

## **Distributive Justice and Controversial Markets**

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### **Abstract**

What makes markets problematic (when they are)? In what follows I argue that distributive concerns regarding the moral limits of markets differ substantially from expressivist accounts. To wit, there is a difference between claiming that some markets are problematic because of what they express (or because of what they express causes) and claiming that some markets are problematic for reasons related to distributive justice. Distributive accounts add important insights to contemporary discussions of the moral limits of markets. I further argue that potential weaknesses of distributive accounts, pertaining to such theories being overinclusive, pointing to regulation rather than bans, and identifying contingent, as opposed to inherent wrongs, should not make us give up on this line of inquiry. I end with some considerations about the way ahead for the discussion.

## Introduction

Contemporary societies face both emerging longstanding questions over the moral limits of markets. That is, whether and under what circumstances to permit the buying and selling of specific goods and services by competent adults willing to buy and sell them. This chapter explores the relationship between distributive justice and controversial markets. Specifically, it explores the extent to which theories of distributive justice may helpfully inform contemporary discussions regarding what makes such markets wrong (if/when they are). The role of justice in illuminating which markets are problematic is, unfortunately, underexplored. This chapter aims to rectify this. The approach taken here is to describe the distributive justice approach and how it differs from other contemporary approaches to the question. Furthermore, the strengths and weaknesses of such an approach are discussed. The main conclusion is that justice has more to offer to this discussion than is often asserted in the existing literature.

One reason the connection between distributive justice and controversial markets has not received sufficient attention may be that theories of distributive justice are considered to lack the anti-market tenants necessary to criticize some transactions. Phillips observed disapprovingly that leading theories of distributive justice embrace the market with the 'the now almost universal acceptance that a plausible conception of an egalitarian society must accommodate itself to the existence of markets in goods and labor' (Phillips, 2008). In response to this, one could note that there are luck egalitarian (Albertsen, 2019; G. A. Cohen, 2009) critiques of markets.<sup>1</sup> But, more importantly, for current purposes, it remains true that even if such theories are not anti-market across the board, they may provide adequate and important explanations as to why some markets (and not others) are problematic.

The purpose of this chapter is not to argue that justice-based theories about why markets are wrong (when they are) are the only valuable theories in this regard. On the contrary, it seeks to establish that it forms an important and underappreciated part of the answer to this question. It is worth emphasizing that the chapter does not deal with whether the market is, as such, unjust. It does not provide answers to this question but instead explores the extent to which theories of distributive justice may inform where markets should be used and/or how this should be done.<sup>2</sup>

The chapter first contrasts various expressivist objections and putatively suggests how some of the weaknesses of such theories may indicate the relevance of concerns pertaining to distributive justice. The chapter then explores how contemporary contributions to the debate have addressed and understood distributive concerns. Having presented this background for the discussion, the chapter examines the conceptual and logical space for different distributive concerns. The chapter illustrates many points with references to the debate over the current kidney market. These are markets where people, while alive, are paid for their kidneys. Such markets have received increased attention from philosophers and ethicists. Many of these find

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<sup>1</sup> And, of course, relational critiques (E. Anderson, 1995, 2008). I am unsure whether Phillips meant these to be covered by the distributive justice notion she employed. The main target was Dworkin's resource egalitarianism.

<sup>2</sup> For discussion of these larger question, see (De Grauwe, 2017; Finn, 2006)

such markets, with varying degrees of regulation, to be ethically permissible or required (Barnett et al., 1992; Becker & Elías, 2007; Cherry, 2005; Cook & Krawiec, 2018; G. Dworkin, 1994; Omar et al., 2010; Radcliffe-Richards, 2019; Radcliffe-Richards et al., 1998; Richards, 1996, 2012; Rodger & Venter, 2023; Semrau, 2014, 2014, 2017b, 2017a; Semrau & Matas, 2022; Sterri, 2021; Sterri et al., 2022; Taylor, 2002, 2005, 2014, 2015; Thaysen & Sønderholm, 2024; S. Wilkinson, 2003; T. M. Wilkinson, 2011). This case is chosen to ensure a focused discussion and to contrast how the distributive justice approach may affect this debate. However, the broader remarks about distributive justice concerns have a much wider relevance.

