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I'll Pay You Ten Bucks Not to Murder Me

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A RESPONSE TO James Stacey Taylor (2016), "What Limits Should Markets Be Without?", ***Bus Ethics J Rev*** 4(7): 41–46, http://doi.org/10.12747/bejr2016.04.07

ABSTRACT

James Stacey Taylor offers three interpretations of our thesis, and argues that only one of them goes through. His point is to clarify our view rather than critique our position. In this brief response, we argue that, upon further clarification, we could endorse at least one of the other interpretations, though as Taylor notes, we don't need to for our book's thesis to go through.

JAMES STACEY TAYLOR'S (2016) "What Limits Should Markets Be Without?" is a helpful Commentary on our work on commodification (Brennan and Jaworski 2015a, 2015b).[2] In it, Taylor examines three interpretations of our main thesis, and finds that one of them is defensible while the other two are not.

We have argued that there are no "inherent" limits to markets, a thesis that we summarize as "If you may do it for free, you may do it for money." There are things people should not buy and sell, such as

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[2] Hereafter, parenthetical page references not otherwise attributed are to *Markets Without Limits* (Brennan and Jaworski 2015b).

child pornography or assassination services (of people who do not deserve to die)—because they should not have or do those things in the first place. There are "incidental" limits to markets, where it might be wrong to sell a particular good in a particular time, place, or manner. For instance, if we promise our spouses not to sell their favorite lamps at a yard sale, we should not do so, but not because lamps are in general objects that shouldn't be bought and sold.

Taylor notes that we express our thesis in three different ways. These include:

(1) "If you may do it for free, you may do it for money" (10).

(2) "If you can have it, you can buy it; if you can give it away to someone, you can sell it to her" (16).

(3) The statement "There are some things which people are normally allowed to own or possess in some way, but which should not be for sale" is false (17).

He helpfully points out that these three different ways of expressing the thesis really are different—the first and second, simpler versions of the thesis, are more likely to be subject to counterexamples. 1 and 2 can be falsified by finding a single instance in which one may not sell something that one may give away, or one may not buy something that one may accept for free. In contrast, to falsify 3, one must show that there is no time, place, or manner under which it is permissible to sell a good that one is permitted to give away or to buy a good one is permitted to accept for free. Further, 3 is really what the book is about. After all, one of the main challenges we offer to anti-commodification theorists is that their complaints about markets in certain goods are usually about contingent rather than essential features. For example, Elizabeth Anderson objects to the role of brokers in pregnancy surrogacy contracts, but people can hire surrogates without using brokers.

At bottom, we agree with Taylor and Taylor agrees with us. So what is there to debate? He offers a putative counterexample to theses 1 and 2, which we actually dispute. We think it would be helpful to unpack the example a little. Here's Taylor (2016: 44–45):

> Consider a person who has a moral obligation to perform a particular action for another. (For example, to save him from drowning when she could

> do so at little cost to herself.) Since she is morally obliged to perform this act it would clearly be permissible for her to do it. However, since she is morally obliged to perform it she (morally) owes its performance to its recipient. If she were to demand payment from him to perform it she would be charging him for some- thing that is already owed to him (i.e., her act of saving him) and hence his by right. Since it is not morally permissible to threaten to retain something that is already owed to another unless he pays for its provision, it would not be permissible for a person to charge for the performance of an action that she is already morally obligated to do free . . . It is thus not true that if you may do something for free (i.e., save this person, at this time) then you may do it for money. Both the first thesis and the second conjunct of the second thesis (and hence the second thesis itself) are thus false.

Pace Taylor, we don't see this as a counterexample. Consider: Jason owes Peter not to kill him. He owes Peter this duty for *free* in the following sense: Jason may not say to Peter, "Unless you give me some money, I plan to kill you. I will discharge my duty not to kill only on the condition that you give me some money." So, it's true that if Jason owes Peter not to kill him for free, then Jason cannot make such threats.

But while Jason can't demand money as a condition of fulfilling this duty, it doesn't follow that Peter cannot pay Jason for doing his duty. Suppose Jason says, credibly, "Peter, I'm not going to kill you regardless of whether you pay me. Still, I'd like you to pay me for being so dutiful." Here, suppose Jason is not threatening Peter; he's just asking to be paid to do what he ought to do. It seems plausible, though weird, that Peter could pay Jason and Jason could accept the payment. Or suppose Peter says, "Jason, I notice that you've been unusually dutiful in observing your duties against killing others, something your fellow Americans, especially your police and presidents, have a hard time with. So, I like to pay you $10 as a reward for your good behavior." Again, this seems weird, but permissible.

