood would arguably encourage us to view the value of blood in monetary terms. The result (according to this line of argument) is that markets in blood will erode the practice of unpaid blood donation—a practice in which people act altruistically towards strangers in their community and in so doing foster a sense of gratitude and obligation towards one’s fellow citizens. The claim here, in other words, is that markets threaten to displace a practice which promotes social solidarity and a sense of community. Brennan and Jaworski gloss these concerns as being (purely) about the risk that blood sales will change the symbolic meaning of non-market exchanges in blood—a semiotic objection to markets in blood. Yet neither Archard nor Sandel suggest that this change is problematic in its own right. Instead, they suggest that this shift in meaning of blood donation is problematic because (and presumably only insofar as) it would displace altruistic donation and in so doing change societal relationships for the worse.

The link between the meaning of the good in question and the promotion of human goods is even more explicit in Elizabeth Anderson’s work (which Brennan and Jaworski also characterize as advancing a semiotic objection to market exchanges). Anderson suggests a framework for determining the moral limits of markets which focuses on whether markets are able to effectively realize the “dimensions of value” that adhere in particular goods. Anderson argues, roughly, that while markets are often effective at realizing economic values (such as fulfilling the desires of those who are willing and able to pay), they characteristically (although not inevitably) neglect or malign non-economic values. In other words, commodification may promote some values at the expense of others. Among other examples, Anderson suggests that damming the Grand Canyon would realize its commercial value at the expense of

its aesthetic value (Anderson 1995, 208); that the privatization of public spaces may promote economic freedom while reducing opportunities for members of the public to meet on terms of equality, thereby promoting economic values at the expense of fraternal relations (Anderson, 1995, 160); and that commercial surrogacy treats surrogates’ genetic and/or gestational ties to the children they bear according to economic rather than parental norms, thereby encouraging the emotional manipulation and exploitation of surrogate mothers (Anderson 1995, 170–189). In short, Anderson argues that a given good’s dimensions of value may or may not be best realized within market relations, depending on the nature of the good in question. While this approach to defining the moral limits of markets requires us to consider the nature of particular goods or services, it amounts to more than a semiotic objection. It is not the (contingent) social meaning of the good but rather the market’s tendency to promote or undermine particular human interests that should guide our decisions about whether we should produce and distribute something according to market norms.

The other putative examples of semiotic objections listed by Brennan and Jaworski are even less apposite. They interpret Michael Walzer’s theory of blocked exchanges as amounting to the claim that “certain things cannot be for sale because that violates the *meaning* of those goods” (Brennan and Jaworski 2016, 49). Yet what Walzer argues is that we should seek to prevent material inequality from translating into certain other kinds of inequality, such as inequality in political power, health, or social standing. In other words, Walzer argues that it can be unjust for some things to be distributed via the market, given a particular understanding of the meaning and importance of the good in question (Walzer 1983). Showing that the social meaning of particular goods is culturally contingent and mutable does not undermine Walzer’s case for market boundaries; it merely suggests that just and unjust distributions can vary between cultures and change over time—a point which is explicitly acknowledged by Walzer (1983, 9). It is the risk of markets generating certain kinds of inequalities—not the social meaning of particular goods per se—that Walzer finds morally significant.

Even more puzzlingly, Brennan and Jaworski take their rejection of semiotic objections to undermine Debra Satz’s theory of noxious markets. Far from defending semiotic objections, Satz defines her own

theory of market boundaries largely in opposition to the idea that the moral limits of markets reflect the nature of the good in question. Satz (2010, 80–84) argues that the nature or meaning of particular goods are often contested and further suggests that many goods can be bought and sold without expressing the idea that these goods are mere commodities. Accordingly, Satz's theory of noxious markets deliberately and explicitly eschews any mention of the social meaning of particular goods or the symbolism of market exchange and instead focuses on the individual and social consequences of allowing specific contested commodities to be traded on the market.