### **Distributive concerns and their alternatives**

A prominent approach to the question of impermissible markets is to provide an expressivist answer to this. Roughly put, expressivist objections to markets claim that some markets for certain goods are morally problematic because of what they express. Normative expressivist arguments may be non-consequentialist or consequentialist. The latter variant focuses on how having a market that expresses something may have problematic consequences. In comparison, the former term is reserved for critiques of markets, which are independent of such consequential considerations (Taylor, 2022, pp. 97, 101–102). Non-consequential expressivist concerns often focus on the meaning of goods and how this may conflict with having a market for a good. A prominent class of consequential expressivist concerns contends that commodifying a specific good is problematic in light of how it affects people's behaviour or character (Grant, 2012; Sandel, 2013).<sup>3</sup>

Of course, there's a certain logic to focusing on the goods, their meaning, and what commodifying them may express. Theories that claim, for example, that treating goods in certain ways expresses something or that treating goods in specific ways contradicts an essential or societal meaning of such a good might provide a solid reason for thinking that we should treat this good (and not other goods) in a non-market fashion. Such concerns, however, face a wide range of now-familiar problems. Few goods have cross-cultural meanings. Goods have contested or multifaceted meanings within a society or culture. And meaning may even change over time within the same country or culture. These difficulties also mean that the consequences of treating a good as a marketable commodity might be less straightforward than sometimes asserted.

For the current chapter, it is instructive to note how the focus of such concerns (what a market in goods expresses and the consequences of this) leaves considerable room for further concerns. After all, the goods being bought and sold and the characters of trading individuals (or citizens more broadly) are not the only things that may be affected by the exchange of some goods on market terms. And effects need not

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<sup>3</sup> This is essentially an empirical claim (the content of which is often underspecified), so much of the relevant debate revolves around when crowding out happens and why (Bowles, 2016; Semrau, 2019).

relate to what a market expresses. It may also affect the parties to the exchange or third parties (or goods) external to the exchange in ways unrelated to what the market expresses. When discussing how this affects persons, notions of fairness and distributive justice seem especially appropriate.

It should say more about what I take distributive justice concerns to be.<sup>4</sup> Theories of distributive justice are about the distribution of goods and burdens (in a society). They care about how individuals fare in a comparative or absolute sense. Various theories of distributive justice differ in terms of the currency of justice (be that welfare, resources, or capabilities)(Arneson, 1989; G. A. Cohen, 1989; R. Dworkin, 1981a, 1981b). This disagreement concerns what metric is best able to capture that which justice is supposed to be concerned about. If justice requires equality, the currency disagreement pertains to what respect people are to be made equal. For simplicity, I will talk about (dis)advantage, which is usually thought to cover most of what the competing views refer to (G. A. Cohen, 1989, 1993) – but the reader is instructed to read it as a placeholder for whatever one holds to be the correct currency of justice. A second important way in which theories of distributive justice differ is that they vary in terms of what they take to be the proper pattern of justice. Here, pattern are to be understood as follows: For whatever currency we take to be correct, how should it be distributed for the distribution to be just? For some, justice is (responsibility-sensitive) egalitarianism (Albertsen & Midtgaard, 2014; Arneson, 1989; G. A. Cohen, 1989; Knight, 2009, 2013; Lippert-Rasmussen, 2016), while others argue that we should give priority to the worst off (Arneson, 2000; Holtug, 2007, 2010; Parfit, 1997); or ensure that a basic, sufficientarian minimum is available (Axelsen & Nielsen, 2015; Crisp, 2003; Huseby, 2010; Shields, 2012, 2016).

Despite their differences, and although theories of distributive justice can be specified in different ways depending on the preferred answers to questions of currency and pattern, they share a common sentiment: Distributive justice pertains to the absolute and/or relative positions of individuals. The question is, then, how such concerns may inform discussions of the moral limits of markets. Before discussing this further, consider how prominent figures in the current debate have commented on such distributive concerns.

