

WHAT MONEY SHOULDN'T BUY

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MY TOPIC IS THE MORAL LIMITS OF MARKETS: ARE there some goods that should not be bought and sold, and if so, why? The proliferation of markets in recent years makes this question difficult to avoid. Consider, for example, recent proposals to establish markets in organs for transplant, or the already flourishing market in human eggs and sperm, or the unseemly race among medical entrepreneurs to patent human genes and other life forms. And what should we think about the extension of markets into spheres of life once thought to lie beyond their reach, with the proliferation of for-profit schools, hospitals, and prisons? The rampant commodification, commercialization, and privatization of contemporary life gives us good reason to reconsider the moral bounds of markets: Are there some things that money should not buy? In order to explore this question, I would like to distinguish two objections to extending the reach of market valuation and exchange.¹

¹ This essay draws upon Michael J. Sandel, "What Money Can't Buy: The Moral Limits of Markets," *The Tanner Lectures on Human Values*, vol. 21, ed. Grethe B. Peterson (Salt Lake City: University of Utah Press, 2000).

Two Objections: Coercion and Corruption

The first objection is an argument from coercion. It points to the injustice that can arise when people buy and sell things under conditions of severe inequality or dire economic necessity. According to this objection, market exchanges are not necessarily as voluntary as market enthusiasts suggest. A peasant may agree to sell his kidney or cornea in order to feed his starving family, but his agreement is not truly voluntary. He is coerced, in effect, by the necessities of his situation.

The second objection is an argument from corruption. It points to the degrading effect of market valuation and exchange on certain goods and practices. According to this objection, certain moral and civic goods are diminished or corrupted if bought and sold for money. The argument from corruption cannot be met by establishing fair bargaining conditions. If the sale of human body parts is intrinsically degrading, a violation of the sanctity of the human body, then kidney sales would be wrong for rich and poor alike. The objection would hold even without the coercive effect of crushing poverty.

Each objection draws on a different moral ideal. The argument from coercion draws on the ideal of consent or, more precisely, the ideal of consent carried out under fair background conditions. It is not, strictly speaking, an objection to markets, only to markets that operate against a background of inequality severe enough to create coercive bargaining conditions. The argument from coercion offers no grounds for objecting to the commodification of goods in a society whose background conditions are fair.

The argument from corruption is different. It appeals not to consent but to the moral importance of the goods at stake, the ones said to be degraded by market valuation and exchange. The argument from corruption is intrinsic in the sense that it cannot be met by fixing the background conditions within which market exchanges take place. It applies under conditions of equality and inequality alike.

Consider two familiar objections to prostitution. Some object to prostitution on the grounds that it is rarely, if ever, truly voluntary. According

to this argument, those who sell their bodies for sex are typically coerced, whether by poverty, drug addiction, or other unfortunate life circumstances. Others object that prostitution is intrinsically degrading, a corruption of the moral worth of human sexuality. The degradation objection does not depend on tainted consent. It would condemn prostitution even in a society without poverty and despair, even in cases of wealthy prostitutes who like the work and freely choose it.

My point is not to argue for or against prostitution, but simply to illustrate the difference between the two objections and also to illustrate the further part of my claim, which is that the second objection is not reducible to the first. The worry about corruption cannot be laid to rest simply by establishing fair background conditions. Even in a society without unjust differences of power and wealth, there would still be things that money should not buy.

The Case of Surrogate Motherhood

Having distinguished two different arguments against commodification, I now turn to a case of contested commodification: commercial surrogacy. Contracts for “surrogate motherhood,” as the practice is commonly known, typically involve a couple unable to conceive or bear a child, and a woman who agrees, in exchange for a fee, to be inseminated with the sperm of the father, to carry the child to term, and to give it up at birth. Some argue that commercial surrogacy represents an objectionable kind of commodification. How can such claims be assessed? Many arguments about commodification proceed by way of analogy. Those who oppose contracts for surrogate motherhood argue that they are morally tantamount to baby selling. With commercial surrogacy as with baby-selling, a woman is paid a fee (typically \$10,000 in the surrogacy market) in exchange for relinquishing a child.