Semiotic objections (as Brennan and Jaworski define them) amount to the claim that we should not allow some things to be bought and sold simply because we do not currently happen to regard them as the kind of things that should be bought and sold. While Brennan and Jaworski offer a detailed response to such objections, this response largely misses the intended target. Rejecting semiotic objections does little to undermine the case for market boundaries, as none of the literature that Brennan and Jaworski criticize actually defends, let alone relies on, semiotic objections. Where moral boundary theorists have argued that we should be wary of the market's tendency to "corrupt" or "degrade" the social meaning of that which we buy and sell, this is not merely because of what markets happen to symbolize. The case for drawing market boundaries rests instead on the idea that commodifying certain things would threaten the realization of particular kinds of human interests.

The Heterogeneity of Markets

Most of the remainder of *Markets Without Limits* is devoted to succinctly rejecting a range of non-semiotic objections to commodification, including objections based on exploitation, misallocation, harms to individuals, and the harmful social effects of particular forms of trade. Brennan and Jaworski offer a general response to such objections. They argue, in brief, that moral boundary theorists "fail to recognize ... that there [are] ... very many different ways of buying and selling the very same thing" (Brennan and Jaworski 2016, 33). Among other forms of market regulation, it is possible to place restrictions on who can participate in the market (for example, by preventing middlemen or brokers from operating in the market), establish upper or lower limits on the price,

or even change the mode of payment altogether (for example, by "paying" participants via contributions to a scholarship fund rather than in cash). Brennan and Jaworski (2016, 199–200) further claim that moral boundary theorists who propose to block markets in specific goods typically overlook the possibility that doing so may simply push the trade underground, exacerbating the very problems that prohibition was meant to address. They conclude that rather than considering whether a particular good ought to be exchanged via the market, we should focus on designing markets which can address any legitimate moral concerns while nonetheless allowing these goods to be exchanged for valuable consideration. On this view the relevant moral question is not *what* can be bought and sold but rather *how* we ought to buy and sell it.

Brennan and Jaworski claim that the failure to recognize the heterogeneity of markets is widespread among moral boundary theorists. Yet one might reasonably wonder who exactly Brennan and Jaworski have in mind. Elizabeth Anderson (1990, 202) argues that while treating some goods as market commodities can malign important non-economic ends, in some cases "the distinctive dimensions of value in the[se] goods can be preserved short of prohibiting their sale [i.e. through market regulation]," particularly when it might be possible to structure markets in ways that encourage market norms to exist alongside non-market norms. Among other examples, Anderson cites zoning laws as an example of regulation that aims to promote non-economic ends (in this case, preserving the architectural integrity of a city) without blocking market exchange altogether. Similarly, one of the central arguments of Margaret Radin's *Contested Commodities* (1996) is that in our current nonideal world the best way to resist the commodification of particular goods might not always be to block the market outright, but rather to pursue a strategy of "incomplete commodification" through regulating trade in ways that recognize and promote the non-economic values of the goods in question. Debra Satz's *Why Some Things Should Not Be for Sale* (2010) repeatedly emphasizes that for some noxious markets, the relevant problems might be better addressed by regulating the market or changing the context in which it operates, rather than banning the trade outright. According to Satz:

Many markets are noxious only in a given context; instead of changing the market we might try to

change the context. Even in cases where there do not seem to be good reasons in favour of allowing a particular market, it may be impractical to ban it... Thus, although there will be cases in which we will want to ban a particular noxious market, in other cases it will make sense to respond to a noxious market by legislating a safety net, or by educational policies designed to increase information, or by mechanisms aimed at increasing accountability, or by tax-and-transfer schemes to reduce inequality. And sometimes we will simply want to ensure that nonmarket mechanisms for providing a good exist side by side with market mechanisms. (Satz 2010, 111)

Where moral boundary theorists propose limiting the scope of the market it is not because they fail to recognize that some problems can be addressed through market regulation but rather because they are less confident than Brennan and Jaworski that all moral concerns are realistically amenable to regulatory solution.

