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RESEARCH ARTICLE

Economic analyses of repugnant market transactions: a modest typology

Péter Cserne

University of Aberdeen, School of Law, Aberdeen, UK
Email: peter.cserne@abdn.ac.uk

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Abstract

Economic accounts of repugnance concern two broad questions: the rationalisation of sentiments of repugnance (do emotional and visceral reactions of repugnance track valid reasons for not engaging in or condemning certain (trans)actions?) and institutional design (how to institute, regulate, or restrict markets in response to reasonable objections). If repugnance expresses valid practical reasons for regulating or limiting markets, our institutions should acknowledge and express these. If attitudes of repugnance are *not* rationalisable in the sense of instrumental or moral values, we should disregard or eventually counteract or reduce them. Focusing on a special case of repugnance, when commodification, i.e., the sale of goods or services for money meets societal disapproval, this paper identifies three characteristic ways to combine conceptual, empirical, and normative arguments and map repugnance into a disciplinary 'epistemic frame' of economics: repugnance as taste; repugnance as proxy for market failures or moral reasons; repugnance as hypocrisy or contingent cultural fact. Correspondingly, economists advise to (1) work around; (2) make sense of; and (3) explain away people's sentiments of repugnance.

Keywords: commodification; cultural semiotics; institutional design; moral externalities; performativity; repugnance

Introduction

The temporal and cross-cultural variability of what people find repugnant is fascinating.

Some 150 years ago, life insurance was considered immoral speculation, and, in many jurisdictions, it was even illegal; now it is considered an eminently prudent and responsible, even virtuous thing to do (Zelizer, 1979). In the West, with few counterexamples, eating insects is generally found disgusting; yet there are signs that this perception is changing or at least the food industry has found ways around it. In other parts of the world, entomophagy is commonplace. While there are important *pro tanto* reasons for an increased role of insects in our diet, there are also moral considerations against it (Sebo and Schukraft, 2021). In its phenomenological sense, repugnance raises questions for evolutionary biology, social psychology, or comparative anthropology – these disciplines are crucial to understand the origins, cultural manifestations, and diversity and/or uniformity of repugnance as human (social) behaviour (Jones, 2000; Zelizer, 1994).

The focus of this paper is on repugnance of a special kind: when commodification, i.e., the sale of goods or services for money meets societal disapproval, in other words, when people find market transactions of certain kinds, say the sale of body parts or sexual services abhorrent, disgusting, and repellent. Concerns about commodification are not only raised by unreflective critics of markets. As Kenneth Arrow once noted, 'a private property – private exchange system depends, for its stability, on the system's being non-universal' (cited in Trebilcock, 1993: 23) What Arrow meant is that if political, legal, and bureaucratic offices were auctioned off, their holders freely bribed or votes freely bought and sold, the private sphere would be massively destabilised. Arrow's example indicates the practical relevance of the limits of markets: we are not dealing with an obscure and marginal subject but something of significance for public discourse and regulatory design (Krawiec, 2009).

In recent decades, the economic discourse on repugnance has become rich and dense. While the moral limits of markets have been discussed in philosophy and various social and policy sciences for centuries, in the last decades, repugnance as a possible limit to markets has been increasingly subject to technical economic analysis as well (Khalil and Marciano, 2018; Roth, 2007; Tirole, 2017: 33–50). To be sure, from a longer historical perspective, economists have always been concerned with moral sentiments, including repugnance.

An economic analysis of repugnance can take many forms. While for certain purposes economics can be seen as an explanatory enterprise that takes an external perspective (see e.g., Seabright 2010), and for analytical purposes it may be useful to distinguish empirical and philosophical economics (Collingwood, 1926), ultimately economics as a social science cannot be sensibly separated from certain practical aims, i.e., contributing to an empirically based normative discourse about (certain domains of) public policy (Varian, 1989). In a somewhat cryptic fashion, this duality is expressed by Ross (2012: 704) who characterised economics as 'both objective science and normatively helpful engineering'.

Correspondingly, economics is concerned with repugnance in two respects. The first is conceptual or analytical. While the various natural and social science disciplines mentioned above draw the contours of repugnance as a culturally, temporarily, and perhaps even individually or temperamentally variable phenomenon, economics as a distinct discipline maps or codes repugnance into a specific epistemic frame, aiming to conceptualise it on its own terms: as (moral) preferences, perhaps giving rise to (moral) externalities or merit goods. For instance, the social disapproval of organ sale can be conceptualised as other-regarding preference, as a transaction generating externalities; and body parts can be seen as goods that should not be allocated via the market.

This conceptual work in economics is similar to, indeed a version of what philosophers do, namely the *rationalisation* of repugnance. They address the question: to what extent can the raw emotions, gut feelings, or visceral reactions of repugnance be accounted for as reasonable, in the sense of tracking *pro tanto* good reasons for not engaging in or condemning certain (trans)actions. As we shall see, an important characteristic of economic rationalisations is that they tend to rely on a narrower range of reasons than moral and political philosophy in general.

This brings us to the second task of economics. When contributing to an adequate collective response to repugnance, economists also engage with questions of *institutional design*: should this regulatory response map, i.e., acknowledge and sanction sentiments of repugnance; counteract or reduce them; or harness them for institutional design? What should be the institutional framework of that market? This raises substantive, technical, or evaluative questions concerning the design or regulation of specific markets or more broadly the role of markets in society.

The distinction of analysis and intervention, explanation and design becomes more complex once we consider the performativity of economic models (Boldryev and Svetlova, 2016; Brisset, 2019). Surely, economists sometimes discuss intimate life or political discourse in terms of economic transactions of exchange, but do they mean this 'literally'? If they do, is this problematic? As various spheres of life are analysed in terms of rational choice models – this rationalisation is not merely descriptive anymore: 'the performative reclassification, by means of description, of an activity as economic radically changes the nature of social interactions and of the goods and virtues available to social actors participating in that activity' (Roscoe, 2016: 134). Economics is performative not only when engaging in explicit market design. Conceptual schemata (Van Schoelandt, 2022) themselves have practical impact: they are interventions in the world that they purport merely to describe. While this line of argument informs some of the discussion below, the focus of the paper is on distinguishing three types of economic analysis of repugnance.

