

Against Market Complicity

John P. Tiemstra
Calvin College

Abstract: The doctrine of market complicity holds that entering into a trading relationship causes each party to take on some moral responsibility for the other parties' actions. For example, consumers who buy goods made in sweatshops are guilty of abusing workers, and employers are guilty if their employees use their health insurance to terminate a pregnancy. I argue that this is not the case. The market nexus does not cause us to take on moral responsibility for decisions we are not empowered to make. Vendors should not discriminate against buyers with different religious or moral views, and employers should not try to constrain their employees' personal moral choices. Consumer boycotts are unlikely to be effective unless they make political demands. Keywords: Market complicity, boycotts

“**M**arket complicity” is the doctrine that moral responsibility attaches to goods and services as they move through market exchanges on their way from producers to consumers. It holds that American consumers are guilty of abusing workers by virtue of their purchases when they buy shirts made in sweatshop conditions in Bangladesh or computers made by exploited workers in China. It can also be applied the other way: that the sellers of “morning-after” pills are complicit in the abortion of human fetuses, that the dealers in assault rifles are morally responsible for the mass murders committed with them, or that the bakers of wedding cakes for same-sex marriages are implicated in lewd homosexual acts.

In recent times in the US, these issues have become matters of political and legal controversy. The requirement under the Affordable Care Act that employers provide comprehensive insurance coverage for women's health issues, including birth control and abortion, generated vigorous public debate and resulted in landmark litigation including the famous *Hobby Lobby* case, in which the store chain successfully challenged the mandate. The Supreme Court effectively held that the company was morally responsible for the use its employees made of this insurance, and, thus, Congress could not impose this mandate under the religious freedom clause of the Constitution.

Market complicity also enters into the law when it is used to justify sellers discriminating against certain buyers. In the past, pharmacists frequently refused to sell contraceptives to people they knew were not married. Also in the past, gun shops would sometimes refuse to sell weapons to people the shopkeepers suspected might be intending to commit a crime. Some of these practices have been abandoned, partly because of changing moral standards and partly because of the possibility of challenges under anti-discrimination laws. In the recent *Masterpiece Cakeshop* case, the Supreme Court held that the bakery could refuse to sell a cake for the wedding of a homosexual couple because of the bakery's moral objection to homosexuality. However, in this case, the argument was partly based on the claim that this was not an ordinary purchase but, rather, the commissioning of a work of art.

Complicity considerations also sometimes give rise to actions like organized consumer boycotts. Concern about environmental damage or abuse of vulnerable workers can be leveraged to organize boycotts of particular companies or industries in an effort to create social change. These movements exploit consumers' feelings of guilt to shame businesses into better behavior or to motivate political imposition of regulatory solutions. One of the better documented of these instances was the 1960s table grape boycott, which was the subject of several popular books, and of my doctoral dissertation, back in an earlier millennium (Dunne, 1967; Matthiessen, 1969; Tiemstra, 1975). A resolution of the problem was achieved not by a collapse of table grape consumption and production but by political reform. The then-governor of California, a young man named Jerry Brown, got the legislature to pass a law opening the way for the United Farm Workers to organize the grape pickers.

The theology of market complicity has been developed largely by Catholics. (See the works of Barrera, 2011 and Finn, 2017.) This doctrine is the main reason that many Catholic churches' Sunday bulletins carry advertising, a practice unknown in the Protestant world. The Catholic majority on the Supreme Court seems especially inclined to accept market complicity arguments. Many evangelical Protestants have embraced these arguments because they offer a way to give political support to the Catholics' opposition to abortion and homosexual marriage. I am not so sure that they have thought about the complicity issue independent of the hot-button political causes.

The argument for market complicity rests on the idea of causation. Proponents claim that negotiations (of a sort), or at least indifference, over terms and conditions are part of the market nexus at each stage of the production and distribution process, so consumer preference, or indifference, enters into the decisions involved in production. The fact that many people are required to demand the same product for the offense to occur only reinforces the conclusion that each of us must be wrong to do so. Thus, my purchase of a shirt made in Bangladesh causes the exploitation of the worker who made it. Your purchase of an iPhone causes the suffering of workers in China. By extension, Hobby Lobby's purchase of health insurance causes abortions among its staff, or at least among other customers of its insurance company, and Masterpiece's bakery work causes the offense (in their view) of homosexual love. We never hear it claimed (it would be political death to do so), but a case could be made that the sale of an assault rifle used in a crime could make the gun vendor guilty of mass murder. But we do debate whether we share the guilt as a polity because of our lack of attention to regulating the sale of guns.

The whole argument about causation was satirized in the very first episode of the cable-TV series *Portlandia*. The waiter in a restaurant conveys to the young couple at table a very complete biography of the chicken they are about to consume. But the couple still has questions. Unable to get answers, they set off to visit the farm where the chicken was raised, to satisfy themselves that it had a proper home, before they can return to their dinner. The absurdity of the situation underlines the practical need to leave the responsibility for production decisions to the producers and consumption decisions to consumers.

There is a sense in which my demand for a shirt is an essential element in the oppression of textile workers in various parts of the world. Without the demand for clothes, those sweatshops would not exist. But my demand is not for a shirt made in a sweatshop. I would be perfectly happy with a shirt made under humane conditions in a union shop. I might not buy as many, as they likely would be more expensive, but I would still need shirts.