What of Brennan and Jaworski's claim that moral boundary theorists often fail to recognize that blocking markets might simply drive trade underground? Here, too, most of the authors that Brennan and Jaworski criticize explicitly acknowledge this risk. Elizabeth Anderson (1995, 156), Debra Satz (2010, 10, 11, 110–111), and Michael Sandel (2000, 96) have each independently argued that the ever-present risk of fostering black market trade means that we cannot move directly from the conclusion that a market is morally objectionable to the conclusion that it should be banned. So too have other moral boundary theorists whose work Brennan and Jaworski do not discuss (see e.g. Phillips 2013). Similarly, the risk of pushing trade underground is one reason why Radin (1996, 132) describes policymakers as caught in a "double bind" whereby preventing the commodification of certain goods (which is *prima facie* desirable) may inflict serious harms on the vulnerable (which is *prima facie* undesirable). Far from being underappreciated, the possibility that prohibition would itself have harmful consequences is widely acknowledged in the body of literature that Brennan and Jaworski take themselves to be criticizing.

Disgust and Moral Dumbfounding

In the final section of *Markets Without Limits*, Brennan and Jaworski speculate on why it is that their arguments

have not persuaded those who believe that some things should not be commodified. Citing Haidt and colleagues' much-discussed experimental research on the role of intuitions in moral judgement, Brennan and Jaworski claim that those who hold strong intuitions that a practice is wrong often continue to maintain this moral judgement even after each of their reasoned objections has been shown to fail. Haidt and colleagues describe this phenomenon as "moral dumbfounding": the "stubborn and puzzled maintenance of a moral judgement without supporting reasons" (Haidt and Murphy 2000). Brennan and Jaworski explain moral boundary theorists' continued opposition to universal commodification in terms of moral dumbfounding. They cite research showing that many people continue to object to markets in organs even when they are presented with a scenario that would seem to pre-empt any concerns about exploitation and distributive unfairness (Tetlock 2000), a phenomenon they claim is true of "anti-market attitudes" more generally. This is because (Brennan and Jaworski claim) moral boundary theorists are merely attempting to rationalize their feelings of repugnance towards certain kinds of market exchanges (Brennan and Jaworski 2016, 20–22). With a rhetorical flourish, Brennan and Jaworski (2016, 221) conclude that any feelings of disgust that we feel towards markets in things like sex, surrogacy, recreational drugs, or transplantable organs should be redirected; rather than being disgusted by these controversial forms of trade, we should be disgusted by those who continue to maintain their opposition to such markets when they ought to realize that the good achieved by such markets outweighs the bad.

For the charge of moral dumbfounding to hold, it must be true that moral boundary theorists do not articulate any legitimate objections to particular kinds of markets. It must also be true that moral boundary theorists' rejection of certain kinds of markets would also extend to proposals for highly regulated markets that could successfully address all of their moral objections. Neither condition holds. As shown throughout this paper, moral boundary theorists often explicitly acknowledge that moral evaluation of particular cases of commodification should be sensitive to both the possibilities of market regulation and the specific social context in which the market would operate.

Brennan and Jaworski's argument faces a further obstacle: that recent experimental work has done much to undermine the moral dumbfounding thesis. For example, Royzman et al. (2015) conducted a series of studies replicating elements of Haidt and colleagues' research, which asked participants to judge the morality of an act of sibling incest, described in a brief vignette, in which no party is harmed. Where Haidt and colleagues found that participants clung irrationally to the belief that the siblings' actions were wrong, Royzman and colleagues found, *inter alia*, that the extent to which participants appeared "morally dumbfounded" largely tracked their degree of incredulity towards the idea that neither sibling nor any third parties would be harmed by the act (for example, because participants expected that the siblings would come to experience psychological difficulties, even if they did not immediately regret having sex with each other). The appearance of "moral dumbfounding" largely reflected the extent to which participants found the scenario they were presented with implausible.

The same phenomenon could explain what Brennan and Jaworski see as the moral dumbfounding of moral boundary theorists when presented with claims that their objections can be met through sensible market design. Among other examples, Brennan and Jaworski (2016, 206–209) assert that a market in organs could, in principle, be designed to protect kidney sellers from being harmed, prevent people living in poverty from being pressured or coerced into selling, and prevent people more generally from coming to regard their bodily organs as "mere" commodities. The implication is that opponents of organ markets are simply unwilling to acknowledge that realistic solutions to their concerns exist—a claim which could also be made regarding opponents of other contested commodities, like blood, gametes, and surrogacy services. Yet much of the opposition to markets in organs is motivated largely by concerns that the proposed regulations may not be feasible and/or that they would not address all relevant moral concerns (see e.g. Capron 2014; Koplin 2014; Malmqvist 2013; Martin and White 2014; Rippon 2014). Those who continue to express reservations about the commodification of transplantable organs (or other goods) may not be morally dumbfounded. They may simply not be persuaded that realistic solutions to their concerns are as readily available as Brennan and Jaworski claim.