In section 'Three types of economic analysis of repugnance', I suggest distinguishing three kinds of economic analysis of repugnance, highlighting some characteristics ways they combine conceptual analysis, institutional design, and normative arguments, in order to map repugnance into a specific analytical framework and respond to it in evaluative terms: (1) working around repugnance and designing institutions and mechanisms for commodification, (2) making sense of anti-commodification sentiments as pointing at reasonable limits to markets, and (3) subverting or debunking sentiments of repugnance as unreasonable 'romance' or 'hypocrisy'.

In section 'Variants of rationalisation', I provide some further characterisation of these three stances. In particular, I discuss how conceptualisations of the second type, i.e., rationalisations of repugnance can be further distinguished, first in terms of market failures, second in terms of pointers at moral reasons. I also comment further on the third type of analysis which aims to demystify repugnance as contingent cultural fact or irrational sentiment. As we shall see, when researchers analyse social norms that express and sustain repugnance as hypocritical or 'mere convention' without moral merit, they perform critique rather than mere description; this requires an explication of the normative premises of such critique.

In section 'Conclusion' I conclude by mentioning that despite important differences, all three analytical strategies could be called 'reactive': they are concerned with how moral sentiments of repugnance impact on the extent to which market exchange is legitimate. This could be contrasted with a 'proactive' stance in which economists identify and analyse moral virtues expressed and cultivated by market transactions.

Three types of economic analysis of repugnance

When we say that economists tend to conceptualise repugnant transactions in 'economic terms', this does not imply a single theoretical strategy or normative stance; rather, we are dealing with a combination of several, interrelated arguments in this respect. These tend to crystallise around three stances.

Regarding the moral limits of markets, there is a range of (a) substantive views. For the purposes of this paper, we roughly distinguish three stances: commodification, anti-commodification, and anti-anti-commodification. These are expressed in different (b) conceptual categories: as moral preferences; moral externalities or merit goods; and hypocrisy or cultural facts. Together, they allow to express the substantive concerns in (c) analytical frameworks, in other words, they provide the technical terms for economists to, respectively: work around; rationalise, i.e., make sense of; and explain away people's repugnance. Thus, I suggest distinguishing three substantive stances on repugnance in economics, combining conceptual choices and normative commitments into analytical frameworks.

First, economists may conceptualise repugnance as a taste or (moral) preference. Following the dictum *de gustibus non est disputandum* (Stigler and Becker, 1977), they engage in technical normative analysis and institutional design in an engineering mode (Roth, 2002). Normatively, they orient themselves in favour of commodification, i.e., extending the scope of markets. Correspondingly, their analytical strategy is to propose policies to 'work around' social sentiments of repugnance.

Second, economists may conceptualise repugnance in terms of (moral) externality or merit goods, i.e., as versions of or proxies for market failures. In doing so, they make sense of sentiments of repugnance, in terms of ordinary economic analysis. Correspondingly, they propose policies to justify limiting or regulating markets. They engage in the rationalisation of anti-commodification sentiments in terms of public reasonableness.

Third, economists may conceptualise repugnance as an expression of hypocrisy or as a cultural fact of no independent normative weight. Normatively, they engage in demystifying repugnance either by naturalising it or philosophically debunking sentiments of repugnance as unreasonable 'romance'; their analytical strategy could be characterised as anti-anti-commodification insofar as they aim to explain away anti-commodification arguments as irrelevant for policy debates around institutional design.

For instance, if in a certain society at a certain time, people find selling organs repugnant, economic analysis may (1) take this sentiment as a social fact; an exogenous constraint on welfare maximisation and work around it to allocate scarce resources to those in need, e.g., by designing a matching mechanism that is not (or less) repugnant than sale transactions. Economists may also (2) analyse this sentiment of repugnance and identify that it stems from, tracks, or expresses what ordinary analysis would call market failures, e.g., information asymmetry between potential sellers and buyers, negative external effects, or high transaction costs. Alternatively, they may use more heterodox conceptual categories such as merit goods to make sense of the sentiment that the availability of life-saving transplants should not depend on willingness to pay. In other words, they reconstruct repugnance in terms of standard economic analysis and subject the transactions to standard comparative institutional analysis, in Pigovian or Coasean spirit. Third, economists may (3) interpret repugnance as having no rational basis, standing in the way of increasing welfare or 'making the world a better place'. They see their task in enlightening the society in question that their objections to selling body parts are based on prejudice, hypocrisy, or the like. This typology is summarised in Table 1, with examples for each type of analysis.

One could object that the authors of some of these papers or books listed as examples are not trained in economics or affiliated with economics departments; to this I respond that they regularly co-author with economists and put forward arguments that are expressed in terms generally used by economists. At any rate, the examples simply illustrate the three stances that could be also exemplified by other professional economists.

More tentatively and controversially, one could interpret this typology as reflecting three facets or 'epistemic stances' of modern economics in general. First, economics is often characterised as a 'positive' science: refusing to engage with values as such or committed to value neutrality or at least keeping positive and normative analysis separate. Second, economics is implicitly or explicitly linked to governmentality, operating in the mode of policy proposals ('whispering in the prince's ear'). Third, economics sometimes expresses a subversive urge to get behind or unmask social taboos; demystify 'the irrational'; 'naturalise' moral phenomena, i.e., reduce them to observable empirical facts. Expressed in this blunt form, these three facets are in contradiction; in practice, these conflicts are typically kept at bay by emphasising one or the other facet, depending on the rhetorical situation.

In the remainder of this section, I provide some comments on aspects of this typology.

Working around repugnance

The first type of economic analysis is supportive of 'commodification' in the sense of designing/supporting market exchange of goods and services commonly or previously considered outside the domain of commerce/exchange such as kidneys or human eggs. In designing new mechanisms to allocate valuable scarce resources, this project has generated social benefits in many spheres from health to the labour market for doctors (Roth and Peranson, 1999).