Defenders of commercial surrogacy must either resist the analogy or defend both practices. Those who dispute the analogy argue that commercial surrogacy is more like selling sperm than selling a baby; when a woman agrees to undergo a pregnancy for pay, she does not sell a pre-existing child but simply allows another couple to make use of her

reproductive capacity. And if it is morally permissible for men to sell their reproductive capacity, this argument goes, why is it not morally permissible for women to sell theirs? I would like to consider both of these analogies. Each can help clarify the moral status of commercial surrogacy. As is often the case with reasoning by analogy, however, we may find that the intuitions that constitute our moral starting point do not emerge unscathed.

Commercial surrogacy, a \$40 million industry in the U.S., is big business. Professional baby brokers advertise for couples who want a child and also for women willing to give birth through artificial insemination for pay. The broker draws up a contract specifying the payment to the birth mother, typically \$10,000 plus medical expenses. She agrees to be impregnated with the father's sperm, to carry the pregnancy to term, and to relinquish the child and all parental rights. For his efforts, the broker collects a \$15,000 fee, bringing the cost per child to more than \$25,000.

Like all commercial contracts, surrogacy promises benefits to both parties. Infertile couples can acquire a baby who bears the genetic imprint of the father and raise it as their own. Surrogate mothers, meanwhile, can earn \$10,000 for nine months work and give the gift of life to a grateful couple. But contract pregnancy does not always work out so happily. Sometimes the surrogate mother changes her mind and wants to keep the baby, which is what happened in the celebrated "Baby M case," a surrogacy case that went to court in New Jersey.²

The surrogate mother, Mary Beth Whitehead, fled to Florida with her baby rather than surrender it to William and Elizabeth Stern, the couple who had paid her to conceive it. A lower court in New Jersey ruled that the contract was valid. A deal was a deal, and the birth mother had no right to break the agreement simply because she changed her mind. The New Jersey Supreme Court disagreed, however, and invalidated the contract. It granted custody to the father, Mr. Stern, but voided the

² In *re Baby M*, 217 New Jersey Superior Court, 313, 1987.

adoption by his wife and declared Mrs. Whitehead the legal mother, entitled to visiting rights.³

On what grounds did the courts justify their rulings? The lower court argued, implausibly, that in contracting with Mrs. Whitehead, Mr. Stern did not really buy a baby—he had, after all, contributed the sperm—but simply hired a woman to perform a service for a wage. But this strained distinction overlooked the fact that the contract not only required Mrs. Whitehead to bear the child: it also required that she renounce her parental rights. In fact, the contract even included a product guarantee: if the baby were born abnormal, the Sterns would not have to take it, though they would be obliged to provide financial support.

The New Jersey Supreme Court invalidated the contract and compared commercial surrogacy to baby-selling: “This is the sale of a child, or at the very least, the sale of a mother’s right to her child, the only mitigating factor being that one of the purchasers is the father.”⁴ But if contract pregnancy is morally equivalent to baby selling, the question remains whether our repugnance to baby selling is well founded. What is wrong with letting people buy and sell babies if they choose?

There are two possible answers to this question, answers that take us back to the two objections to commodification in general. One answer worries about coercion or other flaws in the act of consent, while the other worries about corruption of the moral goods and social norms associated with pregnancy, childbearing, and parenthood.

Those who oppose surrogacy and baby-selling in the name of consent claim that the choice to bear a child for pay is not as voluntary as it seems. They argue that surrogacy contracts are not truly voluntary because the birth mother is unlikely to be fully informed. Since she cannot be expected to know in advance the strength of the bond she

³ *Matter of Baby M*, 537 Atlantic Reporter, 2nd series (New Jersey 1988) 1227.

⁴ *Matter of Baby M*, 1248.

will develop with her child during pregnancy, it is unfair to hold her to her bargain once the baby is born.

In the Baby M case, the lawyers for the Sterns argued that Mary Beth Whitehead's consent was informed because she had had previous children of her own. But it is not clear that previous pregnancies supply the knowledge relevant to a surrogacy contract. The distinctive feature of such a contract is that it requires a woman to bear a child and then relinquish it. Bearing a child to love and raise as one's own does not necessarily inform a woman about what it would be like to bear a child and give it up for money.

