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Œconomia
History, Methodology, Philosophy

11-2 | 2021
Varia

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OpenEdition Journals

Electronic version
URL: https://journals.openedition.org/oeconomia/10975
ISSN: 2269-8450

Publisher
Association Œconomia

Printed version
Date of publication: 1 June 2021
Number of pages: 0-0
ISSN: 2113-5207

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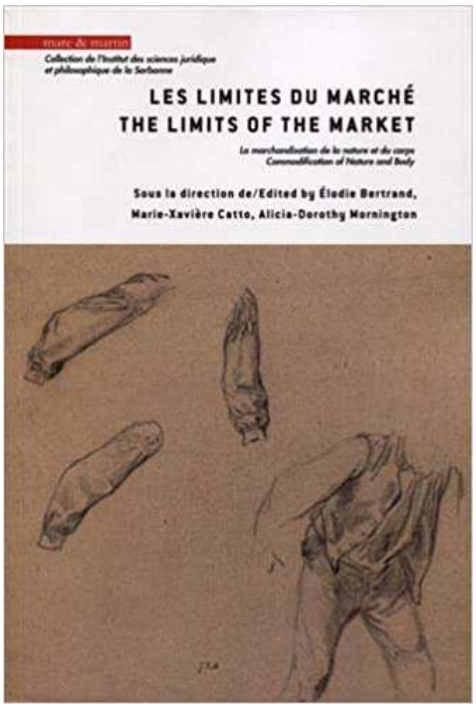

1 This collective work, which brings together some fifteen contributions, is the result of study days whose main purpose was to debate the commodification of the body and of nature, by crossing disciplinary (philosophy, law, economics) and cultural (Anglo-Saxon and continental) perspectives. Its main interest is to propose a sort of progress report on what is known as commodification studies, which developed in the English-speaking world in the 1980s, largely inspired by the book *Contested Commodities* by the jurist Margaret Jane Radin (1996). In particular, this stream of research was a reaction to the Law and Economics approach (the Chicago School), which championed the free market. An emblematic example is the article by Elizabeth Landes and Richard Posner (1978), in which they suggested introducing market incentives into the process of adopting new-born babies in order to deal with a baby shortage. The controversies surrounding the emergence of particular markets help to explain the issues involved in regulating these markets and the sometimes alternative solutions that are finally adopted but which may evolve, particularly as a result of globalization. Other economists have contributed to this reflection, such as Alvin Roth (2007) with his characterization of so-called "repugnant" or "toxic" markets.

2 In France, the commodification studies movement has been developed by lawyers specializing in the law of nature (notably Marie-Angèle Hermitte, 2016) and by sociologists who have introduced the notion of "contested markets", in the sense of markets that provoke strong moral controversies. The book *Marchés contestés - Quand le marché rencontre la morale* (*Contested Markets: When the Market Meets Morality*), edited by Philippe Steiner and Marie Trespeuch (2014), is a reference, following on from Viviana Zelizer's original research (1979) on the development of life insurance. The commodification studies movement must also be linked to philosophical reflections on what is a "good", reflections explored in depth here by Emmanuel Picavet, with a contribution in which he raises the question of freedom and justice. It is precisely the intention of *The Limits of the market* to start from the most debateable transactions in order to address more generally the relationship between ethics and economics. In so doing, the book deals with the place of law in these exchanges, or with the different conceptions of the legal human person underlying them.[1]

3 Another interest of the book lies in the crossing of different disciplinary views, which has enriched the exchanges and the contributions. It is regrettable, however, that the contributors do not make more reference to pluralistic approaches to justice. They do cite the work of Michael Walzer (1983) on the different spheres of justice, but little mention is made of the work of economists such as Amartya Sen or, in the French case,

the economics of convention, which explores the question of justifying actions in terms of different foundations for the "common good" (Boltanski and Thévenot, 2006). We will return to this in connection with the definition of what a "good" is.