Redefining the Commodification Debate

Brennan and Jaworski take the commodification debate to centre on the narrow question of what, if anything, it is sometimes permissible to exchange for free but *necessarily* wrong to trade on the market. According to Brennan and Jaworski (2016, 16), for moral boundary theorists' "anticommodification thesis" to hold, this wrongness must be an *essential* feature of all market exchange in this particular good, not merely certain kinds of markets or markets which operate in particular social or political contexts. Accordingly, Brennan and Jaworski argue that if establishing a market in some good would have negative consequences (because it would change how people exchange or value the good in question), we should blame those who buy, sell, and value the good in problematic ways, not the market itself. If, for example, establishing a market in votes would have negative consequences because many people would sell their votes to the highest bidder (who would likely fail to promote the right ends of government), Brennan and Jaworski (2016, 191–194) hold that the blame falls squarely on those who sell their vote irresponsibly, not on the commodification of voting *per se*. By analogy, if sellers of transplantable organs, bone marrow, ova, or other biological materials would be characteristically harmed or exploited on an open market, we should blame whichever market actors are responsible for bringing about these harms, not the commodification of these goods *per se*. Because such markets are not *essentially* problematic—it is, for example, possible to imagine a society in which people buy and sell votes responsibly or in which organ sellers and recipients alike benefit from a trade in organs—they lend no support to the "anticommodification thesis" that it is never permissible for some things to be bought and sold.

While understanding commodification concerns extremely narrowly, Brennan and Jaworski adopt a broad understanding of what a market is. They charge their argumentative opponents with the task of proving that some things should not be exchanged on *any* kind of market, even one in which (as they suggest in relation to adoption markets) buyers and sellers alike are subjected to extensive screening, or where (as they suggest in relation to organ markets) goods are distributed according to need rather than ability to pay, or even one where (as they suggest in relation to blood and surrogacy markets) the seller is "paid" not in cash but via a

charitable donation made on their behalf.² Elsewhere, they suggest that commodification occurs even when the cash value serves a purely symbolic purpose—as in the case of a prestigious prize awarded by the Museum of the City of New York, which carries a nominal cash payment of \$24 designed to mirror the sum paid to Native Americans in exchange for Manhattan Island (Brennan and Jaworski 2016, 111). Brennan and Jaworski claim that if not all forms of market exchange would be morally problematic or if problems would arise in some social contexts but not others, the “anti-commodification thesis” purportedly defended by moral boundary theorists—that is, that trade in some things would be morally problematic under all conditions and in every context—fails.

This broad definition of the market and narrow characterization of the “anti-commodification thesis” jointly do much of the argumentative work in *Markets Without Limits*. Brennan and Jaworski claim that anti-commodification arguments are intended to show that there are some things that it is permissible to exchange for free but inherently objectionable to trade on the market. They define markets so broadly as to include altruistic exchanges in which the monetary incentives play only a trivial role (as is arguably the case if the “seller” receives a token payment of purely symbolic value or has a charitable donation made in their name). One might reasonably expect that for any given contested commodity, there likely exists at least some form of market (broadly defined) under which the same good could be exchanged without significantly changing the moral stakes. Brennan and Jaworski are right to be sceptical of the “anti-commodification thesis,” so defined. The problem is that the theorists that Brennan and Jaworski criticize do not defend as ambitious a thesis as Brennan and Jaworski ascribe to them.

