

# Discussing Why Some Things Should Not Be for Sale

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*'Your kidney for an iPad'*

*Advertisement slogan used by a Chinese kidney broker*

Denis Campbell & Nicola Davison (2012)

Suppose your kidneys are failing. You might die before a donor kidney becomes available. If you are rich, there is a solution: buy a kidney on the black market in China, India or Pakistan. The kidney will cost you about \$200.000, of which the donor will receive only \$5.000. The remaining \$195.000 will go to the broker and the surgeon who made the transplant happen (Ibid.). Many of us think a competitive market in human kidneys would be troubling. This unease is reflected in the prohibition of kidney trade all around the world – except in Iran.

In *Why some things should not be for sale*, Debra Satz (2010) takes a critical look at markets that strike us as 'noxious' - markets that cause widespread discomfort or even revulsion (Ibid.: 3). She argues that most of these markets undermine our capacity to interact as equals. To guide discussions on the morality of markets, she develops a framework with four parameters that proxy for lacks in relational equality. These parameters are (1) weak agency, (2) extreme vulnerability, (3) extremely harmful outcomes to individuals, and (4) extremely harmful outcomes to society. A market that scores high on one or a few of these parameters can be deemed noxious.

Satz's framework backs our intuition that a competitive market in human kidneys is noxious (Ibid.: 204). This market would score high on all four parameters. People who sell a kidney are typically unaware of

the long-term health risks of doing so (weak agency) and they are likely to be destitute (extreme vulnerability). Kidneys could turn into debt collateral, making it harder for people who do not want to sell a kidney to get loans (extremely harmful outcome to individuals).<sup>1</sup> Finally, a kidney market could worsen existing class inequalities because only the rich would be able to buy kidneys and the poor would be supplying them (extremely harmful outcome to society).

Satz stresses that her framework is not intended as a blueprint that can be used to instantly recognize noxious markets. Users of her framework may have different opinions on the relative importance of the parameters and how high a market would need to score on them to label it 'noxious'. The project of this paper is to assess to what extent Satz's framework can be used as a guide for discussions on the morality of markets.

After starting off with a brief survey of Satz's moral limits to market theory, I will raise three issues. Firstly, since weak agency and extreme vulnerability occur often and do not always render a market noxious, it is not clear how these two parameters of Satz's framework could distinguish between markets that are problematic and markets that are not. Secondly, as the moral permissibility of markets depends to a large extent on how they are regulated, theoretical markets can only be assessed with a clearly specified regulatory framework in mind. Thirdly, it is very important to consider all available actual results of markets, as markets might turn out very differently in reality than they look on paper.

## 2. Satz's Moral Limits to Markets Theory

Satz (2010: 11) wrote her book for both theoretical and practical purposes. Her theoretical aim is to contribute a new perspective to discussions on equality by answering the questions *what type of equality is important?* and *how should this equality be achieved?* On a more practical level, she wishes to develop a framework that can be used to structure debates on the moral status of markets. This section briefly outlines Satz's theoretical contribution and her framework.

### The theory

To see clearly what is novel about Satz's moral limits to markets theory, it is helpful to think about a competitive market in human kidneys again. According to Satz (Ibid.: 66), there are two important strands in the literature on equality that could help us to answer the question why this market is problematic: general egalitarianism and specific egalitarianism.

General egalitarians argue that markets may generate levels of social inequality that are unacceptable (Ibid.: 76). For them, a market in human kidneys would be problematic because it generates large inequalities: the rich will live longer because they are able to buy kidneys from the desperately poor. Banning the market would be inefficient, as competitive markets generate optimal economic results (Ibid.: 77). The solution is to reduce the inequality produced by the market through income redistribution.

A specific egalitarian on the other hand, claims that some goods should be distributed more equally than others (Ibid.: 79). Some specific egalitarians (for instance Michael Waltzer) even argue that certain goods should not be distributed by the market system at all, because selling them would degrade their meaning. Examples of such goods would be friendship, votes and Nobel Prizes. An argument that some specific egalitarians could make against a market in kidneys is that the human body and its constituent parts should not be commodified.

Satz thinks that general and specific egalitarians do not sufficiently consider the effects that markets have on the way people in a society

relate to each other.<sup>2</sup> To understand how markets and social structures are intertwined, she argues that we need to return to the works of classical political economists such as Adam Smith, David Ricardo and Karl Marx (Ibid.: 57).

According to them, markets can only function when they are socially embedded. To give one example, without the social institution of a legal system, the power of employers over employees would be potentially unlimited. If people could be enslaved or imprisoned by their employers, a competitive market in labor would be hampered (Ibid.: 43). Also, some markets shape us more than other markets (Ibid.: 40). Especially the labor market has a considerable impact on the types of persons we become.<sup>3</sup> Sewing the same clothes in a sweatshop for fourteen hours a day, seven days a week could make a person passive and even servile – little more than an obedient appendix to the sewing machine.