4 The book is composed of two parts. The first set of contributions raises the question of what it is to have a right for oneself (internal effect) and/or for others (external effect), where different rights may be in competition. In the second part of the book, the concept of commodification is discussed, if not contested.

5 First, we will briefly present most of the contributions, following the structure of the book, but adopting our own themes: the thesis of commodification, its relativization and finally the criticisms levelled at it. In the second part, we will focus on certain contributions by proposing critiques and developments, in particular on the question of the commons, and by showing the interest of resorting to a more sociological posture to identify them and to study the criticisms to which they may be subjected.

1. The commodification thesis and its critics

6 In a way, Élodie Bertrand's text ("The external effects of contested markets") serves as an introduction to the first part of the book. In it, she shows the interest of using the economic concept of externalities (considered as involuntary harm caused to others and to which they have not consented) to account for the different reasons for contesting markets, from the view point of the physical effects (technological externalities), the inequalities or moral offenses they generate, and the questioning of social norms or status that they may entail. This position, of which she underlines certain limits, allows her to discuss with the critics of commodification who take up this concept of "externality", while avoiding the pitfall of moralism or exacerbation of the gift/market opposition.

7 To clarify the vocabulary, the author reminds us that economists are mainly concerned with technological externalities, i.e., unpriced, physical effects. The first solution to this problem is to prohibit the (polluting) activity by making the good inalienable. The second solution is to regulate the market for the good by creating a tax or by introducing quotas, which corresponds, following Radin (1996), to "incomplete commodification". The third solution is the complete marketization of the external effect described by Ronald Coase (1960), which consists in trading and exchanging "rights to pollute" between the polluter and the polluted until an efficient result is achieved, in the absence of excessive transaction costs. The economic analysis of law then explains that the inalienability of a good causing externalities is justified when the costs of endogenizing the externalities are higher than its benefits, which Radin (1996) defined as "the transaction costs model for inalienability".

8 Bertrand mentions the fact that some critics of commodification do not use the concept of externality. Thus, for example, Debra Satz's (2010) alternative approach is based on the principle of seeking the equal status of citizens. This principle has the advantage of being open to political discussion in each cultural context. For another question raised by this book—which would have merited more explicit expression—is that of the universal scope of the principles of justice that are defended in it, the extreme case being represented by John Rawls' *A Theory of Justice* (1971). This universalist theory of justice could be seen as the counterpart of economic theory and its principles of calculation. What is often described as "moralist" corresponds to the social (ethical)

norms of a particular community, in contrast to universal principles, and in the first place the ability to define what is right for ourselves.

9 The contribution by T.T. Arvind and Aisling McMahon ("Commodification, control, and the contractualisation of the human body") shows how forms of contractualisation in the patenting of genes or drugs have deleterious effects on the access to health. The authors also follow the contested goods approach initiated by Radin (1996), according to which legal contracts contribute, in a diffuse way, to the transformation of our fundamental rights into goods, either directly through the subject of the contracts, or indirectly through their external effects on third parties. In general, the authors tell us, intellectual property is overlooked in studies on the limits of commodification, although as a legal instrument it is closely linked to the commodification and contractualisation accompanying the development of markets. Indeed, the patent holder can decide to extract value from the patent by granting or not granting a license on certain uses of the technology. The institutional consequences of licensing contracts on human health and life are not really taken into account by patent offices, with the exception of limitations on patentability involving considerations of morality and public order. Thus, opposition proceedings have succeeded in limiting the patentability of gene sequences. But the arguments put forward to obtain this restriction concern the correct definition of the gene—the risks of error in the description of the gene sequence—vwithout considering questions of ethics or the public good, i.e., without reference to the ethical principles of science and medicine. Moreover, patents on medicines have been generalized since the TRIPS agreements, but with the possibility, for certain countries, of obtaining a compulsory license to deal with public health problems and facilitate access to medicines for all (Doha Declaration of 2001).