Table 1. Three conceptualisations of repugnance

Conceptual categories: repugnance as…	Substantive normative stance	Analytical strategy	'Methodology'	Examples
'Taste' or preference	Commodification	Work around repugnance	Technical rationality; institutional design	Tirole (2017: 57), Roth (2007)
Proxy for market failure or merit good	Anti-commodification	Rationalise or make sense of repugnance	Rationalisation; eliminative redefinition	Satz (2010), Tirole (2017: 37–38)
Expression of hypocrisy; cultural fact	Anti-anti-commodification	Explain away repugnance	Demystification: naturalisation; 'debunking'	Tirole (2017: 35–36, 50) Brennan and Jaworski (2015, 2016)

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This type of economic analysis does not directly engage with moral attitudes or preferences as the reasons for repugnance, rather analyses their consequences. Nobel laureate Alvin Roth's work is a good example for this line of economic work. 'Roth argues that economists can treat the fact that people view certain markets as "repugnant" as a constraint on market design, akin to a technological or information constraint' (Hausman *et al.*, 2016: 97).

Market design is sometimes confronted with repugnance in the sense that significant groups of people resist or object to the introduction of markets. How do economists work around this? The cultural and temporal variance of repugnance implies that market design requires context-specific analyses. In this mode of analysis, the economist takes the sentiments of repugnance as given preferences or accounts for them as moral costs; engages in quantifying or measuring repugnance, as it affects characteristics of explicit markets and other resource allocation mechanisms. The models often represent analytically sophisticated social science or 'technical' policy analysis.

To accept and work around moral attitudes in a given society as exogenous constraints implies the perspective of a (mechanism) designer or (institutional) engineer, a limited ambition to give advice under the guise of technical efficiency and instrumental rationality, rather than grand theory. These are relatively humble interpretations of the job of an economist. The theorist tries to remain objective, neutral, or morally agnostic, adopting an external perspective, taking social morality as given. In short, Roth (2007) styles repugnance as a constraint in market design.

Occasionally, however, proponents of commodification go beyond mechanism design and provide an indirect challenge to these preferences of repugnance. Thus, Roth (2007: 54) assigns economists an 'educational role of pointing to inefficiencies and trade-offs'.

Making sense of repugnance

The second type of economic analysis goes further and directly engages with anti-commodification arguments. This line of research is more wholeheartedly normative and concerns the significance of repugnance as a heuristic for good (instrumental or moral) reasons for limiting (market) transactions. To be sure, not only economists but researchers from other disciplines work at articulating (good and bad) reasons against commodification. They articulate these reasons, i.e. not only lament over or argue against commodification but try to make sense of sentiments of repugnance. In the last decades, philosophers such as Anderson (1993), Radin (1996), Satz (2010), Sandel (2012) have taken the lead on this enterprise but Musgrave's work on merit goods (1987) could also be interpreted as an economist's engagement with anti-commodification sentiments in this mode. Furthermore, without explicitly talking about it, economists who suggest regulatory models for the exchange of 'contested commodities' such as body parts or sexwork also do so by identifying institutional solutions to actual or possible market failures. For instance, Becker and Elìas (2007: 3) start the argument for legalising monetary incentives for organ donations, thus: 'When an economist sees a persistent gap between demand and supply – as in the demand for and supply of organs for transplants – the next step is usually to look for obstacles to equilibrating that market.'

Unlike the first type of analysis, those who argue in this second mode do not simply take social attitudes as given but engage in both empirical and normative argument about which cases and forms of repugnance matter, and point out unintended consequences of markets or legal bans on markets. In explicating these grounds, the analyst assigns different degrees of normative relevance to 'repugnance'. Some of them are 'market failures' that are easily overcome. To the objection that 'payment for organ donations from living individuals would encourage impulsive and reckless provision of organs, because donors would not be able to calculate the risks involved', Becker and Elìas (2007: 21) respond: 'We would require that donors be informed fully in writing and in person of the risks during surgery, the length of the recovery period, and other possible risks. If impulsive donations were a problem, a few weeks cooling off period could be required to give donors sufficient time to change their minds.' Others discuss the consequences of introducing incentives in domains and contexts originally governed by internal motivation, the so-called 'crowding out' effect (Grant, 2012; Tirole, 2017: 39–40).

Some philosophers, in reconstructing the reasons behind repugnance, also build on economic analysis, insofar as they explore not only moral but also instrumental grounds for social attitudes against either the alienability or the market exchange of certain goods and services. This line of analysis promises to rationalise these sentiments and corresponding social norms and contribute to public discourse on policy decisions on economic activity. This is one of the modes how philosopher Debra Satz (2010) characterises and analyses 'noxious markets'. Her arguments belong to economics insofar as they articulate the reasons against commodification in terms of instrumental reasons that are familiar to economists (externalities, information asymmetries, and other market failures).

Arguably, philosophers' arguments are also relevant for economics insofar as they rationalise sentiments of repugnance in terms of public normative reasons such as justice, rights, or dignity: these are relevant analytical categories for any public policy, hence also to economics as policy science. For instance, Musgrave (1987: 453) engaged in the same exercise when he tentatively rationalised anti-commodification sentiments in terms of Rawlsian basic goods, i.e., an argument from justice.

An important kind of repugnance stems from contingent background conditions of inequality and therefore, at least in principle, is easy to reconceptualise as a matter of distributive justice. As several analysts have observed, some goods are withheld from a pure market allocation because allocating them 'through the prevailing distribution of wealth is highly undesirable to a significant number of people' (Calabresi, 2016: 26). In Calabresi's welfarist language, for these goods, 'it is the capacity of the rich to outbid the poor that renders their allocation through the ordinary market unacceptable, utility diminishing, and therefore, "costly" to many people' (ibid.). More generally, 'in some cases, objections against commodification stem more from excessive inequalities of power, gender or wealth rather than from markets as such' (Hodgson, 2021: 159) Conversely, the idea is that objections to commodification would disappear with a less inequal wealth distribution. Or at least, as long as repugnance of commodification derives not from objections against (market-)alienability *per se*, rationalisation can point at the root of the problem. Many economists exclude questions of justice from the domain of economics: '[o]n this an economist has little to say, except as an ordinary citizen' (Tirole, 2017: 57). In section 'Why we need two distinct stages of rationalisation', I return to this strategy of rationalisation and discuss the range of relevant reasons that economists may or should consider. In sum, this second line of economic analysis explicates repugnance as a heuristic for good reasons for limiting (market) transactions.