Radin, for example, describes a continuum between complete commodification and complete noncommodification. On Radin’s view, the more heavily we regulate a market in service of non-economic ends, the less fully we commodify the good in question (Radin, 1996, 104). Radin’s objections to commodification apply primarily to examples of complete or near-complete

commodification, not *any* context where goods are exchanged for valuable consideration. Similarly, Anderson (1995, 156) argues that what makes something a commodity (for the purpose of her theory of wrongful commodification) is “not that people pay for it, but that exclusively market norms govern its production, exchange, and enjoyment.” On Anderson’s view, some things can be exchanged for valuable consideration without being (fully) commodified. Among other examples, labour is only partly commodified in contexts where one does not act purely according to market norms but is also bound by the norms of a profession—as is generally the case in the medical professions (Anderson, 1995, 166). Anderson further notes that while market institutions tend to promote particular values and malign others, this is merely a tendency. According to Anderson, ethical evaluation of actual markets must therefore consider how well such markets can, in practice, accommodate and promote non-market values:

Any particular social institution or practice is apt to diverge from its ideal type in multifarious and complex ways and to include mixtures of norms more prominently associated with institutions and practices in other spheres of life ... Hence, any move from a relative evaluation of ideal types to a relative evaluation of actual practices must be informed by a detailed empirical investigation of the actual norms they embody, an evaluation of how well they combine norms from different spheres, how well these norms express the ideals in terms of which they are justified, and how well the practices fare by other criteria such as justice and efficiency (Anderson 1990, 184).

If such theories of the moral limits of the market do not apply (or apply only weakly) to cases at the outer edge of this continuum—for example, markets in which altruistically-motivated organ donors have a charitable donation made in their name—this is not a serious indictment of the idea that some things should not be (wholly or substantially) commodified. It is hardly surprising if various theories of the moral limits of markets gain more purchase as goods are increasingly commodified and apply less strongly when the same good is not treated as a commodity to any significant extent.

By framing the “anti-commodification thesis” in terms of the idea that it is morally impermissible to

² Brennan and Jaworski acknowledge that in listing such a wide range of possibilities, they have adopted a broad definition of what a market is. They also claim that the authors they criticize also adopt a broad definition of markets but do not provide any textual justification for this claim (Brennan and Jaworski 2016, 54).

buy and sell some things under *any* social conditions, Brennan and Jaworski also occlude the extent to which moral boundary theorists themselves emphasize that the moral limits of markets are context-specific. To mention just a few examples: Sandel (2012, chapter 2) argues that the appropriateness of introducing money into a non-market setting can depend on whether the norms that are already at play in this setting are more or less closely aligned with the market; Satz (2010) argues that markets in sex and reproductive labour are likely to reinforce the mistaken idea that women carry lower status in society, while also suggesting that such markets would not necessarily do so under conditions of gender equality; Anderson (1990, 182) both criticizes the practice of prostitution under current social conditions and describes a model for how it could be practiced in a just society; Phillips (2013) argues that markets which closely reflect conditions of significant material inequality can make it difficult to sustain the notion that all members of society are moral equals (a concern that applies only to exchanges that take place against unequal background conditions); and Kerstein (2009) argues that under current social conditions (but not in a hypothetical Kantian Kingdom of Ends), markets in bodily organs are likely to reinforce the view that people living in poverty, and not merely their body parts, have mere price. The claim, then, is not that markets in such things would be problematic under any conceivable context, but rather that they would be problematic in the society we currently inhabit.

Brennan and Jaworski (2016, 225) ultimately hold that those presenting an anti-commodification argument bear the burden of proving a) that there is an asymmetry whereby it is morally permissible to exchange something but morally impermissible to exchange it via the market and b) that no alternative form of the market could address the objections to buying and selling the good in question. Yet it is unclear why (and doubtful that) opponents of commodification should be expected to show that *no* feasible solution is available for their concerns, while proponents of commodification need not show that the concerns of moral boundary theorists can realistically be met. Allocating the burden of proof in this way assigns opponents of commodification with a far more difficult task than those who defend commodification, which surely requires justification. Brennan and Jaworski (2016, 39) suggest that for any given good there are at least 2,187 different kinds of markets that opponents of commodification need to address; defenders of

commodification, on the other hand, need only show that their argumentative opponents have not anticipated each and every possible form of market regulation. Assigning the burden of proof in this way also means that we cannot draw any practical conclusions about whether we ought to allow a market in the good in question; even if opponents of commodification fail to show that it is impossible to meet their concerns through clever market design, we cannot conclude on this basis that an ethical market in this good exists, let alone determine what such a market would look like. Yet the animating question in the literature on contested commodities is not whether there is some conceivable world in which the commodification of these goods could prove benign but rather the practical question of whether we ought to allow the sale of such things—and, if so, under what conditions.