10 In her contribution to the book ("Commodification in today's digital world"), Radin applies her analytical framework to the growing commodification of the field of big data, as thousands of companies harvest personal data and sell it, after computer processing, to agencies that use it for targeted advertising, or even political control, endangering not only our privacy but also our personal identity. For Radin, personal data cannot be considered as goods to be bought and sold on a market, even in a purely rhetorical way in reference to possible commodification. This "market inalienability" derives from the fact that people do not want to reveal elements of their personality. Radin goes much further than Posner's (2008) approach to the protection of "privacy", which adopts a minimalist definition in terms of the protection of an individual's reputation. This approach does not take into account, for example, the fact of belonging to minority groups within which one can exchange with confidence to build a collective identity.

11 The digital economy and the use of platforms have also encouraged the emergence of what Radin calls "boilerplate contracts" between sellers and consumers. Users of these platforms who want to access a service do not really have the time or the skills to read and appreciate the contractual terms, leading to agreements that are flawed by a lack of consent.[2] From this point of view, in Europe and in contrast to common-law countries, the spirit of the General Data Protection Regulation (GDPR) is that agreement implies knowing what is involved. Data surveillance procedures or facial recognition processes (resulting from public/private partnerships) can be subject to stigmatization processes, discouraging our participation in civic life and thus contributing to the degradation of democratic life.

12 The following three contributions raise the question of the right to dispose of one's body or one of its parts as one sees fit, which also raises the question of the "ownership of one's body". Based on a personalist philosophy à la Paul Ricoeur (the body is considered as a non-transferable property of the person), the economist Jean Mercier-Ythier ("Communication globale, propriété de soi et corps: discussion à partir du cas pratique du don de sang") suggests limiting the sale of blood plasma (as it is intensively practised in the United States) because it causes lasting and emotional damage to the physical integrity of the donors. He envisages different solutions to limit this practice, including new medical techniques that are more economical with plasma.

13 Alicia-Dorothy Mornington's contribution deals with organ sales ("Consent, coercion and commodification: the case of organ sale"). She raises the same issue of the "diminution" of the person, of his or her physical integrity, following the removal of a kidney, for example. The World Health Organization has forbidden the organization of a market in the sale of organs, because it has the consequence of exploiting the most vulnerable people, raising the question of the value of their consent (a concept that forms the basis of a contract's validity). This idea of "consent", or "consent to harm", is at the heart of Mornington's analysis, as a means to shed light on the possible regulation of this type of market and to better inform and compensate sellers, as in the labour market.

14 Let us start from the liberal idea in contract law that one cannot claim injury for something to which one has willingly consented. The prohibition of organ sales would then be a perfect example of paternalism, in the sense of coercive state intervention in the private sphere, going as far as to protect individuals against themselves. In the case of organ sales, this paternalism is consistent with the majority social norm and, we would add, its conception of human dignity. This paternalism goes against the libertarian ideology (Nozick) of the absolute freedom of the owner (of one's body) to decide on the use one desires to make of it, which confers on a person his human dignity and his capacity to define his rights in relation to himself (subjective rights), such as the right to practice consensual sadomasochistic violence or, as shown in the contribution of the philosopher Jean-Fabien Spitz ("Are there any good libertarian arguments against voluntary slavery"), to voluntarily sell oneself as a slave. Spitz also reflects on the relevance of the notion of "property" when it comes to one's body or one's will in relation to the question of alienability. He also examines the introduction of compulsory performance clauses in a contract, with the risk that the recognition of these clauses may return us to a form of feudal serfdom. Finally, he shows that this type of clause, and more precisely the slavery contract, was criticized by the economist John Stuart Mill in the name of utilitarianism, on the grounds that it is not so much a question of rights or dignity, as a problem of economic inefficiency.

