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Seduction by contract

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review of

Bar-Gill, O. (2013) *Seduction by contract: Law, economics, and psychology in consumer markets*. Oxford: Oxford University Press. (HB, pp xvi +280, £30.49, ISBN 978-0-19-966336-1).

In this accessible and well-structured book Bar-Gill takes a close look at the credit card, mortgage, and cell-phone markets. He shows why contracts in these markets look the way they do, what is wrong with them, and what the law can do to help. Providing a dearth of examples Bar-Gill shows in a detailed analysis how in these three markets externalities, asymmetric information, and misperception lead to biased estimates on the part of customers. This analysis provides the basis for an interesting critique of the behavioural assumptions of the contracts in the markets he studies, and a broader critique that the way contracts in these markets function exhibit deficiencies that may well hurt overall social welfare. However, on the basis of the material that he discusses, it may well be argued that the critique he provides is too limited in a number of ways.

The first way in which his approach is too limited is that he ultimately frames his critique in a technical malfunctioning of the market. The main argument developed in the book revolves around the assumption that contracts in the credit card, mortgage, and cell-phone markets do not adequately reflect the products and conditions offered. As a result, competitive forces will work to maximise the perceived, rather than the actual benefits of a product. This can lead to 'market failure' [16] because it hinders effective competition. The implicit underlying belief is, therefore, that the market principle must be helped to provide its salutary work. This underlying belief may explain why the assumption seems to be that the conditions for the contractual relationship in these markets can be optimized through technical fixes and why suggestions for reform focus specifically on what the law 'realistically' can do to help, such as providing the basis for better disclosure regulation and the expansion and disclosure of product-use information [249] in order to help consumers shop for the best deal [3]. This underlying belief may also explain why the framing of the problems typically focuses on the inefficiencies embedded within the agents themselves, e.g. when Bar-Gill speaks of 'less sophisticated' customers [249]. Similarly, it may explain why the focus of the recommendations is ultimately on the provision of workarounds that will help to deal with the imperfections of such less sophisticated economic agents, rather than on the construction of these contracts and these markets.

The ongoing belief in overall market rationality and technical fixes to support this market rationality is not supported by the material provided in the book, which provides the basis for a more critical analysis. The examples provided of the contracts in the three markets shows clearly how customers with less intellectual or financial means have less capacity, including access to advisers, to help them navigate the complexities posed by the contracts in these markets. Moreover, the analysis provided by Bar-Gill shows how these customers do not necessarily have access to the contracts that are targeted at customers who could be deemed more 'adequate' market participants. Bar-Gill notes how, under these conditions, more options and increasing complexity of contracts can actually lead to less meaningful choices and impose regressive distributional effects. Moreover, he shows in some detail how contracts in these markets are explicitly produced to exploit the 'inadequacies' of particular types of customers (e.g. the deliberately unclear long-term conditions of subprime mortgages); that demand for such types of contracts is artificially inflated for those particular types of customers; and that those customers have different access to information and to different types of contracts than other types of customers in those markets.

Under these conditions, it can well be argued that the use of such contracts, the construction of markets on the basis of such contracts, and the regressive effects of these contracts and markets are not accidental outcomes of a malfunctioning market mechanism. Rather, on the basis of the material provided in the book it becomes quite clear that these contracts and markets explicitly function on the basis of continuing unequal access to types of contracts by different classes of customers. In this framing, maintaining a segmentation of classes of customers and making optimal use of the deficiencies attributed to these different classes of customers is not accidental, but is central to the constitution of these markets.

The idea that the strengthening of market mechanisms will solve the issues, therefore, merely detracts from the underlying problem.

The material provided in the book thus provides the basis for a more comprehensive critique than the author is willing to acknowledge. Rather than the supposed 'seduction' exhibited by particular kinds of contracts on deficient economic agents, it is the way in which markets are constructed to sustain a particular political economy that invites the use of deficient types of contracts on the basis of a segmentation of classes of customers. By extension, it is not an absent market mechanism that must be brought back in and strengthened to respond to these deficiencies, but rather political and legal economic institutions that are able to constrain the use of deficient contracts in malfunctioning markets. The book thus provides an implicit basis for a deepening of the critique of contract and contractual relations and central assumptions in behavioural economics. To develop this critique, however, it should be broadened to involve a wider assessment of contractual relations and markets, for instance by departing from the perspective of real-world actors, rather than ideal-type actors (Foucault, 2008; Ghoshal, 2005; Perrow, 1986; Sen, 1977).

In sum, *Seduction by contract* is an interesting book because it provides a number of relevant and well-documented examples of markets in which the use of specific types of contracts provides the basis for regressive distributional effects. However, the analysis of the material provided could be significantly expanded upon by providing a richer theoretical grounding and by applying a more elaborate critique.

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