Michael Sandel is a prominent contributor to the debate over the moral limits of markets. He posits that fairness is one reason to be concerned about the growing role of markets in society (what he calls the transition from a market economy to a market society). For Sandel, fairness is only one aspect that may make markets wrong. He often highlights concerns about fairness to show that it inadequately captures what's wrong about a particular market or exchange. In those cases, Sandel suggests expressivist concern to be at the heart of the matter.<sup>5</sup>

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<sup>4</sup> Distributive theories of justice are often contrasted with relational theories of justice(E. S. Anderson, 1999; Lippert-Rasmussen, 2018)

<sup>5</sup> On one reading of Sandel he expresses a semiotic objection (i.e., a claim about how the nature of the good necessarily makes it wrong to have a market in that good (Brennan & Jaworski, 2016). On another,

Often, when Sandell gives a broader, more principled description of the fairness concern, the most crucial aspect of the worry seems to be about how unfair inequalities or circumstances might be considered coercive in a way that makes people's choices insufficiently voluntary (Sandel, 2013, pp. 57–58, 110, 187). On these formulations, such concerns bring into question 'whether every instance of market choice is truly voluntary' (Sandel, 2013, p. 186). Similarly, Sandel writes, 'The coercion objection maintains that market relations can be considered free only when background conditions under which we buy and sell are fair, only when no one is coerced by dire economic necessity' (Sandel, 2013, p. 186).

While we should probably consider this to be Sandel's explicit views about what the fairness concern amounts to, it cannot be his only fairness-based critique of markets. He must have a broader notion in mind because this particular coercion problem does not occur in many scenarios where Sandel believes that unfairness is present. Sandel writes, for example, that 'If having children is a central aspect of human flourishing, then it's unfair to condition access to this good on the ability to pay' (Sandel, 2013, p. 71). The unfairness here does not pertain to what inequalities force people to do but rather to what it ensures that they cannot do. Similarly, Sandel remarks that increased reliance on markets 'makes life harder for those of modest means' (Sandel, 2013, p. 8). Similarly, if there is a fairness-based reason to be concerned about those left to languish in the ordinary lanes when access to fast-track lanes on the highway is sold off, it must be a broader sense of fairness.

It seems, then, that Sandel also employs other conceptions of fairness. Sometimes, fairness refers to how the increased reliance on markets increases the significance of inequalities. It is unfair towards the less affluent, who cannot buy what is now a marketable commodity (Sandel, 2013, pp. 8, 20, 27, 31, 33, 71, 109, 203). Elsewhere, fairness is associated with an egalitarian ethic of the queue (Sandel, 2013, pp. 19, 39) and, at one point, with an anti-exploitation sentiment (Sandel, 2013, p. 123).

Importantly, Sandel does not believe that fairness concerns (broadly or narrowly construed) are exhaustive. In fact, he routinely presents the fairness critique to show that there is more going on in the examples than what fairness can capture. And that something relates to expressivist concerns. But my suggestion would be that the reverse is also true. Everything that may be considered wrong in many of the examples cannot be adequately captured by expressivist concerns. I do not suspect Sandel would disagree with this. The importance of expressivist concerns does not evaporate because they cannot capture every aspect of why markets may be problematic (when they are). However, the thought from this is that we can say

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more plausible reading, Sandel offers a normative expressive consequentialist argument, where the wrongness of a market in certain goods is related to what it expresses and the (moral and prudential) cost of having such a market (Taylor, 2022). The latter reading is more plausible because Sandel often talks about a tradeoff (which would not make sense if his objections were semiotic) (Sandel, 2013, pp. 64, 78, 154, 162).

something similar for accounts based on distributive justice. They capture something important that expressivist accounts cannot, and Sandel's many examples allow us to gauge the many ways in which fairness may matter for our assessment of markets and market transactions.

Debra Satz made another essential contribution to the debate about the moral limits of markets. In the discussion on distributive justice, a distinction is usually drawn between those who consider equality to be (primarily or exclusively) about distributions and those who contend that relations are what is important (E. S. Anderson, 1999). Satz's view is of the relational egalitarian kind, and the broad sentiment of her arguments is that what makes markets problematic pertains more to how they affect people's ability to relate as equals than to distributive concerns.

In reaching this conclusion, she draws an important distinction in her arguments against the adequacy of distributive approaches. Satz writes that egalitarians of the distributive kind can take two routes. They can be generalists or specific egalitarians. The generalists egalitarian believe that goods should be distributed equally, but for efficiency reasons, the pursuit of equality should be through taxation and income redistribution, not through foreclosing particular exchanges (Satz, 2010, p. 63). On the other hand, specific egalitarians are concerned with the (equal) distribution of certain goods. Typically, these goods should be distributed in a specific sense due to their nature or meaning. On this construal of the debate, many (but not all) expressivist objections to markets (including Sandel's) are a form of specific egalitarianism. But one that draws our reason to be egalitarian from theories about the (social) meaning of goods or their appropriate valuation.