The second objection to surrogacy contracts does not depend on finding a flaw in the act of consent. It holds that even a truly voluntary, fully informed agreement to sell a baby lacks moral force because certain things should not be bought and sold. This was the position of the New Jersey Supreme Court, which stated, "there are, in a civilized society, some things that money cannot buy."⁵ This argument maintains that we should not regard ourselves as free to assign whatever values we want to the goods we prize. Certain modes of valuation are appropriate to certain goods. Treating children as commodities degrades them by using them as instruments of profit rather than cherishing them as persons worthy of love and care. Contract pregnancy also degrades women by treating their bodies as factories and by paying them not to bond with the children they bear.

Elizabeth Anderson advances a compelling version of this argument. "By requiring the surrogate mother to repress whatever parental love she feels for the child," Anderson writes, surrogacy contracts "convert women's labor into a form of alienated labor." The surrogate's labor is alienated "because she must divert it from the end which the social practices of pregnancy rightly promote—an emotional bond with her child."⁶

⁵ *Matter of Baby M*, 1249.

⁶ Elizabeth S. Anderson, "Is Women's Labor a Commodity?," *Philosophy & Public Affairs* 19 (Winter 1990): 81, 83.

Anderson's argument brings out a controversial feature of the corruption argument against commodification. To object that market valuation and exchange of a good corrupt its character is to assume that certain things are properly regarded and treated in certain ways. Thus Anderson invokes a certain conception of the proper end of pregnancy and childbearing. To know whether a good should be subject to market exchange, according to this view, we need to know what mode of valuation is fitting or appropriate to that good. This is different from knowing how much the thing is worth. It involves a qualitative, not just a quantitative judgment.

The argument from corruption, which draws our attention to modes of valuation appropriate to certain goods and social practices, may prompt us to reconsider the moral implications of the analogy between surrogacy and sperm-selling. This analogy is typically invoked in defense of surrogacy. If men should be free to sell their reproductive capacity, the argument goes, shouldn't women also be free to sell theirs? Isn't it unfair, isn't it discriminatory, to allow one but not the other?

Here may be a case where, on reflection, the moral force of the analogy works in the other direction. If, prompted by the surrogacy case, we conclude that certain modes of valuation are proper or fitting to certain kinds of goods, we may come to question the moral permissibility of sperm sales. Such qualms are heightened by the brazen way in which the market for sperm has become commercialized.

From time to time, there appears in the Harvard student newspaper, *The Crimson*, an advertisement stating, "the largest sperm bank in the United States is looking for donors." Those who qualify are promised \$35 per specimen, up to three times a week. For relatively little effort, eligible Harvard men can make \$105 per week selling sperm.

It is no accident that Cryobank, Inc., locates its sperm banks near Harvard and MIT in the east and Stanford and Berkeley in the west. Its marketing materials play up the prestigious source of its sperm. A monthly catalog offers customers a physical and ethnic profile of each donor, including his major field of study. "It's not the Sears, Roebuck

catalog,” a company manager told *The Boston Globe*, “but it’s a place to start.”⁷

The marketing of Ivy League sperm commodifies the male reproductive capacity in much the way commercial surrogacy commodifies pregnancy. Both treat procreation as a product for profit rather than a human capacity to be exercised according to norms of love, intimacy, and responsibility. A further example illustrates the point.

Several years ago there was a scandal surrounding a doctor named Cecil Jacobson, an infertility specialist in Virginia. He didn’t have a donor catalog. Unknown to his patients, all of the sperm he used to inseminate his patients came from one donor—Dr. Jacobson himself. Genetic testing proved that at least fifteen of the babies conceived at his clinic bore his genetic imprint. Columnist Ellen Goodman described the bizarre scenario:

Had his patients known what was happening between the time the doctor left the examining room and his return with a vial of sperm, I suspect they would have leapt off the table. At least one woman who testified in court was unnerved at how much her newborn daughter “looks just like him.”⁸

It is possible, of course, to condemn Dr. Jacobson for failing to inform the women in advance. But Goodman glimpsed another moral of the story:

The clamor over this case comes in part from a change in attitudes towards fathers. We are, finally, uneasy, about the disconnection between men, sperm, and fatherhood. We are trying to strengthen the lines between male sexuality

⁷ Sally Jacobs, “Wanted: Smart Sperm,” *The Boston Globe* (12 September 1993): 1, 39.