Explaining away repugnance

The above line of anti-commodification arguments has given rise to a third stance that could be called anti-anti-commodification: a range of sometimes subversive responses to both social morality and moralised critics of markets. Rather than rationalising anti-market sentiments, representatives of the third type of analysis challenge them on both conceptual and empirical grounds. As opposed to the seriousness of the second group, the third one is often refreshingly subversive. Their most distinctive critical contribution is to lay bare the structure of anti-commodification arguments, emphasising the need to disaggregate, operationalise, and eventually empirically test them. In short, they suggest demystifying repugnance: 'we need to understand the source of those beliefs.' (Tirole, 2017: 35).

One way of 'understanding' is by providing (or at least referring to) naturalistic accounts of repugnance in the sense of explaining them in terms of observable empirical (biological or psycho-social) facts as opposed to engaging with them in the domain of practical reason, as the second type of economic analysis does. This is a legitimate exercise: other (evolutionary or comparative) disciplines proceed in a similar manner and their insights should not be isolated from or disregarded by economics. Indeed, if the aim is to give a 'positive', i.e., descriptive or explanatory account of either the genesis of or changes in sentiments of repugnance and corresponding social norms, that requires a theoretical framework and empirical, possibly cross-cultural data. 'We must better understand the foundations of morality and our fears about the commercialization of certain domains. That is what the academic community seeks to do' (Tirole, 2017: 46–47).

This 'positive' account is often accompanied by an implicit and often explicit criticism of these sentiments as irrational and hence rationally indefensible, following the slogan: there is no room for 'romance' in economics (cf. Buchanan, 2003).

Nor is there room for 'hypocrisy' in rational market design. This is how Jean Tirole (2017: 50) argues:

> '*the market is sometimes made a scapegoat for our own hypocrisy.* […] *the market becomes a mirror of our souls that reflects realities of our societies, facets of our aspirations, and preferences that we would rather conceal – from ourselves as well as others. We can break the mirror by doing away with the market, but to do so only suspends judgement on our personal and collective values.*'

The conceptual work in this third mode of analysis is largely negative: it engages with anti-commodification arguments in order to 'debunk' them, implicitly or explicitly, as irrational. More positively, it is typically combined with institutional design claims, i.e., arguments as to ways to meet practical or instrumental objections to commodification.

To cite two examples, Brennan and Jaworski's more measured philosophical paper (2015) and lively popular book on the subject (*Markets without Limits*, 2016) suggest deconstructing repugnance in this manner. On a smaller scale and in a simpler fashion, Becker and Elías (2007: 21–22) respond to ethical objections to introducing payments for organ transplants by a similar combination of debunking and institutional design.

Brennan and Jaworski acknowledge that there are things that it is (morally) wrong to own in the first place (e.g., child pornography). The main target of their critique is the 'asymmetry thesis', namely that there are important goods that one can legitimately gift but cannot sell. As one of their characteristic slogans says: 'if you can do it for free, you can do it for money'. They devote much of their work to debunking arguments against the use of money in those contexts where a free gift of the good/service would be unproblematic. They discuss this along with a related anti-commodification argument, the so-called 'semiotic objection'. I shall comment further on this analytical strategy in section 'Should there be a third stage of rationalisation?'.

When it comes to institutional design, they concede that 'some things should only be bought and sold in regulated or highly regulated markets' (Brennan and Jaworski, 2015: 1058). The beginning of institutional design is to identify those market parameters that would allow to sell what is otherwise legitimately alienable. A large part of their argument is to demonstrate that as long as anti-commodification arguments target contingent features of specific markets, these can be defused one by one. They claim that the rational core of anti-commodification arguments is nothing else but a list of contingent features of certain (actual or mostly hypothetical) markets 'that could be designed out of the market or regulated away' (Brennan and Jaworski, 2015: 1058). If there are valid objections to certain market practices, such as information asymmetry, unequal bargaining power, or exploitation, careful institutional design based on cost–benefit analysis should eliminate those.

This ambitious version of the anti-anti-commodification stance suggests that for every good and service, there is a possible set of parameters that would allow to design a morally unobjectionable market. Yet, it remains to be seen whether this is possible in every significant case. In fact, we are justifiably sceptical about this: 'the authors have not shown that there is a policy proposal that could create a market that would assuage all the worries of the anti-commodification theorists. It may be true that one moral evil, say rights violations, could be fixed by fine-tuning one feature of a market. However, it does not follow that there is a policy that could modify all the market dials in such a way as to avoid the array of moral concerns that motivate the anti-commodification theorists' (Stout and Carothers, 2016: 206).

Variants of rationalisation

In this section, I discuss certain aspects of the second and third types of economic analysis in more detail.

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Why we need two distinct stages of rationalisation

While all three types of economic analysis introduce certain conceptual or terminological innovations in the service of different aspects of theory-building, the redefinition strategy we discuss here implies rationalising cases of anti-market objections by rephrasing them in terms of underlying instrumental and moral reasons that can be discussed in reasonable public deliberation. More broadly, we refer to rationalisation here as the process of distinguishing what is a 'healthy' gut reaction (a heuristic that stands for and can be given a rational justification) and what is moral panic or self-serving misinformation. An important contribution of economic theory to public discourse is the rationalisation of moral sentiments of 'repugnance' in terms of intelligible practical reasons for action. This eliminative redefinition strategy is arguably a reasonable method to channel the substantive problem of repugnance into economic analysis. I suggest distinguishing two stages of this strategy.

The first seemingly easy stage of this 'redefinition' of repugnance is in terms of instrumental reasons against certain (trans)actions within a standard economic framework. As long as anti-market sentiments are supervenient on negative third-party effects, specific transaction costs, and/or informational imperfections, the limitation of market transactions is considered economically justified: they remedy market failures.

If it can be shown that the opposition to or the lack of some (legal) markets is explicable not only by adherence to sacred values or unintelligible feelings but by (ordinary) market failures (information asymmetry, externality, or 'internality') then repugnance is rationalised, i.e., made tractable in terms that are not only familiar to economists but intelligible to any reasonable person.

This stage of the eliminative strategy provides both epistemic and practical benefits.