There are several problems with capturing the distributive justice approach to markets through this distinction. One clear indication of its inadequacy in that regard is that several people listed by Satz as specific egalitarians do not believe that particular goods should be distributed equally. Instead, they think merely that the goods should be distributed in a non-market way. To understand the supposed problem, consider a person who believes that organs should be distributed among potential recipients based on their medical needs. We might have egalitarian reasons to do so (say because they have equal moral worth, have to an equal degree not caused their need, etc.), but that does not mean that we aim for an equal distribution of this good (even if we strive for a non-market distribution). Alternatively, it means that we believe that a needs-based distribution best captures what it means to treat people equally (or in accordance with distributive justice) on a proper understanding of this. However, in this reading, specific egalitarianism becomes an extensive family of views.

One way of maintaining that Satz's distinction captures the landscape of distributive theories about the market would be to suggest that the views just presented are better understood as general egalitarian views (or we might want to call them general distributive or distributive views to cater to the fact that they prefer different patterns, not all of which are equality). But for Satz, general egalitarianism is something much more specific. In Satz's depiction, general egalitarians also put a very high value on efficiency – something that cannot be said for all distributive concerns.

Satz's reply to general egalitarian concerns is that given their overall commitment to equality, it is unclear why they should work through banning specific markets. We will return to such worries later, but note that this critique is consistent with the thought that such distributive justice concerns may sometimes require markets to be banned and delivers significant insights into when and how markets should be regulated. It seems then that while Satz draws an interesting distinction, it fails to capture the scope of plausible positions in the debate over the moral limits of markets, which draws on distributive justice.

A third perspective on distributive justice and its relevance is to claim that distributive justice concerns are doing important work in relation to many of the concerns already discussed in the literature over markets and their moral limits. Critiques of organ markets highlight various problems (Albertsen, 2020, 2023; Veatch & Ross, 2015; Venter, 2024). Many of these relate in some way to distributive justice. To stay with the living kidney market example, we might say that prominent concerns about sellers being harmed (Adair & Wigmore, 2011; Danovitch & Leichtman, 2006; Koplin, 2014) rely on particular understandings about how existing (unjust distributions) affect the likelihood of harm to would-be sellers (even on a regulated market). Suppose we are concerned about exploitation in the sense that sellers receive a disproportionate share of the benefits created through the sale (Campbell, 2016; Greasley, 2014; Koplin, 2017). In that case, one might readily see how existing (unfair) background conditions may affect the conditions of the trade and the distribution of benefits. If our concern pertains to whether those agreeing to sell their kidney really understand the consequences (I. G. Cohen, 2015) or are unable to provide adequate consent (I. G. Cohen, 2013, 2014, 2015; Malmqvist, 2014, 2015; Satz, 2010), then again, the distribution of goods and burdens in a society may affect this. The thought in this paragraph is that there is a sense in which the concern of distributive justice is already a big part of the current debates. But it is so in what we may consider an indirect manner. It influences the relevance of persistent critiques and concerns. On this construal, justice is important for these debates because it affects who will sell and how they will fare in terms of the trade itself and afterward (Albertsen, 2023). So, one way of making sense of the claim that distributive justice concerns are relevant for the debate over markets is today that having a market for some goods could affect individuals in a way that creates distributions that conflict with concerns of justice. But there is more to it than this. The following section expands on this thought.

### **How markets are unjust**

Based on the exposition above, we may say something more detailed about what justice claims in relation to markets are all about. If we, for simplicity, say that distributive justice is axiological, which deems the distribution of advantage between individuals to be in disaccord with some distributive standard (be that of an egalitarian, prioritarian or sufficientarian kind). From here, we may attempt to say more about how markets may conflict with justice.

The first task for anyone wanting to say anything substantial about markets and justice is to find a way to move beyond what we might term the 'mere co-existence claim,' which is the claim that markets and distributive justice co-exist. The mere co-existence claim says that while markets and distributive injustice may co-exist, it is not the presence of the former that creates the latter. So, the presence of injustice in this coexistence should not affect our judgment of the market in either way.<sup>6</sup> On this construal, distributive justices are incidental. They happen to be there, but there are not a constitutive part of the market.

