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When to Limit the Market

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A COMMENTARY ON Gregory Robson (2023), "How to Object to the Profit System (and How Not to)," ***J Bus Ethics*** 188: 205–219, https://doi.org/10.1007/s10551-022-05317-5

ABSTRACT

Gregory Robson (2023) argues that a moral objection to the market is successful only if it shows that a representative sample of business activity is unethical. He calls this the Normative Representativeness Requirement (NRR). I argue that we should not endorse the NRR for two reasons. First, an objection can be successful even if it fails to satisfy the NRR. Second, Robson motivates the NRR by appealing to a general epistemic requirement against hasty generalizations, yet this epistemic requirement only applies when one attempts a generalization—and objections to markets need not do so.

THE PAST FEW decades have seen a growth of philosophical interest in the moral limits of markets—whether some things should not be for sale (e.g. Satz 2010), whether it is morally permissible to make windfall profits during shortages (e.g. Zwolinski 2008), or whether workers are unjustly dominated at their workplaces (e.g. Anderson 2017). Gregory Robson (2023) observes that there has been little systematic theorizing in this literature about the meta-question of what it would take for a given moral objection to actually be successful. He makes progress on this front by developing what he calls the 'Normative Representativeness Requirement' (NRR), which states that a moral objection to the market is successful only if we can show that there is a representative sample of business activity engaging in unethical behaviour (2023: 217).

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The Normative Representativeness Requirement

The motivation behind the NRR is the idea that we ought not make hasty generalizations. You cannot, for example, conclude that all drivers in your country are dangerous if you have only observed a small cluster of dangerous drivers in your neighbourhood (2023: 207). This general prohibition against hasty generalizations similarly applies to firms and other transactions in the market, as Robson rightly observes (2023: 207). While it may be true that some firms treat their workers unethically, we cannot conclude just by looking at a few select firms that there is something wrong with the entire labour market. Thus, the NRR states that any successful objection must show that a representative sample of business activity is unethical (2023: 217).

Before I present my criticisms, let me offer two comments about the NRR. First, we should distinguish between what I call ‘diagnostic success’ and ‘practical success.’ A moral objection is successful in the diagnostic sense when it correctly identifies a bad-making feature of a situation, whereas a moral objection is successful in the practical sense when it gives us decisive reason to change that situation. An objection may therefore be diagnostically successful without being practically successful; we may truly state that there is something bad about the present state of things, even if we should do nothing to change it. Robson seems to have diagnostic success in mind, since he says that he does not aim to address the question of whether we should *switch* to another type of market system (2023: 207). I will therefore treat the NRR as a requirement for diagnostic success, although the same objections – suitably modified – can be made against a practical-success interpretation of the NRR.

Second, Robson initially presents the NRR as a requirement for objections against the market system as a whole (which he calls the ‘profit system’). However, Robson seems to intend for the NRR to also apply to objections against specific markets (e.g. whether we should have a market in X, and to what extent we should regulate it). This is because he uses the NRR to object to Elizabeth Anderson’s *Private Government* (2017), where she argues that we should implement restrictions on employment contracts, rather than abolish the entire market system (2017: 66–70). Indeed, it is a fairly old insight from economics that the existence of the employment contract is a contingent feature of the market system (see Coase 1937). Another reason for why the NRR seems to apply to specific markets is that Robson motivates the NRR by arguing that the epistemic prohibition against hasty generalizations similarly applies to moral objections (2023: 207). If this is right, then the NRR should also apply to objections against specific markets. I will therefore treat the NRR as applying to objections against both the market system as well as specific markets.

Two Successful Objections

There is much to be said in favour of Robson's proposal. I think he is right to observe that critics of the market often provide insufficient evidence of unethical behaviour, thereby risking a hasty generalization. In particular, I think that his critique of Anderson for making a hasty generalization is largely successful. I also agree that a moral objection is stronger if it can identify a greater amount of unethical behaviour. What I disagree with, however, is Robson's central claim that "no objection can succeed without meeting these [the NRR's] conditions" (2023: 206). Here are two that do.