As far as epistemic benefits are concerned, this stage is conceptually easy but often technically complex. To the extent that we discuss these matters within economics, there is an epistemic benefit in formulating these in the ordinary terms of economic analysis. In other words, if there are reasonable arguments for limiting the scope of markets and invalidating certain kind of transactions that are based on structural or other features of a specific market, in demonstrable consequences of commodification, etc., then we should not assign independent weight to anti-commodification sentiments. When it comes to a rational assessment of sentiments of repugnance, we need both empirical data on the presence and strength of such effects and conceptual and normative tools to analyse and eventually criticise such sentiments – as not all of them deserve respect, let alone legal sanctions. Indeed, it is an open empirical matter whether in a specific context there are indeed demonstrable relevant market failures such as tangible negative external effects (Krawiec, 2022).

As far as practical benefits are concerned, this strategy provides a common denominator or overlapping consensus for public policy in the context of reasonable ethical disagreements, even though the identification of market failures does not make this rationalisation strategy ethically neutral.[1]

A further practical benefit becomes clear when we consider its implications for institutional design, more particularly, the practical task of designing incentive-compatible institutions for large anonymous groups. To assume, as ordinary economics does, that even self-regarding rational agents would want to regulate the matter (as a market failure) serves as an incentive-compatibility constraint in an exercise of institutional design (Kornhauser, 2002).

To be sure, this argument is subject to some potential complications. As mentioned in the Introduction, economic analysis does not simply map human behaviour into analytical categories; it has an impact ('performative effect') both on outward behaviour and arguably on motivation as well. Discussing attitudes of repugnance in public as 'justified', 'misguided', 'worthy of respect', or 'irrational' may have an impact on the prevalence and expression of these very attitudes, irrespective of any actual policy. The analysis of these performative effects is beyond the scope of this paper.

[1]I understand Tirole's claim ('When this is the case, invoking ethics adds little to either the analysis or the conclusion' Tirole, 2017: 36) to imply the former (overlapping consensus) and not the latter (ethical neutrality).

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In sum, the first stage of the eliminative redefinition strategy could be seen as a 'realist' reconstruction of what 'really' goes on behind a surface of moralistic 'cheap talk' or 'hypocrisy' (Tirole, 2017: 50), namely market failures.

A more radical formulation would be to claim that moral repugnance is a contingent fact about the attitudes of a particular culture (or social group) with little or no independent normative weight. As we have seen, this is the core of the anti-anti-commodification arguments. It is certainly true that not all sentiments (of repugnance) deserve respect, let alone legal sanction: 'disgust is an unreliable source of moral knowledge' (Brennan and Jaworski, 2021: 172); 'feelings of revulsion are an unreliable source of ethical inspiration' (Tirole, 2017: 46–47). Furthermore, one could make the case that, at least in the context of a market economy, the 'anti-romantic' impulse of economics is a good presumption for institutional design, in terms of where the burden of argument should lie. Anti-market sentiments need to be rationally scrutinised and a compelling moral or prudential case against commodification or privatisation is required.

However, this should be seen as an invitation to a second stage of rationalisation, rather than a debunking argument against moral limits to markets shortcutting rational discussion.[2] This second stage of rationalisation is distinct from the first one because, as a conceptual matter, not all reasons against commodification can be properly analysed in terms of preferences or costs only.

As we have seen above, as long as the sentiments of repugnance derive from underlying inequalities, at a minimum economic analysis can identify the root of the problem. The second stage of this strategy, however, requires economists to engage in a rational critique of repugnance even outside the conventional welfarist normative framework. The morally and prudentially justified parameters of interpersonal transactions need to go beyond considerations of welfare and need to be formulated in terms of rights and justice (Shiffrin, 2000; Stone, 2014). Economists who follow the eliminative redefinition strategy are bound to engage in moral reasoning of a certain kind. It concerns identifying non-instrumental or non-welfarist moral reasons for not engaging in or collectively prohibiting certain transactions.

Economists and economically minded legal scholars sometimes conceptualise the fact that some people find certain conducts morally offensive or simply disgusting, in terms of other-regarding preferences or 'moral externalities' and argue for including them in an instrumentalist policy analysis in terms of social welfare. These 'moral externalities' would in turn potentially justify public intervention. Thus, Shavell argues that 'the existence of moral beliefs should itself influence the design of the law, given that moral beliefs constitute tastes the satisfaction of which raises individuals' welfare' (Shavell, 2002: 255). In a working paper on 'Moral Commitments in Cost-Benefit Analysis', Posner and Sunstein (2017) explicitly discuss how and why moral externalities should be included in a welfarist calculus for public policy purposes. This is not a mere academic exercise – they are suggesting specific operational methods of making and justifying public decisions that have serious real-world consequences. They argue that third-party preferences, motivated by moral commitments, and measured by willingness to pay, should, as far as practicable, be part of any cost–benefit analysis pursued by administrative agencies. For instance, the question how much social benefits are attached to protecting dolphins depends not only on the direct 'welfare effects' of the policy but also on the 'moral effects' on those who care about dolphins.

Like any welfare-based theory, reductive redefinitions face difficulties in delimiting, in a non-arbitrary manner, the kinds of third-party effects that would justify a welfare-enhancing intervention.

[2]For economists sharing the methodological stance of 'value-neutral' policy analysts, this second stage of rationalisation strategy is altogether more controversial or at least uncomfortable. Many economists, by professional credo keep their discipline separate from moral and political philosophy, and are proud to remain ill-equipped to discuss these matters. Surely, they can use their intuitions, argue as ordinary citizens, or introduce methodological or meta-theoretical arguments to exclude questions of morality from what proper economic discussion is or what is meaningful altogether (or from a disciplinary perspective). Sociologically, a possible question is whether this unease is accidental or a shared disciplinary or professional point of view. Certainly, not all economists take this stance, see e.g., McCloskey (2002), Hausman *et al.* (2016). To be sure, there are also non-economists who are moral sceptics. This matter is beyond the scope of this paper.

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Third-party effects are potentially infinite and practically incalculable. Once one goes beyond tangible harms to third parties, many activities might be viewed as generating some externality. But as externalities are ubiquitous, regulators need additional criteria to determine what kind of externalities matter and how much weight should be attached to them. Welfare-based analyses alone do not provide tools for selecting between relevant and irrelevant externalities. Without further analytical tools, economics cannot determine what to do with moral repugnance.