To challenge the co-existence claim, one would have to show that the market either creates new injustices, increases existing ones, or, in interesting ways, interacts with the injustice in ways that go beyond co-existence. The preceding presentation provides a range of suggestions for how that may be the case. We could say that having a market in some good and having people exchange that good in a market could be considered problematic in a distributive justice sense for reasons pertaining to how:

- A) The market distribution of some goods may reflect existing unfair economic inequalities. This would be relevant when the market distribution reflects the ability and willingness to pay under unfair background distribution.
- B) A market may expand the significance of existing unfair economic inequalities. When new things can be bought and sold, affluence matters more
- C) A market may increase existing economic inequalities. Distributing goods that are conducive to income (such as education and health) on market terms may have this effect.
- D) A and B's exchange affects the distribution of some goods, which negatively affects C.
- E) Who sells/buys on a market may reflect existing inequalities in our ability to negotiate opportunities.
- F) The exchange may be exploitative (perhaps because of unfair circumstances, but not all theories of exploitation require this).

Note that across these suggestions, we may sometimes feel that there is a reason pertaining to specific egalitarianism, which gives the concern extra weight (i.e., the market distribution is in disaccord with the correct distribution of the good in consideration). Or we may say that generalist egalitarians, as Satz understands them, could find the role of the market in the economy problematic. As the specific egalitarian arguments are quite similar to the various expressive arguments discussed in the literature, the focus here will be on the strengths and limits of distributive accounts that are not expressivist. From, this we may say that considerations of distributive may lead us to criticize a market in some goods if:

- People's reasons for trading (including their abilities to assess a trade) are unduly affected by unjust circumstances
- If the outcome of the trade reflects unjust circumstances.

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<sup>6</sup> For such a view, see (Brennan & Jaworski, 2016, p. 24)



- If the outcome of the trade increases unjust circumstances.
- If having a market in some good increases the unfairness of the distribution of advantage.

All such concerns are best understood as *pro tanto* reasons to worry about a market. They may be outweighed by other concerns or be tolerated in the absence of proper alternatives to employing a market distribution. But it remains plausible to say: We have a distributive justice concern in relation to this or that market.

One might say that some considerations of distributive justice are indirect, while others are more direct in their relevance. The latter could refer to a broader assessment of distributions, whereas the former describes situations where unjust distributions affect participation and participants. Both are important, but the direct ones have received less attention (even if the indirect ones are often not discussed as distributive justice concerns).

To see how considerations of the more general kind matter, I would like to point to a few arguments made in the literature over organ markets. Among those who believe that the current ban on organ markets should be removed (or that the arguments in its favour is unconvincing) one particular line of argument is quite common. Briefly put, they show that banning organ markets remove what would-be sellers would consider their best option. Radcliffe-Richards employs such a line of reasoning, when she remarks (Radcliffe-Richards et al., 1998; Richards, 1996) that

*"Presumably the prospect of selling his kidney was, to say the least, no more attractive to him than it seems to us, but he nevertheless judged this to be his best available option. As we rush to intervene, therefore, saying how dreadful it is that he should be exploited in this way, we are taking away what he regards as his best option and leaving him in a situation he thinks even worse than the loss of a kidney."* (Richards, 1996, p. 377) Other authors make similar arguments (Andrews, 1986, p. 32; Cameron & Hoffenberg, 1999, p. 727; Cherry, 2000; G. Dworkin, 1994; Ng, 2019, p. 25; Semrau, 2017c; T. M. Wilkinson, 2011). There have been several reactions to this, which underscore the importance of distributive justice considerations.

Rivera-Lopez points out that it is problematic if and when those who allowed people's lives to become so bad that selling a kidney is their best option use that very desperation to introduce an organ market. Zutlevics instructively suggests that if there were an international market for kidneys, which presupposes some people living in dire poverty, then this might affect the willingness to aid with poverty (Zutlevics, 2001). Zutlevics also suggests that the organ market may be problematic because it is, in a sense, failing to do enough for people (Zutlevics, 2001). In a recent article, I took up this theme, arguing that the best-option argument relies on a narrow comparison when it emphasizes how having a market is better for would-be sellers than having a ban (Albertsen, 2024). We could, presumably, offer people better opportunities and are likely to have distributive justice-based reasons to do so. Each of these arguments points to how the distribution of goods and burdens in society may impact our assessment of a particular market. Various replies have been made to such reasoning

and the specific details of the arguments just presented (Semrau, 2024; Taylor, 2002, 2015). But it remains true, that they can be construed as non-expressivist concerns with markets. Here, however, I would like to address some broader concerns that are at least to some extent applicable to all distributive theories about the moral limits of markets. It is to this we now turn.