Consider first that any market transaction could instead be administered through some non-market institution. A pertinent example is kidney selling. The only jurisdiction in which such transactions are allowed is Iran, where transactions for kidneys are mediated through a government agency providing monetary compensation for donors. Let us suppose that a market for kidneys could be feasibly designed, but that in the only feasible market open to us there remains a persistent minority of egregiously unethical transactions. Suppose that the costs of enforcement are too high to prevent these unethical transactions from occurring, and that this persistent minority can only be prevented by adopting a state-administered kidney matching system, which happens to perform just as well as a market in terms of allocating kidneys (see Roth et al. 2004).

Clearly, one can still say that there is something wrong with this kidney market, even if unethical behaviour is not pervasive. After all, the non-market arrangement does at least as well as the market arrangement, and the only difference—by construction—is that the market arrangement contains a persistent minority of egregiously unethical transactions. So, contrary to what the NRR requires, a moral objection to a market might succeed even if it does not address a representative sample of business activity. A small problem is still a problem.

Second, one can successfully object to a market even if nobody is behaving unethically. Suppose that a town has no fire brigade. To address the shortage of fire services, the town considers two proposals. On the first proposal, several entrepreneurs offer to operate several private fire brigades in each neighbourhood. On the second proposal, the mayor suggests that the city run a city-wide public fire brigade.

Even assuming that we are justified in believing that no unethical business activity would occur in the market for fire services, there may still be something morally wrong with it. It might simply be the case that a public fire brigade would capitalize upon economies of scale and avoid transaction costs that a series of private fire brigades could not do, thus running more efficiently and – importantly – saving more lives. So, a moral objection might succeed even if there is absolutely no unethical business activity in the market.

Thus, two kinds of objections are counterexamples to the NRR. First, there are 'persistent minority' objections which appeal to a non-representative sample of immoral behaviour (like the kidney market case). Second, there are 'emergent property' objections which appeal to morally salient properties had by the overall system but not its individual members (like the fire brigade case). Neither satisfies the NRR, since unethical behaviour is restricted to a minority of cases in the former and is completely absent in the latter. Yet, each plausibly provides a successful moral diagnosis.

A Diagnosis

Robson claims that the NRR is an instance of the uncontroversial epistemic requirement against hasty generalizations. How, then, does the NRR yield the wrong verdict in each case? The reason is that the NRR is not really an instance of this requirement. The 'no-hasty-generalization' requirement is best understood in conditional terms: it tells you to address a representative sample on the condition that you make an inductive generalization. However, the NRR requires that we address a representative sample even when we make no generalization whatsoever.

To illustrate, suppose that I do not like sending my kids to the local water park merely because there is an unruly child who shoots a water gun at me once every few visits. Imagine you say that my reasoning is flawed, because my unpleasant visits are not a representative sample of all of my visits. Clearly, you have missed the point. The object of my objection is the persistent minority of cases where I get shot with a water gun.

This shows two things. First, I can register my complaint against visiting the water park without violating the no-hasty-generalization requirement. Second, the no-hasty-generalization requirement only comes into force when I make a generalization. Had I generalized to the view that the park is overrun by feral children, then you would have been right to point out my flawed reasoning. However, since I do not generalize, my complaint still stands. Similarly, our complaint against a market may have as its object a persistent minority of unethical behaviour (or, as the fire brigade example shows, it may have a system-level emergent property as its object).

Conclusion

In general, the NRR seems to miss the fact that our moral judgements are often (but not always) comparative: that A is more efficient than B, that X promotes equality better than Y, etc. But once we admit such objections, there is little reason to endorse the NRR. There is clearly something morally wrong with a market where we find 100 firms out of 1000 behaving unethically, especially if a non-market alternative could avoid this. What the NRR entails, however, is that no moral objection succeeds until we can prove that immorality pervades the market. As I have tried to show, doing so is unnecessary. Demanding that we do so – as the NRR does – gives the market a standing moral presumption which it has no need of.

None of this is to say that the NRR cannot be modified. My constructive suggestion is to restrict its scope in the following way: *if* an objection to a market (system) makes a generalization from a smaller set to a larger set of unethical business activity, *then* it is successful only if it addresses a representative sample of that larger set. This scope-restricted NRR only applies to moral objections which attempt to generalize, thus avoiding the two counterexamples I raised earlier (this is because the antecedent of the scope-restricted NRR is false in both cases, thereby vacuously satisfying it). This scope restriction also turns the NRR into a genuine instance of the no-hasty-generalization requirement. However, this means that the NRR does not really apply to "all moral objections" (2023: 207) and thus has a far narrower scope than Robson intends.

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