Furthermore, the reduction of moral beliefs and attitudes to preferences or costs flattens the normative landscape, and as such is problematic both analytically and normatively. The reductionist way of talking about values as tastes and moral commitments as costs conflates categories. As Zamir summarised, 'There is a fundamental difference between preferences and normative judgments. Individuals have the final say on the content of their preferences, but their judgments may be sound, or unsound. Whether a judgment is right or not depends on its justifications, not on the number of its supporters or the intensity of their support' (Zamir, 2017: 116). Judgements, including moral judgements, are, and should be, aggregated differently than preferences. Beliefs can be updated in response to new information and there is scope for rational argument about what is the case, i.e. what is the right course of action. This is clearly not the case with matters of taste or preferences, understood as raw data about desires. When attitudes of repugnance indicate (sound or unsound) moral judgement they should be analysed as such.

When economists use the same assumptions but extend from positive to hypothetical normative or policy analysis, they unjustifiably simplify the normative landscape to a single dimension of commensurable value – ironically exemplifying the very idea that was repugnant in the first place. While some cases of repugnance may be plausibly analysed in terms of costs or externalities, the reduction of moral reasons to externalities is bound with both practical (the ubiquity of third-party effects) and conceptual problems (the distinctness of values and preferences).

For instance, one might support a universal entitlement to basic education irrespective of family income not out of repugnance for a market in education services but out of a commitment to equality of opportunity (as a requirement of justice or dignity). To be sure, in a next, instrumental step, one might discuss whether a tax-funded public school system, school vouchers, or some other policy is the most adequate instrument to achieve this goal. Equality of opportunity may also be considered a desirable principle of public policy in terms of its consequences. Yet equality of opportunity is not a mere 'moral preference' or the lack of it a 'moral cost'.

The simplicity of reductionist accounts is attractive: all justified limits on market transactions can be expressed in terms of preferences and costs, i.e., without relaxing the usual assumptions of economics about individual rationality or resorting to non-consequentialist normative arguments of fairness, justice, or autonomy. Yet this simplicity comes at a cost of theoretical fruitfulness and practical relevance.

The reductionist promise to reduce all normative concerns to welfare is double-edged. If repugnance is a preference, then within the framework of economic analysis there is no rational basis for questioning or disregarding it. If repugnance is an externality and externality as a market failure is a *pro tanto* reason for regulation market transactions, then from a purely welfarist economic perspective, there is no principled limit to analytically welfarist but substantively moralistic interventions in the name of these attitudes, whether morally defensible or not.

Many cases of repugnance against commodification or alienability 'are better explained by the idea that exchange of the relevant entitlement injures some fundamental interest of the restricted agent not captured by his utility function, or some social interest that cannot be translated into material or pecuniary terms' (Hermalin *et al.*, 2007: 47–48).

In response to this argument against reducing repugnance to preferences and costs, an anonymous referee formulated the following argument:

> '*An economist might* [*say*] *that the only alternative to pricing repugnance in terms of costs and preferences is what Calabresi called "inalienability," simply banning particular practices without*

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> *reference to costs, on cultural or other grounds. But then what if someone actually engages in a repugnant transaction even though it's been banned? There seems only one response: make the transactor liable (legally or culturally) and thus make him pay for the harm he's caused. That is, the alternative to pricing repugnance ultimately comes down to … pricing repugnance.*'

The implication seems to be that there is no way out of analysing repugnance in instrumental terms. Imposing inalienability rules is either naïve or hypocritical (perhaps populist) – it will not eliminate the problematic transactions or practices.

The argument partly misfires and partly proves too much. My argument above is primarily conceptual and only secondarily one of institutional design. The objection is only concerned with the latter. In that regard, the question whether and how certain legal and cultural norms are enforced is indeed a legitimate subject of economic analysis and any realistic moral argument should also take enforcement costs into account. As mentioned above, incentive-compatibility is a relevant, indeed key, ingredient in public policymaking. Yet this is not a specific problem of laws expressing repugnance or making goods. Economists may and indeed do contest the wisdom of absolute bans on markets or transactions of certain kinds, e.g., prohibitions of certain types of anticompetitive behaviour. But when such a rule is in place, most economists do not (publicly) argue in such radically realist terms as to supporting disregarding them. In sum, while sound institutional design cannot disregard consequences, sound conceptual analysis cannot disregard categorical distinctions.

In a more conciliatory mode, one could rephrase the disagreement about the necessity of the second stage as one of disciplinary boundaries and competences. A rational analysis of repugnance requires input from both philosophy and economics.

Should there be a third stage of rationalisation?

After carving out what is the result of a market failure (first stage) and what independent moral reasons require, in terms of rights, justice, or dignity (second stage), there might remain an unanalysed and partly unanalysable residual 'unease' with certain transactions, linked to moral intuitions or gut feelings of repugnance.

Tirole argues that even here, some degree of rationalisation is possible, although perhaps of a different, explanatory, kind:

> 'It is essential to question these strong moral feelings and ensure we reflect on them in developing public policy. We must better understand the foundations of morality and our fears about the commercialization of certain domains. That is what the academic community seeks to do.' (Tirole, 2017: 46–47)

What we are concerned with here is whether the third kind of economic analysis indeed fully explains away repugnance, or should we rather engage in a third stage of rationalisation.

Philosophers Jason Brennan and Peter Jaworski go full length with the first two stages of rationalisation discussed in the previous section. A key feature of their argument is an analysis and critique of some of those sentiments of repugnance that cannot be rationalised in terms of market failures or non-instrumental moral reasons, i.e., are irreducible to the former categories.

As mentioned in section 'Three types of economic analysis of repugnance', they also devote much of their analytical energy to arguing against the 'asymmetry thesis', namely that there are goods that one may legitimately give away for free but should not sell. They also identify and refute what they call the 'semiotic objection' to markets, as the main underlying argument for the asymmetry thesis they attempt to refute. They formulate the objection in abstract terms:

> 'Independently of noncommunicative objections, to engage in a market in some good or service X is a form of symbolic expression that communicates the wrong motive, or the wrong attitude

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> toward X, or expresses an attitude that is incompatible with the intrinsic dignity of X, or would show disrespect or irreverence for some practice, custom, belief, or relationship with which X is associated' (Brennan and Jaworski, 2015: 1055)

Their response to the objection is disarmingly simple. The semiotics of markets is temporarily and culturally variable: markets themselves carry social meanings that are local and contingent 'and not written into the moral fabric of the universe. […] What market exchanges mean depends upon a culture's interpretative practices. […] [T]hese interpretative practices are themselves subject to moral evaluation and […] there can be better or worse interpretive practices' (Brennan and Jaworski, 2015: 1057).