### **Concerns with distributive accounts**

Some would probably maintain that despite the good that distributive accounts do, they are not very helpful in moving the debate over the moral limits of the markets forward. Here, I will suggest and respond to three reasons for thinking this. They pertain to such critique being overinclusive, point to regulation rather than bans, and identify contingent as opposed to inherent wrongs.

The overinclusiveness objection to a distributive theory of the wrongness of markets runs as follows: If we use a distributive yardstick to identify which markets are wrong, we may successfully be able to say that some markets, widely considered to be problematic, are indeed problematic. But this success comes at a cost. The theory can do this because it considers a much broader set of markets problematic. Including, the critique contends, markets we should consider unproblematic. The overinclusiveness objection thus contends that the range of markets that, for example, interact with existing inequalities is so large that taking a distributive approach to evaluating markets may lead us astray. If markets are unjust when they reflect unjust background inequalities, then that would be true for all markets among people who live under such unjust circumstances. And it would apply to the blue hat market, and the kidney market alike.

As always, if a principled approach leads to conclusions that we are uneasy with, we may need—in the spirit of reflective equilibrium (Knight, 2017)—to adjust either the principle or our initial reaction to the conclusions it implies. The overinclusiveness objection suggests that the former is the right approach (jettisoning distributive approaches), but I would at least contend that this is not so clear-cut. Properly understood, the wide-ranging implications are not as embarrassing as proponents of the overinclusiveness objection would maintain.

The reason for this is that the overinclusiveness objection misunderstands what follows from reaching the conclusion that injustices taint many markets. The conclusion that follows is that these markets should not be banned or that they should be considered wrong to a similar degree. That would be absurd. But there is no need to conclude this. For two reasons: Distributive justice is not a lens, which merely says that distributions are either just or unjust. Rather, we can imagine that a distributive justice approach to the moral limits of markets may allow us to rank problematic markets. Some markets may, on this account, be more problematic than others and, to the extent that this ranking leads to a pattern where the markets that proponents of the overinclusiveness objection were unsurprised to see included are ranked as most problematic – then the force of this objection will suddenly be less obvious. The ranking could be conducted based on a number of considerations. For example, how

disadvantaged would-be sellers and buyers on a particular market are likely to be and how important what is being bought and sold is to those involved.<sup>7</sup>

The second reason the supposed conclusion does not follow is that those who care about distributive justice are usually pluralists. Saying that something is unjust is not the same as saying that it should be eliminated at whatever cost. Distributive justice can be one value that goes into our assessment of markets, but it need not be the only one. So, once again, the supposed embarrassment is negligible.

For some, the above might sound like a complete abandonment of what they believed the moral limits of market debate to be about. If theories of distributive justice are unable to explain where to 'put the fence' or 'build the wall' between the market domain and the non-market domain, they could be considered to be of little value in this particular context. One reason for the inability of theories of distributive justice to do this is that they are contingent critiques. A contingent critique of a market is one which does not claim that a market in some good is inherently wrong, but rather that it is sometimes wrong. According to some participants in the debate, this is a problem for distributive concerns. According to Brennan and Jaworski, the question at the heart of the debate over the moral limits of markets is whether there are some goods, that should never be bought and sold (Brennan & Jaworski, 2016). If that is the important question, then contingent critiques are of less interest. They depart from the supposed goal of upholding the asymmetry thesis: that there are some goods that may be possessed and given away but which it is impermissible to sell (Brennan & Jaworski, 2016, pp. 15, 225).

On this construal of the debate, we may see why contingent critiques are missing the mark. Saying that a market is problematic due to unjust circumstances, clearly has little bearing on what we should think of such a market under just background conditions. Similarly, Brennan and Jaworski contend, that we are unlikely to find goods, the trade of which, is always harmful or exploitative (Brennan & Jaworski, 2016, p. 20) – and at least for that reason, such critiques of markets are unlikely to show us, that there are some goods, which we may possess and give away, but which should not be sold. This is true. Such critiques (including the justice critique) admit, by definition, that they can only say that buying and selling a good is problematic under certain circumstances.