The lesson we can learn from classical political economists is that markets shape the types of persons we are and the way we relate to each other. This is where Satz's concept of relational equality becomes important. She argues that because markets can shape the relations we have with each other, they can also undermine the conditions necessary for citizens in a society to 'interact as equals' (Ibid.: 95) and 'participate competently and meaningfully in democratic self-governance' (Ibid.: 101). 'Interacting as equals' here means that individuals do not have to beg or push others around to be able to make claims on one another. In most markets that we consider problematic, individuals do not interact as equals: there is a lack of equality of standing between parties before, during or after transactions take place (Ibid.: 93).

Satz takes a broader perspective than the general egalitarian: the problem with noxious markets is not only that they reinforce inequalities in income and wealth between the parties. Nor does she contest the claim made by specific egalitarians that certain goods cannot be sold because this would somehow degrade their meaning. The real problem for her is that some markets aggravate and perpetuate inequalities in background knowledge, level of education, social relations, and so on between their participants (Ibid.: 101).

## The framework

To facilitate the discussion on whether a particular market is noxious or not, Satz develops a framework with four parameters that proxy for lacks in relational equality. Two of these parameters deal with the consequences of markets, the other two with their sources. A market is noxious when it scores high on one or more of the four parameters.

Satz takes extremely harmful outcomes to individuals to be outcomes that leave their basic interests unsatisfied. These basic interests refer to what is necessary to have a 'minimally decent' life (Ibid.: 95). An example of such a harmful outcome would be a stock market crash that completely evaporates someone's savings. Markets can also have extremely harmful outcomes to society. These occur whenever markets undermine the possibility for individuals to interact as equals (Ibid.: 95). Consider child labor. Children from poorer backgrounds will, on average, have to work more and will receive less education than children of richer parents. This way, the inequality in education level and income in a society is passed on from parents to the next generation.

Now, on to the source parameters. There is weak agency in a market whenever agents are not completely aware of the consequences of an action, or do not have full information about the good that is being exchanged (Ibid.: 96). An example would be a woman bearing someone else's child for money. She might feel very different about giving away the child after it has been born than at the moment when she signed the contract. Finally, there are extreme vulnerabilities in a market whenever there are large inequalities in bargaining power between market participants. This could be because one party has much fewer resources – be they wealth or capabilities – than the other; or because the supplier has market power. A case of extreme vulnerability would be a destitute woman who prostitutes herself to survive.

## Using the Framework

Satz applies her framework in detail to five markets that people typically consider problematic: the market in surrogacy pregnancy, sex, child labor, voluntary slavery, and human kidneys. As Table 1 shows, these five markets set off all four of Satz's alarm bells for noxious markets. In that respect, these markets are extreme. A market scoring highly on just one parameter of the framework could already be problematic. Satz notes as a limitation of her approach that she does not define precisely what scores on parameters would be sufficient to label a market 'noxious'. This can lead to disagreements amongst users of her framework (Ibid.: 111).

Now, what to do if we agree that a market is noxious? Satz argues that a noxious market should not be banned automatically because the alternatives to banning the market might be worse. Forbidding child labor, for instance, could result in more child prostitution. Moreover, a change in regulation may already be sufficient to resolve the noxiousness of a market. A final reason for not banning problematic markets could be that banning is ineffective. Enforcing a ban on drugs, for example, is difficult. This could be a reason not to forbid a market in them.

Market	Extremely harmful outcomes	Sources
<b>Surrogacy pregnancy</b>	<i>Society:</i> perpetuates historical status inequality between men and women <i>Individual:</i> possibly threatens security of child, surrogacy mother could be left in destitution if contract is cancelled	<i>Weak agency:</i> possible future emotional costs to surrogate mother; unborn child's interests could be harmed <i>Vulnerability:</i> destitution/poverty
<b>Prostitution</b>	<i>Society:</i> perpetuates historical status inequality between men and women <i>Individual:</i> basic agency interests of individual harmed (especially in the case of streetwalkers)	<i>Weak agency:</i> pimps decide <i>Vulnerability:</i> destitution/poverty
<b>Child Labor</b>	<i>Society:</i> less productive workforce due to lack of education; higher costs of public health-care system; passive, ignorant citizenry <i>Individual:</i> undermining of future well-being and capacities of child	<i>Weak agency:</i> a child cannot make well-considered education decisions; unawareness of parents about benefits of education <i>Vulnerability:</i> destitution/poverty