Markets Without Limits, then, is dedicated to refuting a thesis that few (if any) of its supposed adherents have actually defended. Its criticisms of the case for market boundaries often echo the very same concerns that moral boundary theorists have acknowledged and accommodated within their theories of the moral limits of markets. In at least this respect, there is less substantive disagreement than it might seem between *Markets Without Limits* and the literature that it sets out to criticize.

The lessons for future work on commodification are threefold. First, concerns about commodification are never *just* concerns about commodification; objections to particular markets should, and in practice usually do, amount to more than the claim that such markets would commodify something that is constitutively not a market commodity. Second, objections to commodification can legitimately apply more strongly to certain kinds of exchange than others; in particular, objections to commodification are likely to gain traction the more completely that the good in question is treated according to the norms of the market. Third, claims about commodification may not, and need not, apply in all contexts. The claim that all markets could be acceptable under at least some conditions is entirely compatible with the claim that such a market would be problematic in the social, political, and economic context that we currently inhabit, as well as the social, political, and economic contexts we can realistically expect to inhabit in the future.

It is perhaps here that *Markets Without Limits* diverges most sharply from the literature it criticizes. *Markets Without Limits* assumes that the

commodification of everything is or can be rendered beneficial not just in principle but also in practice and indeed specifically argues for markets in goods as varied as blood, votes, sex, college admissions, babies, and human enhancement technologies. Where some argue that there is no feasible way to protect commercial surrogate mothers from bullying and exploitation, Brennan and Jaworski (2016, 36–41) hold that these problems are straightforwardly amenable to regulatory solution. Where some argue that selling college admissions to wealthy families is incompatible with the values that should guide higher education, Brennan and Jaworski (2016, 134–137) defend such arrangements on the grounds that poorer students who attend such institutions would benefit from opportunities to learn the manners and behaviours of the upper class. Where most people are rightly concerned about the consequences of introducing a market in votes, Brennan and Jaworski (2016, 19) optimistically suggest such markets would not be problematic if people are careful to sell their votes for the right reasons to the right parties. It is certainly possible to imagine a world in which the commodification of everything is compatible with the realization of the full range of human goods. Where Brennan and Jaworski err is in their confidence that this would, in practice, be the case.

Bioethics and Market Boundaries

So far, this paper attempted to show that Brennan and Jaworski's case against market boundaries fails. This final section briefly makes a positive case for bioethicists to (continue to) consider the moral limits of markets. Although obviously related, these two aims are independent of each other; this paper's critique of *Markets Without Limits* may succeed even if its positive case for market boundaries fails.

Trading something on the market often changes the character of the good in question. This is a less controversial claim than it might first appear. Consider, for example, how awards and honours are exchanged. Recipients of the Nobel Prize are selected according to some conception of desert; this is the reason why it is considered an honour to receive one. Imagine if a limited run of Nobel Prizes were instead sold each year to the highest

bidder, regardless of their accomplishments. Presumably this would help ensure that Nobel Prizes could be acquired by those with the greatest willingness and ability to pay. At the same time, a fully commodified version of the Nobel Prize would not honour scientific or literary achievement (and so would fail to achieve the goal that the Nobel Prize was designed to achieve); receiving such a prize would confer very little prestige if one bought it on the market.

The hypothetical commodification of Nobel Prizes is far removed from bioethical discussions of contested commodities. However, it illustrates an important point: that commodification can promote some goals (e.g. allocating goods to those with the greatest willingness and money to buy them) at the expense of others (e.g. honouring scientific and literary achievement). Opening a market in a particular good does not merely change the financial costs or benefits of engaging in a particular kind of exchange; it can affect (perceptions of) the character of the good being exchanged and in so doing promote or hinder the realization of particular human interests. Markets in some things may therefore be morally problematic even if the same good can be exchanged outside the market without raising any serious moral issues.