⁸ Ellen Goodman, “The Father of Them All” (3 March 1992) reprinted in *Ellen Goodman, Value Judgments* (New York: Farrar Straus Giroux, 1993) 309–11.

and responsibility, fathers and children. Dr. Jacobson gave his infertility business the, uh, personal touch. Now the rest of us are in for a round of second thoughts on sperm donation.⁹

Perhaps, Goodman concludes, fatherhood should be something you do, not something you donate.

Objections to the Argument from Corruption

The argument that commodification corrupts or degrades certain goods raises two difficulties that do not confront the argument from coercion. One is that the argument from corruption has to be made in a different way, case by case. It must be shown how, in each case, market valuation and exchange degrades or corrupts important values or ends that non-market practices may embody. The argument from coercion, by contrast, does not have to be defended in a different way each time. It points to a single ideal—the ideal of consent—not a plurality of ideals. The form of the argument is always the same: what seems like a free exchange of goods or services for money is not truly voluntary, because economic coercion, or economic necessity, is operating in the background.

The second difficulty follows readily from the first: Since the argument from corruption points not to consent but to the moral worth of particular human goods, the question arises how the case for these goods can be established, especially in the face of competing moral and religious convictions. Recall the argument against commercial surrogacy advanced by Anderson. She claims that certain modes of valuation are “fitting” or “proper” to certain kinds of goods. This argument has, at least to some, a worryingly Aristotelian aspect, for it depends on attributing to certain social practices a characteristic purpose or end. Arguments of this kind are subject to two familiar objections: If, on the

⁹ Goodman 311.

one hand, we derive the fitting or proper way of regarding goods from the social meanings that prevail in a given society at a given time, we run the risk of lapsing into conventionalism. If, for example, there are fewer and fewer things that money can't buy these days, we might simply conclude that the meaning of our social practices is changing in this respect. The critical role of an appeal to proper modes of valuation is lost. If, on the other hand, we derive the fitting or proper way of regarding goods from some notion of the essential nature of the practices in question, we run the risk of essentialism—the idea that the purposes and ends of social practices are fixed by nature.

Is it possible to argue that markets corrupt or degrade certain goods, without lapsing into conventionalism or essentialism? How can such arguments proceed in the face of disagreement about purposes and ends? One way of proceeding, as I suggested above, is to argue by analogy—to begin with moral intuitions we have about certain practices and to see whether or not the practices in question are relevantly similar. We considered, for example, whether commercial surrogacy was more like baby-selling or more like sperm-selling. The argument by analogy was saved from conventionalism by the fact that moral intuitions functioned as starting points for reflection, subject to revision as the argument unfolded. Another way of proceeding is to begin with a certain conception of the good, and then to explore its consequences for morally contested cases of commodification, and also commonly accepted ones. In the course of reflecting, we may find reason to revise our judgments about the cases or about the conception of the good that provides the starting point.

Republican Citizenship

I turn now to two cases that concern markets and the public realm. Rather than begin with analogies and then tease out the conception of the good at stake, as in the surrogacy case, I'll proceed in the opposite direction: I'll begin by describing a certain conception of the good and then explore its consequences for certain familiar market-oriented policies and practices. The cases I have in mind are military service and voting. I would like to argue that there is reason to limit the role of markets in governing these practices more severely than we are

accustomed to do. In each case, an excessive role for markets corrupts an ideal the practices properly express and advance—namely, the ideal of citizenship as the republican tradition conceives it.