15 However, another element of criticism of the libertarian thesis, put forward by Mornington but already to be found in Kant, is that ownership implies duties towards oneself and thus a responsibility for one's body and taking care of it. The concepts of ownership and human dignity (and to some extent that of consent) are therefore ambivalent and do not allow one to take a position on the sale of organs. One might add, following the philosopher Vincent Descombes (2004), that there are in fact two conflicting conceptions of "subjective rights".[3] One view derives rights from an obligation incumbent on the individual by the mere fact of belonging to the human species or to a human community; the other, with reference to Hobbes, considers a

right as a freedom, an absence of impediment in the use of one's powers for one's own preservation.

16 This indeterminacy leads Mornington to study the consequentialist approach and in particular the negative externalities of the sale of organs on third parties who may become willing because they have no other way to earn a living, as in the labour market where bad contracts drive out good ones, once they become the norm.[4] To reduce these forms of exploitation, she considers more redistributive fiscal policies. Thus, the author is led to study the issue of organ sales by varying the conceptions of human dignity.

17 The next two contributions are part of a critical questioning of the commodification thesis and beyond that, a criticism of the concept of contested markets. Marlène Jouan's paper ("Contract Pregnancy as a Contested Market: The Enshrining vs. Subverting of Capitalist Valuation") attacks this commodification thesis head-on, drawing on the case of surrogate motherhood, often presented as the quintessential commodification of women's bodies and reproductive capacity. This criticism of commodification follows in particular the Baby M case, in which the "surrogate mother" had wanted to keep the baby, but custody was awarded to the "couple of intention" (claiming their reproductive autonomy and the choice of the technique best suited to their needs). In opposition to an essentialist or moralist posture, Jouan seeks to overturn this criticism and to show that this practice can have a dimension that subverts capitalist exploitation by introducing a form of valorisation of (re)productive work that cannot be reduced to monetary compensation and that pays attention precisely to this work involving a certain amount of giving, thus going against the gift/commodity dichotomy. She leads us to take a more pragmatic look at practices by seeking to identify the meaning that the protagonists ("third-party procreator" and parents of intention) give to their actions.

18 However, the criticism explicitly levelled at Radin's thesis here does not seem to be well-founded, since Radin's starting point was precisely a criticism of the monetary incentive to produce or render a service championed by the law and economics movement of the Chicago School, which she described as commodification in rhetoric, operating an economic reduction of the different dimensions of the value of a good or a service. Moreover, on this question of the different forms of valuation, Jouan's reference to Luc Boltanski and Arnaud Esquerre's recent work (2017) appears to be unfounded, although we can follow her in the idea of accounting for more complex ways of valuing work, going beyond the registers of morality or capital.[5]

19 Faced with the accusation that liberal political philosophy contributes to the intensification of commodification, Vida Panitch's contribution ("Commodification of body, liberalism, and justice") shows how a liberal approach based on Rawls's theory of justice can justify restrictions on the market for civic goods (voting) and, to some extent, the markets for necessary goods (education, health) and bodily goods. These restrictions can be justified by asking whether there are distributive guarantees to achieve the moral faculties of free and equal citizens, in some ways echoing Satz's (2010) approach based on the search for equality of status and conditions that people need to interact between equals. Panitch's contribution also raises the question of the social foundations of self-respect based on shared representations, on the status of people who engage in a particular type of trade, which may evolve.

20 The contributions in the second part of the book question the very idea of commodification and in particular its excessive expansion. Thus, environmental

lawyers Carole Hermon and Matthieu Poumarède criticize the concept of the "commodification of nature" because nature is not constituted of "goods" that are strictly subject to property rights ("On the concept of 'the commodification of nature'. Observations on a semantic bias"). One exception today is biological elements (micro-organisms or gene sequences), which can now be patented, whereas until now the patent concerned the invention and not the genetic material supporting the invention. The authors expose the misuses of the concept of property and present the different ways of protecting unappropriated natural things, with the emergence of new concepts that take into account common or collective ownership, or various modes of compensation in case of damage, such as the disappearance of biodiversity. We are witnessing a form of objectification of these infringements when contracts are signed for environmental services or when a market in pollution rights is created. Generally speaking, according to Poumarède and Hermon, these environmental objects or rights do not reflect any appropriation of one of the elements that make up the environment, but rather a profound transformation of State intervention in this field, leaving more room for self-regulation by private agents and, in particular, by businesses.