This general point underlies a broad range of concerns. To choose a prosaic example, one objection to organ markets holds that sellers would face greater risks than organ donors. This is not because the addition of payment somehow renders the surgery more dangerous but rather because the practice of organ *donation* is meaningfully different from the practice of organ *selling*. Organ donors and organ sellers would typically be drawn from different demographics (with inter alia different degrees of access to healthcare), act according to different motivations (which may have implications for long-term regret), and participate in a practice with a different social meaning (which may result in stigma to those who sell organs but not those who donate them) (Koplin 2014).

A second category of concerns focuses on the social consequences of promoting or blocking certain forms of exchange. For example, Richard Titmuss' *The Gift Relationship* (1997) famously argued that a system of unpaid blood donation can foster an important sense of community between otherwise separate members of large-scale

modern societies. This is because (Titmuss argued) under an altruistic model blood is a life-sustaining gift donated by people who are fellow citizens with, but otherwise strangers to, those who ultimately receive it. A sense of community might not be so readily achieved if the blood supply is commercialized and blood donors are seen to act from financial motives and if blood itself becomes seen not as a life-saving gift but rather a commodity with a discrete financial value.

A third category of concerns focuses on how conceiving of some things in terms of their market value can shape our broader worldview. On this view, the commodification of some goods—particularly those closely associated with personhood—might lead us to adopt a deficient conception of (and thereby impede) human flourishing. For example, in discussing the sale of children for adoption, Margaret Radin argues that treating babies according to the norms of the market might promote a tendency to see children as mere commodities rather than persons worthy of respect:

When the baby becomes a commodity, all of its personal attributes—sex, eye colour, predicted I.Q., predicted height, and the like—become commodified as well. This is to conceive of potentially all personal attributes in market rhetoric ... In the worst case, market rhetoric could create a commodified self-conception in everyone, as the result of commodifying every attribute that differentiates us and that other people value in us, and could destroy personhood as we know it (Radin 1986, 1925–1926).

On this view, what we conceive of as a commodity may have flow-on effects for how we see the “texture of the human world” (Radin 1986, 1884)—effects that may be problematic independently of any direct harms to persons involved with the trade.

My aim here is to illustrate some of the ways that markets in some goods might set back human interests even if the same good can permissibly be exchanged outside of markets. This point holds regardless of whether one thinks that markets in organs, blood, or babies are morally acceptable, all things considered. Given that commodification has far-reaching implications for how goods are produced, exchanged, and valued, it is doubtful that commodification is always

desirable and equally doubtful that market boundaries are never morally legitimate.³

Markets Without Limits is notable because it presents what is perhaps the most fully developed and far-reaching critique of market boundaries to date. If its arguments are correct, the scope of the market should expand to encompass anything it is permissible to exchange outside of markets, including blood, gametes, transplantable organs, bone marrow, genetic and gestational surrogacy services, and children. On this view, bioethicists should limit themselves to considering, at most, what form such markets should take. This would be a mistake. Rather than accepting markets without limits, bioethicists ought to continue the difficult work of considering, on a case by case basis, how opening a market in various kinds of contested commodities would affect human interests.

Funding This research was supported by funding from the Victorian Government’s Operational Infrastructure Support Program.

References

- Anderson, E. 1990. The ethical limitations of the market. *Economics and Philosophy* 6(2): 179–205.
- . 1995. *Value in ethics and economics*. Cambridge, MA: Harvard University Press.
- Archard, D. 2002. Selling yourself: Titmuss’s argument against a market in blood. *The Journal of Ethics* 6(1): 87–103.
- Block, W. 1999. Market-inalienability once again: Reply to Radin. *Thomas Jefferson Law Review* 22: 37–88.
- Brennan, J., and P. Jaworski. 2015a. In defense of commodification. *Moral Philosophy and Politics* 2(2): 357–377.
- . 2015b. Markets without symbolic limits. *Ethics* 125(4): 1053–1077.
- . 2016. *Markets without limits: Moral virtues and commercial interests*. New York, NY: Routledge.
- . 2017. If you can reply for money, you can reply for free. *The Journal of Value Inquiry* 51(4): 655–661.
- Capron, A. 2014. Six decades of organ donation and the challenges that shifting the United States to a market system would create around the world. *Law and Contemporary Problems* 77(3): 25–69.
- Haidt, J., and S. Murphy. 2000. *Moral dumbfounding: When intuition finds no reason*. Unpublished manuscript.