According to the republican conception of citizenship, to be free is to share in self-rule. This is more than a matter of voting in elections and registering my preferences or interests. On the republican conception of citizenship, to be free is to participate in shaping the forces that govern the collective destiny. But in order to do that, and to do it well, it is necessary that citizens possess or come to acquire certain qualities of character, or civic virtues.¹⁰

The emphasis on civic virtue sets republican political theory apart from two other familiar theories of citizenship. One such theory is interest group pluralism, which conceives citizens as persons who are free to identify their interests and to vote accordingly. A second theory is the liberal conception of citizenship, which emphasizes toleration and respect for the rights of others. The liberal conception of citizenship allows for the inculcation of certain civic virtues, but only those necessary to liberal principles themselves, such as the virtues of toleration and equal respect. The republican conception of citizenship, by contrast, seeks to cultivate a fuller range of virtues, including a moral bond with the community whose fate is at stake, a sense of obligation for one's fellow citizens, a willingness to sacrifice individual interests for the sake of the common good, and the ability to deliberate well about common purposes and ends. With this conception of citizenship in mind, we can now consider how commodification corrupts the good of self-government in two domains of public life.

Military Service

Military service can be allocated in different ways, some involving the market, others not. Conscription allocates service without the use of

¹⁰ For a fuller discussion, see Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge: Harvard University Press, 1996) 4–7,

markets. In its simplest version, it fills places according to a lottery of eligible citizens. A second way of allocating places in the military was employed by the Union during the American Civil War. It introduced market principles, but only to a point. In the first American draft, enacted in 1863, those who were called but who did not want to serve could hire a substitute to take their place. Many draftees advertised for substitutes in the newspapers, offering amounts from a few hundred dollars up to fifteen hundred dollars. The system was less than a resounding success. There were widespread protests. In the New York draft riots, a thousand people died. Congress tried to quell the protest by amending the policy by setting a flat fee for exemption. If you were drafted and didn't want to serve, you could pay a three hundred dollar fee to the government. You didn't have to bother finding someone else. Three hundred dollars in those days was equivalent to one year's wages for a laborer.¹¹

A third way of filling the ranks of the military, the present-day American all-volunteer army, uses market principles from the start. The term "volunteer" is something of a misnomer. Soldiers do not volunteer in the way that people volunteer to work in the local soup kitchen on Thanksgiving—that is, to serve without pay. The volunteer army is a professional army, in which soldiers work for pay. It is voluntary only in the sense that all paid labor is voluntary. No one is conscripted, and the job is performed by those who agree to do so in exchange for money and other benefits.

Compare these three ways of allocating military service—conscripted, conscription with a buy-out provision (the Civil War system), and the market system. Which is most desirable? From the standpoint of market reasoning, the Civil War system is preferable to a system of pure conscription because it increases the range of choice. Those who are conscripted but who do not want to serve have the option of buying their way out, and those who are not conscripted but who want the job

¹¹ On the Civil War draft, see James M. McPherson, *Battle Cry of Freedom* (New York: Oxford University Press, 1988) 600–11; and Guido Calabresi and Philip Bobbitt, *Tragic Choices* (New York: Norton, 1978) 158–67.

can buy their way in. From the standpoint of market reasoning, however, the volunteer army is better still. Like the Civil War system, it enables people to buy their way into or out of military service, but it is preferable to the Civil War system because it places the cost of hiring soldiers on society as a whole, not just on the unlucky few who happen to be drafted and must therefore serve or hire substitutes to take their places.

So from the standpoint of market reasoning, the volunteer army is best, the Civil War system second best, and conscription the least desirable way of allocating military service. But there are at least two objections to this line of argument. One is that we cannot prefer the volunteer army without knowing more about the background conditions that prevail in the society. The volunteer army seems attractive because it avoids the coercion of conscription. It makes military service a matter of consent. But some of those who serve in the all-volunteer army may be as averse to military service as those who stay away. If poverty and economic disadvantage are widespread, the choice to serve may simply reflect the lack of alternatives. This is the problem of the poor persons' army. According to this objection, (an instance of the objection from coercion), those who buy their way in, or fail to buy their way out, are conscripted by the lottery of economic necessity.

The difference between conscription and the volunteer army is not that one is compulsory, whereas the other is not; it is rather that each employs a different form of compulsion—the state in the first case, economic necessity in the second. Only if people are similarly situated to begin with can it be said that the choice to serve for pay reflects people's preferences, rather than their limited alternatives.