Market	Extremely harmful outcomes	Sources
<b>Voluntary slavery</b>	<i>Society:</i> perpetuation of social inequalities that hamper capitalism <i>Individual:</i> extreme dependency on employer, inhibition to development of individual	<i>Weak agency:</i> illiteracy and innumeracy <i>Vulnerability:</i> destitution/poverty (no protection from seasonal fluctuations in income)
<b>Kidney markets</b>	<i>Society:</i> worsening of existing class inequalities <i>Individual:</i> potentially being forced to sell kidneys in case of destitution (kidneys could become collateral)	<i>Weak agency:</i> unawareness of potential health consequences <i>Vulnerability:</i> destitution/poverty

Table 1: Satz's assessment of noxious markets in *Why Some Things Should Not Be For Sale*

### 3. The discriminatory power of the source parameters

There are noxious markets that score high on only one or a few parameters of Satz's framework. An interesting case is when a market just scores high on the source parameters, but has no extremely harmful outcomes. Weak agency and extreme vulnerability occur often and they do not always make a market morally objectionable – even when they occur in high degrees (see Satz, 2010: 97; Claassen, 2012; Kachra, 2011). An important question is therefore: when is a market with only weak agency and/or extreme vulnerability noxious?

It is easily established that weak agency does not always make a market noxious. Consider the market in fast food. At least some consumers in this market will suffer from weak agency: they are not fully aware of the long-term health risks of eating fast food or do not know about the range of other food options available. Still, not many people think of the fast food market as morally objectionable. The same goes for markets with extreme vulnerabilities. Few people would deem a market in fruits with honest prices but some very poor buyers problematic.

In a review of Satz's book, Claassen (2012: 590) claims that weak agency and extreme vulnerability only render a market noxious when they lead to extremely harmful outcomes. This would mean that the outcome parameters in Satz's framework do all the discriminatory work. The source parameters would just be common causes of extremely harmful outcomes. We could leave them out of the framework and still label exactly the same markets 'noxious'.

This seems quite plausible at first glance. In all markets that Satz discusses in detail (see Table 1), weak agency and extreme vulnerability cause harmful outcomes. However, Satz does mention examples of cases where weak agency and extreme vulnerability make a market noxious even when there are no extremely harmful outcomes. For weak agency, she refers to markets that 'target young children', and markets 'whose products are based on deception' (2010: 97). For extreme vulnerability, she notes that markets in which people sell their assets at very low prices out of desperation are wrong, even if the sale does not result in extremely harmful outcomes (Ibid.).

Thus, Satz does mention that it is possible that markets are morally objectionable if there only is weak agency and/or extreme vulnerability. However, her framework does not seem to be developed to an extent that one can recognize such markets with it. Given that weak agency and extreme vulnerability occur often, it would be very helpful for discussions on the moral status of markets to have a better understanding of why they sometimes make markets noxious.

#### 4. Regulatory context matters

Regulation and the noxiousness of markets are closely intertwined. Frequently regulation can resolve the problems in a market (Ibid.: 104). It even seems to be the case that in absence of regulation, almost any market can be noxious (Fleurbaey, 2011).<sup>4</sup>

An example could help to see this more clearly: suppose cars were not invented yet.<sup>5</sup> Then, someone - call her Pauline Daimler - invents them. Many people will be shocked by the thought of cars: collisions can result in death (extremely harmful outcomes to individuals), drivers are largely dependent for their safety on other drivers whose capacities for driving they cannot establish (weak agency), and poorer car owners cannot afford the safer, heavier cars of the rich (vulnerability).

Without regulation, it seems that Satz would have to label a market in cars 'noxious'. With regulation, this is no longer the case. If there are clear traffic rules enforced by the police, a minimal safety standard for cars, and obligatory courses to ensure that drivers know the traffic rules and are capable of maneuvering their vehicles safely, the car market would not score so high on Satz's framework anymore. Regulation *can* make the difference between a market being noxious or not. This does not mean that regulation is a panacea for the noxiousness of markets, however. Some markets are problematic by their very nature. The already mentioned advertisement targeted at children would be an example.

Now, what to do with the knowledge that regulation and the moral status of markets are closely intertwined? When Satz applies her framework to markets in the third part of her book, she always asks two questions. First: is this market morally objectionable? And only when a market is found to be noxious: can regulation resolve its noxiousness? This strategy works well for markets that exist in reality, because then a regulatory context is already present.

However, many of the markets Satz considers are merely theoretical. There are, for instance, no nationwide markets in surrogacy motherhood or human kidneys (except for Iran in the latter case). Asking whether these markets are noxious before thinking about a regulatory framework for them seems to be unproductive. After all, even the market in cars and food could be noxious in absence of regulation.

## 5. Actual outcomes are surer than expected ones

A related worry is that it is very difficult to know what a theoretical market will be like when actualized. If one is unsure about how a market will turn out in reality, how can the market's moral status be assessed?

This question ties in with a classic problem in ethics. There is a debate in consequentialism on how moral knowledge – knowledge of whether an action is right or wrong – can be obtained (Shafer-Landau, 2010: 120). The central question is: how should we assess the moral status of an action when not all of its results have occurred yet?