The way that the shirt is made is not under my control or even under the control of shirt-buyers as a group. Decisions about the production process are under the control of corporate executives. But how do those executives make decisions? The market complicity argument oddly

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seems to absolve them of moral responsibility. It assumes that their decisions are so constrained by market-based economic considerations that they have no real choices in what they are doing. The executives are obligated by their role in the corporation to maximize the profits that belong to the corporation's owners, the stockholders. They must operate under the constraint of vigorous competition in the market for new shirts. They also face competition in the capital markets, where their stockholders could sell out if the rate of profit is not competitive. This means they must minimize the cost of producing a shirt without violating the law. The only solution is to employ a sweatshop in Bangladesh. So I have a choice about buying a shirt, but the executives have no choice about exploiting workers, because of their role in the system.

But this is a caricature of the way the economy works. Even in the market for such a generic good as shirts, there are large corporations who have significant market power, giving them a degree of control over the price of their output and over the rate of return offered to the stockholders. (If the product is brand-name computers, the control is even greater.) Some corporations regularly tout the socially responsible attitude they take toward worker health and safety, environmental quality, product integrity, and similar issues. They emphasize their readiness to spend real resources to address these issues. Stockholders, as well as customers, value these socially responsible choices. Lack of attention to these issues can cause serious problems in the marketplace, as GM discovered with its airbag problems and Volkswagen with its cheating on emission tests. These are companies with a brand reputation to protect, which differentiates them somewhat from the shirt-makers.

Indeed, I believe that the greatest danger in the market complicity doctrine is that it directs our attention away from the parties who really bear the moral responsibility for these problems, because they are the ones with the power to correct the problem. These are not ordinary consumers, who have very limited attention and information and no bargaining power with producers, even in the rare case where they can organize collectively. The grape boycott and similar cases demonstrate this. Rather, it is the business executives who have the power, and the responsibility, to make decisions about the ways and means for producing goods. The truth is that no matter how much I care about working conditions in the clothing industry, the computer business, or any other market, I have no leverage I can use in bargaining with management for

something better. In this respect, Finn's account of the market process is unrealistic.

The other way in which power can be enlisted to solve the problem is politics, as the story of the grape boycott suggests. If business managers with the power to change things for the better are unwilling to act, consumer-voters can enlist government to impose regulations on the industry. But again, this is not a case of consumers exercising market power. They don't have any. They are enlisting political power in their cause.

The cases on the other side of the market, like *Hobby Lobby* and *Masterpiece Bakeshop*, reverse the concern. How intrusive should businesses become in the decisions of their employees and customers? Here again, the question of causation is crucial. It is a stretch to think that a bakery making or refusing to make a cake would influence the decision of a couple to marry, so the bakery bears no responsibility except to keep its promise to bake cakes for paying customers. (Again, the creation of works of art is in a different category, since it involves the artist expressing meaning.)

The life situations in which health insurance is used are very often complicated and fraught. The issues are very personal. The employer has no place in this. Just as an employer has no right to intervene in employees' decisions about spending their pay, so, too, it has no right to decide how employees use their insurance policies. An employer does not own its employees and should not constrain the conscience of an employee in personal matters, unless it is a church of which the employee is a member. So the Little Sisters of the Poor (who were parties to a similar case) might have grounds to constrain its employees' use of insurance, but *Hobby Lobby* is not a church. Though the employer may want to resist buying coverage for abortions, it might be unavoidable for market or regulatory reasons. It might even be prudent to buy such coverage, since sometimes abortions are medically necessary. That the insurer might cover abortions for other customers is a matter beyond the interest or competence of any particular customer and so is of no consequence.

The gun dealer who refuses to sell to a suspected criminal has my thanks and applause, but I don't think we should count on this method to control crime. The government needs to be involved. If we are really going to get a handle on gun violence in our society, we need a better way to regulate the sale and possession of guns. We need regulations to insure that people cannot buy or possess weapons that have no legitimate use

in a civilized society. We can't rely on gun dealers and market complicity doctrine to solve this.

Recently it has become popular for businesses to deny service to public officials whose positions or actions are repugnant to the business proprietors. This may be appealing as a vehicle for protest and may produce good feelings of virtue in the proprietors. Clearly, there is no complicity issue here. By feeding nasty political figures, you are not implicated in their misdeeds. But not to put too fine a point on it, if you deny them service, you are being rude. In the marketplace, we must all be equal. The impersonal character of markets is key to their efficiency and a necessary part of maintaining civility: that key lubricant of a good society. (Calvinist theology has traditionally insisted on equal treatment for all in the market. See Nelson, 1949.)

One of the wonderful things about markets that economists rightly celebrate is the way markets economize on information. If I need a shirt, I don't have to learn how to make it myself. I don't even have to search out somebody who is really good at it and have it made to order. I can go down to the mall and find one I like and buy it. If I want to get married, I don't first have to learn how to bake a fancy cake. I can order a really fine one from the bakery down the street. But how do I know these things were made in a morally responsible way? How do the vendors know that I will use them responsibly? Sometimes, we can count on government regulation to take care of these things. Most of the time, we have to rely on the generally accepted moral standards of our society.

But we have reached a point in our history where moral consensus is not as strong as it used to be and where government does not seem as trustworthy as it once was. In the name of liberty, there is less legal and social regulation of behavior than there used to be. There is good and bad about this. It allows room for diversity of belief and behavior that was not possible in the past. It allows innovation that can be productive and liberating. But it also places greater responsibility on those who have power in both politics and business, to pay more attention to moral issues, and to work harder at using their power to do things right. That means making sure that workers, customers, and the public are treated with respect, both in the terms of transactions and in deference to their moral autonomy.

Thinking about issues like this one reminds me of Total Depravity, the first of the famous Five Points of Calvinism (and the "T" in the

mnemonic TULIP). We are all so stained by sin, and our world so damaged by evil, that everything we set out to do, no matter how noble or righteous the intention, ends up being hopelessly contaminated. But the point is one that all Christians recognize: It is only the grace and love of God that can save us.

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