The actual composition of the American all-volunteer army seems to bear out this objection. Congressman Charles Rangel, who recently called for reviving the draft, points out that African-Americans make up 20 percent of the military.¹² Thirty percent of the U.S. army troops

¹² Charles Rangel, "Military Conscription: Mandatory Service Might Make Hawks Think Twice," *Atlanta Journal-Constitution* (14 January 2003): 21A.

who were sent to fight the first Gulf War were African-Americans, almost three times the percentage of African-Americans in the population as a whole. The enlistment rates for children of the richest 15 percent of the population are one-fifth that of the national average.¹³ According to sociologist Charles Moskos, an advocate of universal national service, in Princeton's class 1956, from which he graduated, 450 of 750 graduates served in the military, while last year, only three of Princeton's approximately 1,000 graduates served.¹⁴ So it is easy to appreciate the force of the objection that the volunteer army is not as voluntary as it seems.

It is worth pointing out that this objection can in principle be met without doing away with the volunteer army. It can be met by making the background conditions of the society sufficiently equal so that people's choice of work reflects meaningful consent rather than dire economic necessity. In this case as in others, the argument from coercion is not an objection to the commodification of military service as such, only to commodification that takes place under certain unfair background conditions.

A second objection to letting people buy their way into and out of military service is independent of the first. It holds that, even in a society where the choice of work does not reflect deep inequalities in life circumstances, military service should not be allocated by the labor market, as if it were just another job. According to this argument, all citizens have an obligation to serve their country. Whether this obligation is best discharged through military or other national service, it is not the sort of thing that people should be free to buy or sell. To turn such service into a commodity—a job for pay—is to corrupt or degrade the sense of civic virtue that properly attends it. A familiar instance of this argument is offered by Rousseau:

¹³ Larry Tye, "All-Volunteer Force No Mirror of Society," *The Boston Globe* (2 February 1991): 1, 3.

¹⁴ Charles Moskos as cited in James Traub, "All Go Down Together," *The New York Times Magazine* (2 March 2003): 21.

As soon as public service ceases to be the chief business of the citizens and they would rather serve with their money than with their persons, the state is not far from its fall. When it is necessary to march out to war, they pay troops and stay at home.... In a country that is truly free, the citizens do everything with their own arms and nothing by means of money; so far from paying to be exempted from their duties, they would even pay for the privilege of fulfilling them themselves.... I hold enforced labor to be less opposed to liberty than taxes.¹⁵

Rousseau's argument against commodifying military service is an instance of the argument from corruption. It invokes the republican conception of citizenship. Market advocates might defend the volunteer army by rejecting the republican conception of citizenship, or by denying its relevance to military service. But doesn't the volunteer army as currently practiced implicitly acknowledge certain limits to market principles, limits that derive from a residual commitment to the ideal of republican citizenship?

Consider the difference between the contemporary volunteer army and an army of mercenaries. Both pay soldiers to fight. Both entice people to enlist by the promise of pay and other benefits. But if the market is an appropriate way of allocating military service, what is wrong with mercenaries? It might be replied that mercenaries are foreign nationals who fight only for pay, whereas the American volunteer army hires only Americans. But if military service is just another job, why should the employer discriminate in hiring on the basis of nationality? Why shouldn't the U.S. military actively recruit soldiers from among citizens of other countries who want the work and possess the relevant qualifications? Why not create a foreign legion of soldiers from the developing world where wages are low and good jobs are scarce?¹⁶

¹⁵ Jean-Jacques Rousseau, *The Social Contract*, book III, ch. XV, trans. G.D.H. Cole (1762; London: Dent, 1973) 265.

¹⁶ For a recent proposal of an American Foreign Legion, see Peter Schweizer, "All They Can Be, Except American," *The New York Times* (18 February 2003): 23.