Indeed, the social meaning of institutional practices is both contingent and dynamic and to some extent subject to deliberate change. Think about how the 'meaning' of marriage has changed in the last decades. Social norms and interpretative schemata attached to practices change; in some cases, deliberate change through policies and regulatory interventions is possible.

This is, in fact, common ground among scholars discussing the moral limits of markets. At this stage, it is important to note that the asymmetry thesis is not defended by any of the philosophers Brennan and Jaworski associate it with, such as Sandel, Anderson, Satz, Walzer, and Archard. Furthermore, the essentialist semiotics implied in the 'semiotic objection' is rejected by most philosophers who have written on the topic, including those that Brennan and Jaworski claim rely on it. In a recent book, Taylor (2022) meticulously reconstructed the relevant arguments by these philosophers and showed how Brennan and Jaworski's focus on refuting the implausible asymmetry thesis and semiotic objection has 'derailed' the debate on the moral limits of markets. The debate, Taylor argues, is not indeed binary (either certain goods should not be sold, or they may be) and it does not depend on the meaning that those goods 'essentially' bear. Taylor's critique of Brennan and Jaworski's is serious if not devastating in exegetical terms but ultimately his argument is constructive. In order to 'rerail' the debate, Taylor provides a rich taxonomy of relevant arguments about moral limits of markets, distinguishing inherent and contingent limits, various expressive limits as well as ontological ones. This is all highly relevant for the substantive debate about repugnance and commodification but would go beyond to scope of this paper.

Here I just briefly discuss the last category that Taylor calls ontological limits to markets. This refers to goods or services (such as love or academic recognition) whose very nature precludes them from being bought or sold. If one attempts to buy love or friendship by money what one gets is at best the semblance of it. Academic institutions may not be universally necessary features of flourishing societies; yet allocating academic rewards based on criteria other than merit (let alone willingness to pay) is not merely objectionable in view of (contingent) social norms of academia; rather, if one gets an academic recognition for money, it is at best a simulacrum. One may be able to buy a Nobel prize medal but one can only be awarded the Nobel prize based on merit.

This particular example is, of course, complicated: some honorary titles may be awarded in recognition of a financial contribution; the Nobel committee may stray far from being a trusted and trustworthy judge of (scientific or literary) merit. Furthermore, markets may have an indirect effect on the allocation of some ontologically non-commodifiable goods. Archard (2022: 934) discusses 'criminal justice and the good of a favourable verdict' as an example: 'This good is surely one whose nature is such that it can only be distributed according to norms of procedural fairness. Bribing judges to secure certain verdicts is wrong as allowing such a market would crowd out fair judgments of guilt and innocence. Yet there is a market for professional legal services and the rich can, by paying for the services of better lawyers, have a higher chance than the poor (who cannot afford their services) of being acquitted. There is here no simple market in favourable verdicts, but it remains true that insofar as lawyers trade their services, fair outcomes to trials may tend to be crowded out.'

All this suggests that the social norms and interpretative schemes governing the cultural or moral significance of goods, acts, and practices can be analysed, as Tirole suggests, in reasonable fashion, i.e.,

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guided by the constitutive norms of academia, to enhance understanding. This could indeed be considered a third stage of rationalising repugnance.

Conclusion

In this paper, I argued that sentiments of repugnance raise two substantive questions for economics. The first concerns rationalisation: to what extent can repugnance as a phenomenon of moral psychology be accounted for as reasonable or track *pro tanto* good reasons against engaging in, recognising, or supporting certain market transactions. The second question concerns institutional design, i.e., what is the adequate policy response to repugnance. The two are not neatly separable: economic descriptions have performative consequences; explicit market design is not the only way economic analysis has practical implications.

I distinguished three principal ways economics tend to analyse repugnant transactions, in particular sentiments against commodification. One can see repugnance as an extrinsic constraint to market design: a limit to commodification to reckon with. One can interpret repugnance as a proxy for instrumental reasons against certain transactions within a welfarist framework and possibly identify non-instrumental or non-welfarist moral reasons for not engaging in or collectively prohibiting certain transactions, in terms of justice, rights, or dignity. Finally, if sentiments of repugnance are *not* rationalisable in the sense of instrumental or moral values, economists may either regard them as culturally specific expressions of value or disregard them as cultural facts without independent moral weight.

All three types of analysis are reactive in the sense of responding supposedly pre-existing repugnance. Dealing with repugnance may also trigger an ambition in economics to account for market transactions in a broader ethical framework and reinvest market exchanges with social meanings opposite to repugnance. Recognising the virtue-generating aspects of markets is not new – think of the *doux commerce* arguments of the 18th century. In line with this venerable tradition of economic thought, the 'reactive' debate around moral repugnance could also generate 'proactive' responses, driven by the ambition to enrich the conceptual and normative tools of (both neoclassical and behavioural) economics with a philosophical account of markets in terms of their compatibility with and contribution to individual character and as an expression of an ethic of 'mutual advantage' (Bruni and Sugden, 2013; Hausman *et al.*, 2016: 94–95; Sugden, 2018).

References

Anderson E.E. (1993) *Value in Ethics and Economics*. Cambridge: Harvard University Press.

Archard D. (2022) Review of Taylor: Markets with limits. *Journal of Applied Philosophy* **39**(5), 932–934.

Becker G.S. and Elìas J.J. (2007) Introducing incentives in the market for live and cadaveric organ donations. *Journal of Economic Perspectives* **21**(3), 3–24.

Boldryev I.A. and Svetlova E. (eds.) (2016) *Enacting Dismal Science: New Perspectives on the Performativity of Economics*. New York: Palgrave.

Brennan J. and Jaworski P.M. (2015) Markets without symbolic limits. *Ethics* **125**, 1053–1077.

Brennan J. and Jaworski P.M. (2016) *Markets Without Limits: Moral Virtues and Commercial Interests*. New York: Routledge.

Brennan J. and Jaworski P.M. (2021) If you can do it for free, there's some way to do it for money. *Journal of Institutional Economics* **17**, 171–175.