21 Contrary to the authors, one may ask whether these forms of objectification, which allow for calculation and the implementation of market mechanisms, do not lead to an undervaluation of natural things in relation to their real value, as was suggested by Jouan in the case of (re)productive work. This is the argument put forward by Isabelle Michallet in her contribution ("Nature and the Law. Towards Natural Capital Rights") concerning the concept of "natural capital" developed by economists. Following a utilitarian approach, this concept designates the natural elements and processes that are beneficial to human beings. Michallet shows how this concept and the accounting methods used for its measurement play a role in the 'economicization' of ecology and environmental law (in international law and then in European and national law), and how economic research centres play a very important role in this development. She emphasizes the danger of this economic concept of natural capital dominating environmental law to the detriment of other scientific languages that value nature differently.

22 The sociologist Philippe Steiner proposes an analogous discussion in his contribution ("Marché, don, appariement: Quel processus pour l'économie de la transplantation d'organes"), analysing the different forms of organ trade and the condemnations aimed at them from different angles. He thus distinguishes between bio-markets, paid donation, contested donation and matching markets based on unpaid donation. In this respect, Steiner recalls that Roth's work on the optimal design of markets to avoid congestion problems (Roth and Xiaolin, 1994) was applied in the United States to the matching of hospitals and medical students for their internship, with a salary calculation system equivalent to what an efficient market would do. This matching technology therefore remains within the framework of a market with a price-fixing mechanism, but which is no longer the only element of choice. More than the monetization of the good or service, it is therefore the resource-allocation procedure that makes these matching technologies similar to a market based on general forms of equivalence. One could say that they make visible the hand of the economist who compensates for the defects in the rationality of the agents or in their capacity for coordination.

23 Furthermore, Steiner shows how the criticisms of each form of trade can be interpreted from the different axiological principles that define the market space, the space of reciprocity and the political space of redistribution. The scarcity of organs can thus be deconstructed and no longer used as an argument by the proponents of market solutions who denounce the risk that relying solely on donation will lead to illegal or morally worse transactions, which the author defines as the catallactic contestation of the moral contestation.

24 For her part, Marie-Xavière Catto's contribution ("Circulation of gametes: is commodification inevitable?") shows that it is by transposing the legal framework of medically assisted procreation (MAP), from a therapeutic aim (procreators declared ill when infertile) to a procreative aim, that solutions other than the market can be invented in the gamete trade. It is a question of preserving the principles of non-profit and volunteerism specific to MAP law. But this also requires a re-examination of the terms of consent and the creation of new arrangements allowing the circulation of gametes in the form of donation.

2. The tensions between different common goods

25 In this second part, we return to the contributions that refer to the concept of "common good" or "commons" to analyse the denunciation of certain forms of trade.

26 The critique of the intensive farming model provides a good illustration, as shown in the text by the jurists Fabien Girard and Christine Noiville ("Judicial figures of commodification of seeds: levers and resistances"). These jurists examine the different legal figures of the commodification of seeds and their transformation with the concentration of the market in the hands of a few large companies with large patent portfolios limiting new entrants. A market already existed between farmers and plant breeders, but it has changed scale with the international development of platforms for licensing patents on seeds, reinforcing the market principles that Polanyi condemned very early on in the name of the principles of reciprocity and redistribution. The authors analyse the multiple condemnations drawn by this production-driven model and examine their causes. First, they draw a parallel between the construction of the seed as a commodity and the development of genetic engineering that has led to the protection of plant inventions by the Proprietary Variety Certificate (with the idea of new, distinct and stable varieties) and then by patents with the creation of genetically modified plants (transgenes that can be integrated into an indefinite number of varieties). While genetic information was previously considered accessible to all breeders as a reservoir for developing new varieties, it has become an object of appropriation and strategic valuation on the markets, as shown by the negotiations between the holders of patent portfolios.