Two answers are relevant here.<sup>6</sup> Either you cannot tell, because the rightness of an action depends on its actual results. Or you can guess, because the rightness of an action can be inferred from its expected results. The main drawback of the first answer is that you do not have moral knowledge in cases where not all the results of an action have occurred yet. The main drawback of the second answer is that your expectations could turn out to be wrong.

A simple example can be of help here. Suppose you think that, in theory, there might be a risk that surrogacy motherhood would reinforce negative gender stereotypes. If you think that you cannot acquire moral knowledge without actual results, the only way to decide whether a market in surrogacy pregnancy would indeed reinforce negative gender stereotypes is to try this market. If you can base your judgment on expected outcomes, on the other hand, this would not be required.

In a review of Satz's (2010) book, Steiner (2013) argues that there is too large a possibility of making wrong judgments about markets that only exist in theory. According to him, one simply has to accept that it is impossible to assess the moral status of theoretical markets. I think such a strict stance would be a loss. It is as likely for theoretical markets to require moral assessments as it is for actual markets. Consider the privatization of public transport, electricity supply, and postal services during recent decades in many Western European countries. Moreover, if a market always has to be tried before it could be forbidden, much harm might occur that could have been anticipated.

It is good to be aware, however, that there always is a risk of having wrong expectations about how a market will turn out in reality. This means that the user of Satz's framework needs to consider any available empirical evidence on the markets assessed. Sometimes there is a lack of such attention to empirical studies in Satz's book.

For starters, Satz argues that prostitution is noxious *inter alia* because it reinforces negative gender stereotypes, according to which women are 'objects for male use' (Ibid.: 149). She does not, however, try to establish whether this is indeed what happens in countries such as Argentina, Germany, the Netherlands, Mexico and the United Kingdom, where prostitution is legal in varying degrees (Global News and The Canadian Press, 2013). Similarly, in her discussion of the potential noxiousness of a market in human kidneys, Satz does not consider the various empirical studies done on the kidney market in Iran – she just mentions in a footnote that Iran is the only country in the world with a legal market in kidneys (Ibid.: 233). Such empirical studies would give her some actual results with which she can contrast her expectations.

## 6. Conclusion

The aim of this paper was to assess to what extent Satz's framework can be used as a guideline for discussions on the moral status of markets. As Satz demonstrates in her book, the framework is successful in the sense that many markets we think of as problematic also score highly on one or more of its parameters. Nevertheless, I have argued in this paper that some further elaboration of the framework and how to use it would be helpful on three issues.

First of all, some markets are noxious just because they score high on the source parameters of Satz's framework. Such cases are interesting, because weak agency and extreme vulnerability occur often and do not always render a market noxious. Consequently, it would be desirable to have a criterion that tells us when weak agency and extreme vulnerability are problematic and when they are not.

Also, almost any market could be noxious without regulation. When considering theoretical markets, it is therefore unproductive to first ask whether the market is noxious and only afterwards whether this noxiousness can be resolved through regulation. Even the commonplace markets in food and cars would be problematic without regulation.

Lastly, when assessing the moral status of a market, it is important to consider its actual outcomes as much as possible. There are many ways in which a market might turn out differently in reality from how it looks on paper. To avoid making erroneous assessments of markets, it is therefore important to consider all available empirical evidence.

Any guide for discussion is incomplete by definition. This also goes for Satz's guide for moral reflection on markets. The purpose of this paper was to point at some details where further elaboration of her framework would facilitate discussions on the moral status of markets even more. The devil is always in the details; it is good to know where it is hiding.

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## Editorial note:

Since this essay was written by a member of the editorial board of the Erasmus Student Journal of Philosophy, it was subject to a more extensive review procedure. For more information, see <http://www.eur.nl/fw/english/esjp/submissions>.

## Notes

1. Satz (2010: 200) refers to a study by anthropologist Lawrence Cohen, in which he notes that kidneys – especially those of women – are already used as debt collateral in certain regions of India.
2. For a summary of Satz's critique of general egalitarians and specific egalitarians, see Claassen's (2012) review of her book.
3. Adam Smith already pointed this out in his *Inquiry into the Nature and Causes of the Wealth of Nations* (1776/1904). He writes that factory work can make workers as 'stupid and ignorant as it is possible for a human creature to become' (Ibid.: V.1.178).
4. Satz (2010: 99) acknowledges this, but then does not apply it in her discussion of specific markets in the third part of her book.
5. Fleurbaey (2011) mentions the food market as an example of a market that would score high on multiple parameters in Satz' framework absent regulation.
6. I ignore 'proximate consequentialism', which uses the legal notion of proximate causes to determine the moral status of actions (Sinnott-Armstrong, 2012). It seems relevant to neither Satz' nor Steiner's position.

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