In fact, entire religions are built around the idea that a divine judge will reward people for doing their duty. Again, in these religions, people are supposed to do their duty regardless of whether they are rewarded. For example, the Christian is supposed to refrain from killing others because doing so is wrong. She must not make her choice to avoid killing conditional upon God enthroning her in Empyrean's white rose. Nevertheless, it doesn't seem evil or wrong for God to reward the faithful as such.

Or, to take a more mundane example, suppose parents decide to allocate allowance to their teenage children according to how virtuously the children behave. If the teenagers do all their duties, they receive $50 a week, but if they act badly, they get nothing. Here, it would be wrong for the teenagers to *refuse* to do their pre-existing duties unless they get paid. But, nevertheless, this allowance scheme seems permissible. (We expect some would object that the scheme will corrupt the children, but, empirically, such arguments are on thin ice.[3])

Or, to offer yet one more example, consider that Jason has agreed to serve as the director of the first year seminars at Georgetown University's McDonough School of Business (MSB). It's already part of his job description that he must do some degree of service to the university. Arguably, he should not demand additional payment for this particular act of service (though he is paid in general for service in general). Still, when MSB offers him an additional $5,000 to do this task, it seems permissible for him to take it.

All of the above examples are consistent with the view that if you may do something for free, you may accept payment for its performance. It at least isn't the case that you are not permitted to accept an offer of money for doing what you ought to do, even if it is true that you are obligated to do as you ought. So there is at least this kind of response to the offered counterexample.

But the counterexample may hinge not on whether or not one may accept an offer of money for performing one's obligations, but whether or not we can have a *market* in obligations. That may be a different kettle of fish altogether. At least, the two of us appear to disagree about the fish. Jason says the above is a sufficient response, and vindicates our thesis against this objection. Peter's not so sure. Peter thinks that conditionality is a necessary feature of a market. It's a quid pro quo, and no quo without quid. Offering someone money for the performance of an obligation is a payment scheme, a way to vindicate the claim that if you may do it for free, you may do it for money (where the second "for" does not imply that you won't do it unless

[3] See Brennan and Jaworski (2015b: 85–127) for a review of the empirics.

you're paid), but it is not a market. So the counterexample, as a counterexample to the idea that we can have a market in anything that we may have, do, or exchange for free, still stands. But, either way, the thesis of the book remains intact.

Taylor also considers another case, which he says might seem to be a counterexample, but upon reflection is not. He says that the Nobel Prize committee can give away Nobel Prizes, but cannot sell them, as the Prizes are meant to be given to the most deserving people. Indeed, *giving* away the Prize constitutes it being a prize; if one were to sell it, it wouldn't really be a prize anymore. Taylor says this example doesn't constitute a counterexample, because ought implies can. Since it's *impossible* to commodify Nobel Prizes, it cannot be wrong do to so, anymore than it's wrong to square a circle.

We're not sure we're on board with this position. Imagine a world in which a poor monastery, the Sisters of the Divine Rose, gives out the World Ethics Prize each year to the person or group that they consider the most virtuous and deserving. Suppose, unlike the Nobel committee, which has frequently distributed the peace prize to has-been and about-to-be mass murderers, the Sisters of the Divine Rose actually have a perfect track record of picking the morally best people on earth. Suppose the prize is incredibly prestigious, on par with Nobel Prizes. But now suppose that when the Sisters select a prize winner, they have a rule: "Any winner who is financially able to do so, without hardship, must make a $100,000 contribution to the Sisters, or to another charity of their choosing, in order to receive the prize." If a person who is able to pay refuses to do so, they would simply not distribute the prize that year.

While the Sisters are not just distributing the prize the way Starbucks distributes coffee, they do make receipt of the prize conditional upon a kind of payment. This situation, though strange, doesn't seem incoherent to us or morally wrong.

We appreciate that Taylor has clarified our thesis and we appreciate his sympathetic response to our book. Nevertheless, we may be more radical than Taylor thinks, though, strictly speaking, we don't need to accept any of the arguments we made in this Response for our book's thesis to go through.

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