The logic of the market could be extended to challenge the notion that armies should be run by the government. Why not subcontract military functions to private enterprise? In fact, the privatization of war is a growing trend. Private corporations that hire mercenary forces play an increasing role in conflicts around the world. Sandline International is a London-based company registered in the Bahamas. It was hired by Papa New Guinea a few years ago to put down a secessionist rebellion. Papa New Guinea's Prime Minister hired Sandline for \$32 million to crush rebels his own army was unable to defeat. "I am sick and tired of our boys coming back in body bags," he said.¹⁷

Sandline, in turn, subcontracted with a South African-based company euphemistically named Executive Outcomes, which supplies and trains the soldiers. "Executive Outcomes has racked up an impressive record of military victories for its customers," reports *The Boston Globe*. "Equipped with Russian attack helicopters, heavy artillery, and battle-hardened veterans recruited from the troops that defended South Africa's former white supremacist government, Executive Outcomes has waged war on behalf of the governments of Angola and Sierra Leone."¹⁸

In 1989, the United Nations proposed the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries. But only ten nations have signed it, and two of them, Angola and Zaire, have already violated it. The U.S. did pressure the South African government to restrain the role of Executive Outcomes in Angola. But the American principled position was complicated by the fact that the U.S. then lobbied the Angolan government to hire a competing U.S. firm, Military Professional Resources Inc., to train the Angolan armed forces.¹⁹

¹⁷ Colum Lynch, "Soldiers for Hire Tempt War-Wearry," *The Boston Globe* (8 March 1997): A1, A12. See also Raymond Bonner, "U.S. Reportedly Backed British Mercenary Group in Africa," *The New York Times* (13 May 1998); and David Shearer, "Outsourcing War," *Foreign Policy* (Fall 1998): 68–80.

¹⁸ Lynch A12

¹⁹ Lynch A12

The cases we have considered pose the following challenge to the commodification of military service represented by the all-volunteer army: If the Civil War system is objectionable on the grounds that it allows people to buy their way out of a civic obligation, isn't the volunteer army objectionable on similar grounds? And if military service is just another job to be allocated by the labor market, is there any principled distinction between the volunteer army and the mercenary forces recruited by Sandline, Executive Outcomes, and other firms? All three policies—the Civil War system, the volunteer army, and the mercenary forces—offend the republican conception of citizenship. Our unease in each case is best articulated and justified by the argument from corruption, which presupposes in turn the republican ideal of citizenship.

Voting

The commodification of military service is controversial in a way that the commodification of voting is not. No one defends the outright purchase and sale of votes. But why is it objectionable? And if it is, what are the consequences for commonly accepted electoral practices that come perilously close to the buying and selling of votes?

Reformers have long worried about the role of money in politics.²⁰ So also did George Washington Plunkitt, the boss of the Tammany Hall political machine in New York. The problem with money in politics, he said, is that there is never enough to go around.²¹ In recent years, however, there has been plenty to go around, at least in American politics. Advocates of campaign finance reform have sought to reduce the power of money in politics. Underlying these attempts is the worry that the present system of financing American political campaigns comes close to bribery. But even the debate over campaign finance leaves untouched a deeper corruption, and that is the politics of self-interest itself.

²⁰ I draw in this section on my article "Votes for Sale," *The New Republic* (18 November 1996): 25.

²¹ See William L. Riordon, *Plunkitt of Tammany Hall* (New York: Dutton, 1963) 76.

Consider the widely accepted practice of conducting democratic politics as if it were about aggregating and responding to interests. If it is wrong for moneyed interests to bribe politicians with campaign contributions, isn't it also wrong for politicians to bribe voters with campaign promises directed at their pocketbooks? Some bribes are more explicit than others. In Plunkitt's day, ward healers distributed money, meals, and favors to bring the people to the polls. These days, it is more respectable to buy votes wholesale than retail. Retail vote-buying is bribery, but wholesale vote-buying is commonly accepted in the name of interest group politics.

The following example lies somewhere between the two: In the state of Washington a few years ago, casino promoters had a ballot measure seeking public approval of casino gambling. The measure provided that, if the referendum passed, ten percent of the profits from the casinos would be paid to everyone who voted in the election.²² Was this a bribe, or was it a legitimate instance of interest group politics? Proponents argued that state governments often receive a portion of casino profits, and for that matter the profits of any industry that operates in a state; the Washington measure simply cut out the middleman and offered the money directly to the people.