27 This large-scale, technology-intensive system of agricultural innovation contributes to the destruction of traditional seed systems, the loss of biodiversity and a reduction in the capacity to respond to the challenges of technological change. Moreover, this intensive industrial system suffers from a risk of blockage due to the incremental dimension of innovation and information asymmetries on the freedom to operate, as it is impossible to identify the commercial varieties in which these patented genes have been integrated. Moreover, this dissemination of narrowly based genetic varieties contributes to the destruction of primitive varieties and the precariousness of

collective breeding activities rich in agro-ecological knowledge and carrying cultural values worth preserving. Following Hermitte (2016), the authors highlight the powerlessness of political authorities to counter this international movement of appropriation, with the difficulty in getting genetic plant resources recognised as a global public good, as well as the rights of indigenous peoples over the genetic resources and traditional knowledge they hold (what are called equitable benefit-sharing policies).

28 The authors then show how the use of the commons, as systems of cooperative governance of resources, can reverse this trend, through three examples: open-source licenses developed in the plant domain, farmers' seed networks, and clearing-houses developed by the seed industry in the field of patents on native genes,[6] to encourage licensing agreements, in particular cross-licensing within patent pools. As in the case of software, open-source licenses pose major legal problems that seed producers seek to circumvent by creating their own rules of reciprocity based on moral commitments (private ordering), always with the risk that the commons will be privately appropriated. These forms of commons also raise the question of the cultural and territorial anchoring of the seed, which is inseparable from ways of life. Indeed, taking into account the environment associated with seeds and the transfer of know-how between farmers is at the heart of the concerns of the farmers' seed network, which remains divided, however, on the question of commercial exchange. For their part, if patent pools benefit medium-sized plant breeders, then the authors see them as a window dressing common to calm down protest and discourage legislators from intervening in this increasingly concentrated sector.

29 Generally speaking, the use of the commons is an alternative solution to market exchange for managing "contested goods". By arguing that plasma can be the object of a common supplied by free blood donations, Mercier-Ythier shows that efficient allocation is confronted with a classic problem of overexploitation taking two different forms: over-exhortation, i.e., the excessive solicitation of donors by blood collection organizations, and the substitution of selling for donating in contested markets. Incentives to donate would also facilitate the circulation of gametes with reference to a common, as Catto implies in his contribution.

30 Most of the contributions in this book question the use of economic calculation as the sole basis for allocating scarce resources, by taking into account the various motives that play a role in the exchange of "goods" and the multiple relationships to "things", especially when it comes to the human body and nature. It is therefore important to return to these two concepts of "good" and "thing" and their interconnections.

31 In his contribution ("Social bond, market and individual values - the pattern of debates on commodification"), the economic philosopher Emmanuel Picavet proposes a first interconnection. Contractual freedom is insufficient to characterize the social ordering of exchanges. Symmetrically, since the object of exchange is far from natural, it is necessary to look at the way in which things are framed to serve as supports for supply and demand (market arrangements in Michel Callon's (2017) sense of the term). This position raises the question of the conception of a "good" as a convergence of wills in exchange, and at the same time what gives meaning to choices, to "goods", in the sense of existing social links, forms of life, and norms deemed acceptable. However, this questioning of the framing of things, historically and collectively constructed, is neglected by the dominant economic theory, which emphasizes the properties of

naturalized resource allocations that are the object of preferences. Picavet's demonstration moves away from the construction of a common good according to a utilitarian framework, following the example of Jean Tirole's approach (2016).[7] According to Tirole, the coincidence of individual interests and the general interest is achieved through an optimal system of incentives defined by an overseeing expert economist, in the form of rights to pollute or payment for access rights. It is also different from the contractualist framework proposed by Ronald Coase (1960), where individuals negotiate their subjective rights in competition.