Brisset N. (2019) *Economics and Performativity: Exploring Limits, Theories and Cases*. London and New York: Routledge.

Bruni L. and Sugden R. (2013) Reclaiming virtue ethics for economics. *Journal of Economic Perspectives* **27**, 141–164.

Buchanan J.M. (2003) Public choice: Politics without romance. *Policy* **19**(3), 13–18.

Calabresi G. (2016) *The Future of Law and Economics: Essays in Reform and Recollection*. New Haven: Yale University Press.

Collingwood R.G. (1926) Economics as a philosophical science. *International Journal of Ethics* **36**, 162–185.

Grant R.W. (2012) *Strings Attached: Untangling the Ethics of Incentives*. Princeton: Princeton University Press.

Hausman D., McPherson M. and Satz D. (2016) *Economic Analysis, Moral Philosophy, and Public Policy*, 3rd edn. New York: Cambridge University Press.

Hermalin B.E., Katz A.W. and Craswell R. (2007) Contract law. In Polinsky AM and Shavell S (eds.), *Handbook of Law & Economics*, Vol. I. Amsterdam – London: Elsevier, 3–136.

Hodgson G.M. (2021) On the limits of markets. *Journal of Institutional Economics* **17**, 153–170.

Jones M.O. (2000) What's disgusting, why, and what does it matter? *Journal of Folklore Research* **37**, 53–71.

https://doi.org/10.1017/S1744137423000139 Published online by Cambridge University Press

Khalil E.L. and Marciano A. (2018) A theory of tasteful and distasteful transactions. *Kyklos* **71**(1), 110–131.
Kornhauser L.A. (2002) Virtue and self-interest in the design of constitutional institutions. *Theoretical Inquiries in Law* **3**(1). https://www7.tau.ac.il/ojs/index.php/til/article/view/222
Krawiec K.D. (2009) Foreword: Show me the money: Making markets in forbidden exchange. *Law and Contemporary Problems* **72**, i–xiv.
Krawiec K.D. (2022) Markets, repugnance, and externalities. *Journal of Institutional Economics*, First View, https://doi.org/10.1017/S1744137422000157 in this issue.
McCloskey D.N. (2002) Why economists should not be ashamed of being the philosophers of prudence. *Eastern Economic Journal* **28**(4), 551–555.
Musgrave R.A. (1987) Merit goods. In Eatwell J, Milgate M and Newman P (eds.), *The New Palgrave Dictionary of Economics*. New York: Palgrave, 452–453.
Posner E.A. and Sunstein C.R. (2017) Moral commitments in cost-benefit analysis. *University of Chicago Coase-Sandor Institute for Law & Economics Research Paper* No. 802; *U of Chicago, Public Law Working Paper* No. 620. Available at https://ssrn.com/abstract=2930450
Radin M.J. (1996) *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts, and Other Things*. Cambridge: Harvard University Press.
Roscoe P. (2016) Performativity matters: Economic description as a moral problem. In Boldryev IA and Svetlova E (eds.), *Enacting Dismal Science*. New York: Palgrave, 131–150.
Ross D. (2012) The economic agent: Not human but important. In Mäki U (ed.), *Handbook of the Philosophy of Science. Volume 13: Philosophy of Economics*. Amsterdam: Elsevier, 691–735.
Roth A.E. (2002) The economist as engineer: Game theory, experimentation, and computation as tool for design economics. *Econometrica* **70**, 1341–1378.
Roth A.E. (2007) Repugnance as a constraint on markets. *Journal of Economic Perspectives* **21**, 37–58.
Roth A.E. and Peranson E. (1999) The redesign of the matching market for American physicians: Some engineering aspects of economic design. *American Economic Review* **89**, 748–780.
Sandel M.J. (2012) *What Money Can't Buy. The Moral Limits of Markets*. New York: Farrar, Straus, and Giroux.
Satz D. (2010) *Why Some Things Should Not Be for Sale. The Moral Limits of Markets*. New York: Oxford University Press.
Seabright P. (2010) *The Company of Strangers: A Natural History of Economic Life*, revised edn. Princeton: Princeton University Press.
Sebo J. and Schukraft J. (2021) Don't farm bugs. *Aeon Magazine* (21 July 2021). Available at https://aeon.co/essays/on-the-torment-of-insect-minds-and-our-moral-duty-not-to-farm-them
Shavell S. (2002) Law versus morality as regulators of conduct. *American Law and Economics Review* **4**, 227–257.
Shiffrin S.V. (2000) Paternalism, unconscionability doctrine, and accommodation. *Philosophy & Public Affairs* **29**, 205–250.
Stigler G.J. and Becker G.S. (1977) De gustibus non est disputandum. *American Economic Review* **67**, 76–90.
Stone R. (2014) Unconscionability, exploitation, and hypocrisy. *Journal of Political Philosophy* **22**, 27–47.
Stout J.A. and Carothers A. (2016) Review of Jason Brennan and Peter M. Jaworski's *Markets without limits: Moral virtues and commercial interests*. *Erasmus Journal for Philosophy and Economics* **9**, 203–207.
Sugden R. (2018) *The Community of Advantage: A Behavioural Economist's Defence of the Market*. Oxford: Oxford University Press.
Taylor J.S. (2022) *Markets with Limits: How the Commodification of Academia Derails Debate*. New York and Abingdon: Routledge.
Tirole J. (2017) *Economics for the Common Good*. Princeton: Princeton University Press.
Trebilcock M.J. (1993) *The Limits of Freedom of Contract*. Cambridge, MA: Harvard University Press.
Van Schoelandt C. (2022) Perspectives on the limits of markets. *Reason Papers: A Journal of Interdisciplinary Normative Studies* **42**(2), 33–48.
Varian H.R. (1989) What use is economic theory? (unpublished working paper), online. Available at https://people.ischool.berkeley.edu/~hal/Papers/theory.pdf
Zamir E. (2017) Tastes, values, and the future of law and economics. *Jerusalem Review of Legal Studies* **16**, 101–123.
Zelizer V. (1979) *Morals and Markets: The Development of Life Insurance in the United States*. New Brunswick and London: Transaction Publishers.
Zelizer V.A. (1994) *The Social Meaning of Money*. New York: Basic Books.

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