Candidates' campaign promises often work in a similar way. In the early '80s, the U.S. Supreme Court heard a case involving a candidate for a county commissioner in Kentucky. The candidate had promised that, if he were elected, he would lower the salary of his office. His opponent charged that this pledge violated a state law barring candidates from offering constituents a financial inducement for their votes.²³

The Supreme Court rejected the challenge. It ruled that the promised salary reduction did not constitute a bribe. Why not? The reasoning of

²² Timothy Egan, "Hedging Bets on Democracy, Casinos Offer Cash to Voters," *The New York Times* (18 August 1995): A1, B7.

²³ *Brown v. Hartlage*, 456 U.S. 45 (1982).

the court displays the moral confusion at the heart of the politics of self-interest. Justice Brennan wrote the opinion. A state “may surely prohibit a candidate from buying votes,” he stated. “No body politic worthy of being called a democracy entrusts the selection of leaders to a process of auction or barter.” Brennan then asserted but did not defend a sharp distinction between buying votes and appealing to voters’ self-interest. Our “tradition of political pluralism” assumes “voters will pursue their individual good through the political process,” he wrote. Personal benefit “has always been, and remains, a reputable basis upon which to cast one’s ballot.”²⁴

But what is the moral difference between a politician who buys votes and a politician who panders to voters’ self-interest? Both offer a financial reward in exchange for a vote. If it is disreputable to sell my vote to a party boss for \$500, why is it reputable for me to cast my vote for the sake of a \$500 tax cut? There are at least three possible answers to this question, three ways of distinguishing the bribe from the promise of a tax cut:

(1) It might be argued that the tax cut comes from public funds, whereas the bribe comes from private funds, or from party coffers, but this makes the tax cut worse. At least those casinos in Washington were offering their inducements from private profits, not state funds. If voters must be paid off, isn’t it better that it be done with private money than with tax payer dollars?

(2) Perhaps the difference is that a campaign promise may not be kept, and so will exert a lesser influence on voters than an outright bribe. But this suggests, perversely, that the moral superiority of the campaign promise consists in the fact that the politician who makes it cannot be relied upon to keep his word. In any case, if voters are skeptical that the promise will be kept, they can simply assign it a discounted value that reflects their degree of uncertainty. The promise of a \$500 tax cut with

²⁴ *Brown v. Hartlage*, 54, 56.

a 50 percent chance of being enacted would be worth \$250. But this would not make it any more justifiable.

(3) Or maybe the difference is that a campaign promise is public and available to everyone, while a bribe is secret and offered only to certain people. But many campaign promises are also targeted at particular groups, or have highly differential effects. In any case, if bribes are wrong just because they are offered to some and not others, then why not universalize them? If votes could be bought and sold openly, if there were an open market in votes, then the secrecy would fall away, and everyone would be free to sell at the going rate. The \$800 million that Clinton and Dole squandered on bumper stickers and attack ads could go directly to the people.

The reason that none of these distinctions succeeds is that they share the mistaken view that the purpose of democracy is to aggregate people's interests and preferences and translate them into policy. According to this theory, citizens are consumers, and politics is economics by other means. If this theory of democracy is right, then there is no good reason to prohibit the buying and selling of votes. Our reluctance to treat votes as commodities should lead us to question the politics of self-interest so familiar in our time. It should also lead us to acknowledge and affirm the republican ideals implicit but occluded in contemporary democratic practice.

Conclusion

My argument in this essay has been directed primarily against those who think that freedom consists in the voluntary exchanges people make in a market economy, regardless of the background conditions that prevail. Libertarian philosophers and political theorists, rational choice economists, and adherents of the "law and economics" movement are my most obvious targets. Also implicated, however, are a group of unindicted co-conspirators. These are the liberal consent theorists who think that the commodification and privatization of public life can be addressed simply by adjusting the background conditions within which markets operate. According to the co-conspirators, there

is nothing wrong with commodification that fair terms of social cooperation cannot cure; if only society were arranged so that people's choices to buy and sell things were truly voluntary, rather than tainted by unfair bargaining conditions, the objection to commodification would fall away. What that argument misses are the dimensions of life that lie beyond consent, in the moral and civic goods that markets do not honor and money cannot buy.