

The Good, the Bad, and the Market: A Response to Brennan and Jaworski's Markets without Limits and the Principle of Wrongful Possession

Introduction: Markets and Morality

The success of markets is difficult to deny; the collective well being of the world's citizens has increased rapidly over the last two hundred years as a result of their creation and implementation. The concept of a market arouses many ideas and images, but for the sake of this paper, a market will be defined as "a relationship where the mode of interaction is consensual exchange" [Brennan and Jaworski, p. 4, courtesy of David Schmidtz]. As markets have flourished in multiple societies, a contentious question has emerged: "What sorts of things should be and should not be for sale?" [Brennan and Jaworski, 4].

Many de facto markets have existed as long as humanity itself (think of prostitution, gambling, etc.) that have been deemed morally ambiguous at their best and absolutely heinous at their worst. Thinkers such as Debra Satz, Michael Sandel, Jason Brennan, and Peter Jaworski have made claims regarding the morality many markets and their peripheral issues. Some thinkers argue that issues of market have to do with social equality of their participants, while others hold that some things ought to never be sold period. However, many of these ideas have been challenged by Brennan and Jaworski in their book *Markets Without Limits*.

In this paper I will first define the concept of essentialism as well as Brennan and Jaworski's Principle of Wrongful Possession. From here I will present a twofold argument: 1. that the Principle of Wrongful Possession does not adequately escape many of the problems associated with essentialism, and 2. The Principle of Wrongful Possession fails to account for

many consequentialist concerns. After these objections, I will propose an augmented version of the Principle of Wrongful Possession called the Principle of Wrongful Creation which can satisfactorily defend markets while more accurately describing antecedent moral issues that are associated with them.

What is essentialism?

According to essentialism, there are goods (whether an item or a labor) that have an intrinsic property that is violated or corrupted when it is introduced into a market environment. Many essentialists such as Sandel argue that there is a value of particular goods (like sexual labor, a child, etc.) that when commodified, becomes diminished, confused, or even eliminated. One of Sandel's concerns is that those who commodify valuable goods will lose sight of their significance outside of the market. Sandel identifies two aspects of marketing that he deems harmful: coercion and corruption. While coercion can be circumvented by fair and ethical marketing conditions, corruption occurs on an intrinsic level, and thus cannot be mitigated through market regulation.

A helpful example may be that of a wild animal that is captured and sold. Sandel would likely argue that there is an intrinsic value in the awe, mystery, and freedom of a wild animal, and once the animal is captured, its worth as an awe inspiring good is corrupted. essentialism also holds that, "the introduction of markets can change environments..." [Satz, 200], as evidenced by this example. Not only are the perceptions of those participating in a market affected by the capture of an animal, but Sandel would argue the animal itself has been changed due to the effort to commodify it.

Sandel elaborates on the notion of corruption when he says, “The argument from corruption is intrinsic in the sense that it cannot be met by fixing the background conditions within which market exchanges take place. It applies under conditions of equality and inequality alike” [Sandel, 95]. Even if a wild animal market existed where all participants had equal access, the animals were treated ethically, and there were regulations that prevented buyers, sellers, or goods from being taken advantage of, it would still be morally impermissible. In short, the essentialist holds that some goods ought never be brought into the market for fear of devaluing or commodifying them in a harmful manner through monetary appraisals and a sense of invasive fungibility among its participants.

What is PWP?

Brennan and Jaworski, not satisfied with contemporary essentialist views, crafted their own idea to address concerns of market morality. They share similar concerns to those of thinkers like Sandel, agreeing that there are, ‘things that should not be bought and sold.’ However, B&J’s motivation for this principle diverges from that of Sandel, stating, “that’s only because they are things people shouldn’t *have* in the first place” [B&J, 7]. This distinction is defined by what they call the *Principle of Wrongful Possession*. According to B&J, “If it is inherently morally wrong for someone to possess (do, use) X, then (normally) it is morally wrong for that person to buy or sell X” [B&J, 11].

Advantages of PWP

The principle of wrongful possession (PWP) is appealing for a variety of reasons. Simply put, having a market for something is bad not because of the market, but because the ownership of the good itself can be intrinsically bad, regardless of whether it is marketed. According to

Brennan and Jaworski, selling nuclear bombs is bad not because they are being sold, but because no one should have a nuclear bomb in the first place. Many issues related to the intrinsic wrong of a good are often compounded by their introduction to a market. For example, it is clear that theft is wrong, but a market that hires thieves would likely exacerbate the wrongness. This however, does not mean that the market *qua* market is wrong or bad.

Another strength of this principle idea lies in its intuitive nature. According to B&J, the PWP is founded in “commonsense moral principles that most people accept” [B&J, 22]. One does not have to perform the moral calculus associated with market functions when evaluating whether or not something such as a market for a good is permissible, they only need to judge the good itself. If crystal meth is deemed bad, then a market for it is also bad. There is no transformation or corruption as argued by essentialists, making this idea fairly simple and easy to apply to various situations.

Objections to PWP

Here it is necessary to analyze market dynamics in order to isolate what exactly Brennan and Jaworski may find problematic in markets deemed morally impermissible. In the context of the PWP, it needs to be clarified that the wrongful possession of a good, such as a nuclear bomb, is distinct from the participation of an individual in a nuclear bomb market. Furthermore, the creation of a good that ought not be possessed is distinct from the wrongful possession of a good. From this it can be deduced that creating and selling a good is distinct from owning and selling a good. While the owner and creator of a wrongful good are companions in guilt, it seems reasonable to assume that the creator of that good is more morally culpable than the possessor.