32 Picavet's argument runs counter to the idea of a "satisfaction" to be obtained, which could be documented on the basis of purely individual data and assumed to be meaningful while disregarding the biographical and cultural elements that constitute personal identity. We would add that this broadening of the "informational basis of judgment" and this reflection on socially-constructed shared values, or even intersubjective preferences, is close to Sen's (1999) theory of capabilities. It calls into question, in particular, the freedom of the parties to an employment contract, a freedom which concerns not only contractual obligations but also collective frameworks of work within companies and professions, which define, often in a negotiated way, the capabilities of workers and the conditions of employment protecting their dignity.

33 By questioning the construction of common values that allow one to call for justice, Picavet's reflection can also be linked to the justification model developed by Boltanski and Thévenot (2006), who participated in the development of the economics of convention approach in France (Eymard-Duvernay, 2006; Diaz-Bone and Salais, 2011). These authors distinguish between different ways of constructing the "common good" (of "moving from the parts to the whole"), following a pluralist theory of justice that transcends communities. These principles of justice are in competition with each other, in the sense that in each justification, the other "common goods" are reduced to particular goods. Commitment to one common good has the consequence—as a kind of sacrifice—of limiting investment in other common goods.[8] Thus, investment in the "market good" implies a constant search for commercial profit, without ever relying on tradition or on personal attachments specific to the "domestic good". "Market logic", in reference to Adam Smith's political philosophy, allows the two concepts of "good" to be confused. The opportunism of the rich, through the business they do, contributes greatly to competition. Luxury thus benefits everyone, and the rich find selfish happiness not only in the enjoyment of their "goods", but also in the multiplication of opportunities to trade, a multiplication considered as a "good" in the ethical sense.

34 But this principle of openness to the opportunities offered by the market conflicts,[9] as we have seen in the organ trade, with a form of civic solidarity and the donors' intimate conviction that they are contributing to a collective good, giving them a certain dignity. Consequently, this idea of externalities or moral offenses put forward by Bertrand could be compared to an attack on a type of common good that competes with the market good. Conversely, the efficiency of the market and of the industrial mode of production, which make it possible to deal with scarcity, can be used to support the criticism of traditional or civic forms of solidarity. This sociology of criticism allows to explain, while sticking closely to the arguments of the agents, the compatibility of the market with competing conventions of the common good that transcend communities, as well as the compromises between conventions that make things momentarily

acceptable. From a more evolutionary point of view, this pluralist approach to justice offers the opportunity to identify the domination of one order of magnitude or sphere of justice over the others, if we continue the analogy with Walzer's analysis (1983); this echoes the "theory of degradation" developed by Elizabeth Anderson (2008) and commented on here by Bertrand to illustrate her concept of societal externalities, which in fact refers to the moral externalities of societal changes.

35 Moreover, in order to take into account "common goods" based on the collective recognition of a value within a particular community, Laurent Thévenot (2015) distinguished between goods of unequal scope and different ways of governing people's commitment to action, which he showed to vary according to different cultural traditions. From this point of view, the "regime of familiarity" with things and with people, a regime of action that is based on compromises that cannot be justified in any general way,[10] echoes the proposals of some contributors to move away from general forms of objectification that do not take into account the particularities of things and context. The value is as much, if not more, in the thing and its potentialities, as in the object, the good always finished for the economist, and its subjection to the market.

3. Conclusion

36 The different contributions gathered in this book provide a great wealth of variation in their points of view on "contested goods" and the renewal of the interconnection between economics and ethics, between the search for efficiency and considerations of justice. The different dimensions of the economic concept of externality enable us to circulate between the different "critiques" of commodification, but one wonders whether Bertrand may not be extending it too far. While this economic concept has a heuristic virtue, there is a risk of remaining in thrall to the initial universal and abstract model - the search for a market optimum -, the distance from which must be minimized by internalizing externalities through the use of incentive mechanisms. Contrary to the regulatory idea of efficiency, an approach based on the systematic recording of shared contestations would feed the work of economic theorization, making it possible not only to understand market arrangements but also to transform them, by taking into account the plurality of common goods at different scales.