³ This minimal case for market boundaries leaves many important issues open. Two important questions— which unfortunately fall outside the scope of this paper—are which (if any) justifications for market boundaries depend on perfectionist judgements about the relative value of different conceptions of human flourishing and, if so, whether this commitment to perfectionism is morally problematic. For a defence of the view that the case for market boundaries is compatible with the liberal principle of state neutrality, see Keat (2000).

- Holland, S. 2001. Contested commodities at both ends of life: Buying and selling gametes, embryos, and body tissues. *Kennedy Institute of Ethics Journal* 11(3): 263–284.
- Jaworski, P., and J. Brennan. 2015. Market architecture: It's the how, not the what. *Georgetown Journal of Law & Public Policy* 13: 231.
- Kass, L. 1992. Organs for sale? Propriety, property, and the price of progress. *The Public Interest* 107: 65–86.
- Keat, R. 2000. Market boundaries and human goods. *Royal Institute of Philosophy Supplements* 45: 23–36.
- Kerstein, S.J. 2009. Kantian condemnation of commerce in organs. *Kennedy Institute of Ethics Journal* 19(2): 147–169.
- Koplin, J.J. 2014. Assessing the likely harms to kidney vendors in regulated organ markets. *The American Journal of Bioethics* 14(10): 7–18.
- Koplin, J.J., and M.J. Selgelid. 2015. Burden of proof in bioethics. *Bioethics* 29(9): 597–603.
- Malmqvist E. (2013) Kidney sales and the analogy with dangerous employment. *Health Care Analysis* 23(2): 1–15.
- Martin, D., and S. White. 2014. Risk, regulation, and financial incentives for living kidney donation. *The American Journal of Bioethics* 14(10): 46–48.
- Phillips, A. 2013. *Our bodies, whose property?* Princeton, NJ: Princeton University Press.
- Radin, M.J. 1986. Market-inalienability. *Harvard Law Review* 100: 1849–1937.
- . 1996. *Contested commodities*. Cambridge, MA: Harvard University Press.
- Rippon, S. 2014. Imposing options on people in poverty: The harm of a live donor organ market. *Journal of Medical Ethics* 40(3): 145–150.
- Roth, A.E. 2007. Repugnance as a constraint on markets. *Journal of Economic Perspectives* 21(3): 37–58.
- Royzman, E.B., K. Kim, and R.F. Leeman. 2015. The curious tale of Julie and Mark: Unraveling the moral dumbfounding effect. *Judgment and Decision Making: Tallahassee* 10(4): 296–313.
- Sandel, M. 2000. What money can't buy: The moral limits of markets. *Tanner Lectures on Human Values* 21: 87–122.
- . 2012. *What money can't buy: The moral limits of markets*. New York, NY: Farrar, Straus and Giroux.
- Satz, D. 2010. *Why some things should not be for sale: The moral limits of markets*. Oxford University Press.
- Semrau, L. 2017. Reassessing the likely harms to kidney sellers in regulated organ markets. *The Journal of Medicine and Philosophy* 42(6): 634–652.
- Tetlock, P.E. 2000. Coping with trade-offs: Psychological constraints and political implications. In *Elements of reason: Cognition, choice, and the bounds of rationality*, edited by A. Lupia, M.D. McCubbins, and S.L. Popkin, 239–263. Cambridge: Cambridge University Press.
- Titmuss, R.M. 1997. *The gift relationship: From human blood to social policy*. New York, NY: New Press.
- Van Zyl, L. and R. Walker R. 2013. Beyond altruistic and commercial contract motherhood: The professional model. *Bioethics* 27(7): 373–381.
- Walsh, A. 2013. Commodification. In *International Encyclopedia of Ethics*, Blackwell Publishing Ltd. <http://onlinelibrary.wiley.com/doi/10.1002/9781444367072.wbiee712/abstract>.
- Walzer, M. 1983. *Spheres of justice: A defense of pluralism and equality*. New York, NY: Basic Books.