However, the PWP has a lingering residue of essentialism which raises many questions. While both ideas are supposed to be rooted largely in intuition, who decides what is morally permissible or impermissible? Essentialism diagnoses an issue with a good when it is introduced into the market, while the PWP merely pushes the diagnosis to an earlier stage, but this alone does not explain how or why this issue arises in the first place. According to Debra Satz, “[T]here are noneconomic values that should constrain market transactions” [Satz, 132]. Both the essentialist and a proponent of PWP emphasize the role of noneconomic values, but again, it is unclear what these noneconomic values are or how they are formed. It seems that PWP merely puts the question of moral origin at bay.

Perhaps one of the greatest detriments to PWP lies in its shortsightedness in regard to utility. Let us assume that Brennan and Jaworski are correct in assuming that no one ought to possess nuclear bombs. Imagine a scenario where a market in nuclear bombs exists, and as a result, the world is at relatively safe (we shall quantify this with an arbitrary label, Threat Level 2). If this market is closed, then the world will become incredibly unsafe, and the Threat Level will escalate to 10. According to B&J, a market in nuclear bombs ought not exist due to the principle of wrongful possession, so there is a decision to close the market. Consequently, the danger of the world increased 8 levels. Doesn’t this go against the “common sense morality” that B&J would like to champion?

A darker, yet much more realistic example may serve us well here. No one disagrees with the fact that child pornography is horrible and ought not exist. Furthermore, most people would agree with the idea that less child pornography is better than more child pornography. The above statements are in line with the PWP. It is not unreasonable to assume that if a child pornography

market existed, then it ought to be closed immediately. However, if the closing of this market actually caused incidents of child pornography and its antecedent transgressions (coercion, abuse, etc.) to increase, then it would be counterintuitive to close this market. The desired effect of closing the market would be frustrated. In the aforementioned scenario, the PWP does not account for occurrences outside the market itself. Upon further examination of these hypotheticals, it becomes clear that the effects of a market's absence need to be accounted for when debating whether or not to close a market. The PWP works well in a vacuum; nuclear bombs are bad, child pornography is bad, so don't market them, but this is an unrealistic and oversimplified understanding of the market environment as a whole.

Rejoinder: Salvaging PWP

I prefaced my objections to the PWP by making a handful of technical distinctions. One of these distinctions highlighted the difference in culpability of a creator of a wrongful good and a possessor of a wrongful good. Since scenarios have been described in which possession may be the best option or even morally permissible, the argument B&J would like to make seems to fall flat. In light of this, there could be a theory that fills the gaps left by the principle of wrongful possession. One can call this the *principle of wrongful creation*, or PWC. Since there are many situations in which possession may not be ideal, but the best option, this moral issues highlighted by the PWP can be traced back to the moral wrongness (whether in intentionality or in a manifest product) of the creation of the good itself. An unfortunate reality is that in cases where black markets, de facto markets, and exploitative practices thrive, the creation and regulation of a market for a questionable good may be the best option. In these cases, a well regulated market can be seen as a mechanism for damage control or mitigation.

Perhaps these analyses seem narrow and only consequentialist in nature. However, this modified version of the PWP can address consequentialist concerns while also satisfying many Kantian criteria. First, it should be noted that creating a policy that affects a market is not the same as participating in the market. Briefly, imagine someone who is at a gun range and shoots a rifle. The individual's gunshot(s) may startle birds in the vicinity, but it is clear that this is not the same as actively attempting to startle birds by say, chasing them with a stick or throwing firecrackers at them. The act itself as well as its intentionality make it clear that the individual is not morally culpable for the birds' reactions. The same could be said for those who make decisions to open and close markets. They ought not be held accountable for the acts of others that they cannot control. Another concern is that an individual opening or closing a market is treating those affected by it as mere means. On the contrary, actions oriented toward morally impermissible markets do the opposite; they seek to increase the autonomy of individuals who otherwise would have been adversely affected. Even if opening or closing a market involved treating someone as a means, they would not be treated as a *mere* means.

Conclusion

Where are we left after the back and forth? The hybrid *Principle of Wrongful Creation* adequately distinguishes itself from essentialism while also making clear that markets are amoral devices. This modified version of Brennan and Jaworski's original argument retains many of the original assertions they wanted to make. By distinguishing between the creation and possession of a morally impermissible good, it becomes clear why PWC fits more appropriately. B&J seem to take issue with the moral impermissibility (such as an antecedent wrongdoing) that a good is imbued with. A similar formula can be applied to the baseball bat scenario; the initial possession

of a bat is not problematic, but giving it to a murderous person creates an opportunity for morally impermissible acts to occur where there was not one originally.

In this respect, the Principle of Wrongful Possession does not originally depart from essentialism the way Brennan and Jaworski intended for it to. However, the ultimate strengths of the argument are salvaged. In light of Brennan and Jaworski's proposition, one would be hard pressed to present an argument that markets have intrinsic moral properties of the capabilities to "corrupt" a good the way an essentialist is concerned with.

Bibliography

Brennan, Jason, and Peter M. Jaworski. *Markets without Limits: Moral Virtues and Commercial Interests*. New York: Routledge, 2016.