37 These transformations raise the question of state intervention and the role of law in regulating the various forms of trade involving the human body and nature. Although, in the introduction to their book, the editors emphasize the limits of contractual formalism to regulate transactions, they do not really make any normative proposals, beyond those present in some of the contributions, in particular the implementation of policies to fight against inequalities. However, between a purely formal conception of rights that does not take into account their social consequences, which are sometimes disastrous, and a resourcist approach to rights, described as "paternalistic" by the liberals, which aims to combat inequalities, there is room for other approaches.

38 In contrast to the positivist viewpoint of welfare economics, the economics of convention allows for the normative dimension of human actions to be addressed through a pluralistic theory of justice, such as Boltanski and Thévenot's (2006) "economies of worth" model. We can also mention Robert Salais' (2019) approach with a "situated State" encouraging agents to pursue the common good, while ensuring compatibility with their personal project, based on a renewed reflection thanks to Sen's

capabilities approach. For his part, an author such as Jean de Munck (2006) takes up this approach and the idea of "rights as goals" advocated by Sen, the definition and realisation of which depend not only on the intervention of the State but also on a whole range of intermediaries such as cause lawyers, associations, or social workers. These legal intermediaries can also pursue, at their own level, the search for the "public good" or for goods specific to communities of practice, as we have seen in various contributions (organ donations, seeds, etc.), and contribute to the definition of legal systems, following a more endogenous conception of law (Bessy, 2015).

39 Nevertheless, the reflections proposed by this book, on the limits of the market concerning things of the body and of nature, shed an original light on our consideration of the institution of rules and the foundations of civic life, or, from a more philosophical point of view, on what Descombes (2004) designates as the problem of modern man: if he claims his political autonomy, his capacity to create his own laws, he nevertheless remains a member of a particular social whole based on common representations that are external to him. And, one might add, it is in the face of these two inclinations that he endeavours to answer the moral concerns raised by the market.

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NOTES

1. The diversity of theoretical approaches, including within the liberal current, can be explained by the history of law. Since the invention of the civil code, jurists have been led gradually to define things outside commerce and at the same time the concept of the legal human person, a concept that has evolved over time as contract law has moved away from a purely consensualist foundation. On this question, see the work of the jurist Isabelle Moine (1997).
2. From this perspective, the functioning of the banking or insurance market, in which this type of "adhesion contract" is widely used, could also be questioned, with the difference that these are regulated sectors. Moreover, one may wonder whether this type of practice is really new and whether we should not, on reflection, set a threshold beyond which it would not be acceptable, instead of excluding it wholesale. On this issue, see Srnicek (2017).
3. Descombes (2004) develops a critique of individualist political and legal philosophies and in particular, of the concept of "subjective right" (Bessy, 2008).
4. See Satz (2010), taken up by Bertrand in his contribution.
5. Indeed, in this work devoted to new modes of enrichment, the authors are not interested in moral judgments concerning the justice of exchange, as in the model of the economies of worth (Boltanski and Thévenot, 2006), but in the way in which forms of value-setting make it possible to explain the prices paid to exchange things. They also seek to distance themselves from contemporary sociology, which believes that economic value is inextricably linked to questions of moral economy, as in Steiner and Trespeuch (2014).
6. That is, natural genes that have not been modified by biotechnology.
7. On criticism of the concept of "common good" developed by Tirole (2016), see Picavet (2018).
8. It should be noted that with the hypothesis of "common humanity" retained by this model of justification of action, each person can attain greatness if he or she agrees to make a sacrifice, which confers a certain humanity on them. This human dignity can nevertheless be called into question if the person accumulates too many stigmas, in Goffman's sense, and cannot therefore rise to any greatness.
9. A Smithian idea recently taken up by Robert Sugden (2018).
10. This regime of familiarity can be compared to the notion of "relational work" developed by Viviana Zelizer (2005), which makes it possible to reconcile the expectations of people who are involved in transactions on goods related to their intimacy.

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