Despite their contingent nature, and despite the fact they cannot say that every market in some good is problematic, distributive concerns may remain relevant. One reason for this is that the oft-used idea of putting a wall or a fence between the market and non-market may be unhelpful and inadequately reflect what participants in the debate are trying to achieve. This line of thought has recently been explored by Taylor, who argues that most arguments in the debate are expressivist, not semiotic (Taylor, 2022). And Taylor further adds that many, indeed 'most', of the debates are contingent in the sense that they address 'the question of whether the good or service in question

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<sup>7</sup> and (on some theories of distributive justice) the extent to which those would-be-sellers are responsible for their situation.

should be exchanged for money in a particular society at a particular time' (Taylor, 2022, p. 126). A similar verdict was also reached by Radin in her article 'Justice and Markets.' According to Radin, the debate is often between those who think everything should be sold (universal commodification) and those who steadfastly maintain that there is an (albeit small) area where the market should not be permitted. Radin considers this way of debating unhelpful. She goes through arguments related to personhood (Radin, 1989, p. 170); denying opportunities for altruism and a domino effect of commodification. According to Radin each of these arguments have their difficulties. The particularities of the arguments and their difficulties are less important for current purposes than Radin's conclusion. For her, these difficulties point to the problematic ways of conceiving the debate and the challenge it poses to us.

Principles evoked to withhold the encouragement on markets on the tiny, designated areas where they should not be are bound to be too broad, in the sense of considering aspects of what is by most currently considered as aptly in the market domain. This, for Radin, means neither that the arguments are without value nor that those aspects on the market side of the wall should be attempted to be pulled over to the non-market side, but rather that we should be interested in what she calls partial decommodification (as opposed to full decommodification). If Taylor and Radin are correct, then, if nothing more, the distributive justice arguments are in good company despite their inability to draw a firm line between problematic and unproblematic markets.

### **Conclusion and the way ahead**

I believe that we should take from the above, that distributive concerns regarding the moral limits of markets are distinct in that they differ substantially from expressivist accounts. There is a difference between claiming that some markets are problematic, because of what they express (or because of what they express causes), and claiming that some markets are problematic for reasons related to distributive justice.

This means that distributive accounts promise to add important insights to contemporary discussions of the moral limits of markets. I have further added that potential weaknesses pertaining to such theories being overinclusive, pointing to regulation rather than bans, and identifying contingent, as opposed to inherent wrongs, should not make us give up on this line of inquiry.

However, much more needs to be said before we can reach a firmer conclusion regarding distributive justice and controversial markets (and what they would entail). One important task left unresolved here is to say more about how this approach differs from other consequential non-expressive approaches (i.e. such as those focused on harm). It might still be the case that while the distributive justice approach adds something that the expressivist accounts do not – it adds little or less when compared to more axiological or consequential accounts that focus on harm or consent.

Another task left underexplored by the above is which distributive theory of the market's wrongness we should prefer. As stressed above, we can imagine such theories

taking a prioritarian, egalitarian, or sufficiency approach. Such approaches would differ in their assessments, verdicts, and regulations, and comparing their strengths and weaknesses as theories of the market's wrongness remains an important task left unresolved by this chapter.

Furthermore, such a specification should include a plausible way of ranking the ways in which distributive and justice interact. I will conclude the chapter with a few preliminary thoughts in that regard. These are best understood, if we dwell a bit on how distributive justice concerns differ from other concerns. In deciding whether to have a market in some good or service, distributive justice critiques differ from utilitarian concerns in that they ask not only whether such a market is efficient and increases, say, well-being overall – but also how these are distributed. Furthermore, theories of distributive justice provide a direct way of being concerned with how those who sell or buy certain goods are motivated (i.e., the extent to which society influences this decision and their understanding of the choice facing them). While many, if not all, markets in a (distributively) unjust society reflect these inequalities in a certain sense, they do so to a different degree. Markets will differ in how badly off, those who trade on them and those who are harmed by them were to begin with (and after). This, along with the distribution of benefits/harms, should inform how markets are evaluated from the perspective of distributive justice.

## References

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