

Theft? What has been stolen?

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Cartels are theft, usually by well dressed thieves.

— ACCC Chairman Graeme Samuel, *Inside Business*, ABC TV, 4 November 2007.

The defining characteristic of theft is that it is a non-voluntary transfer of property rights. How is a price-fixing cartel similar?

Cartels do not obtain wealth directly by force. Consumers voluntarily agree to pay the price that is charged. Trivially, price-fixing is not theft in the usual sense of the word.

Exchange lies at the heart of all economic transactions—even those involving cartels. Parties give up property rights over certain goods in order to obtain rights over others. Both want to give up as little as possible in exchange for as much as possible. There is nothing immoral about the desire of each party to obtain a rate of exchange that favours them.

Of course, some prices are obtained as a result of coercion, duress, or other forms of pressure (such as blackmail or extortion). But a cartel does none of these things. It never forces consumers to agree to a particular price or transaction. Because the price paid is always

voluntary, price-fixing is not theft in this weaker sense.

What about other, less direct forms of ‘theft’? Cartels do not defraud consumers or engage in any form of deceptive conduct or deliberate or negligent misrepresentation which would make consumers less well off after the exchange than they initially anticipated. Consumers receive *exactly* the benefits from exchange that they thought they would.

Perhaps it is the secret way in which prices are determined in a cartel that is bothersome. But all companies choose their prices in a way that could be deemed ‘secret’. Indeed, consumers do the same thing, and individuals do likewise when they negotiate wages. Secretly determining your desired rate of exchange does not violate anyone’s property rights.

So much for theft. But is a cartel unfair? Ownership of a bundle of property rights does not entitle the holder to consume the goods of others at an arbitrarily determined ‘correct’ or ‘fair’ price. Thus, cartels do not violate that property right either—since no such right exists.

When a consumer buys from a cartel, he does not receive fewer benefits than he anticipated; nor do producers receive more benefits than they anticipated.

Indeed, the expectations of both parties are completely fulfilled. A price does not suddenly become ‘unfair’ just because one or both of the parties in retrospect would have liked it to be different. In that case, we could abolish all trades, since consumers and producers always would have preferred a different price, even at the time of agreement.

Is it unfair that firms profit by charging ‘high’ prices? Consumers would always like to pay lower prices. So, irrespective of whether a firm makes a profit or not, there will never be a price that is

not ‘too high’. In any case, is the enjoyment of the profits of mutually beneficial exchange (even when they are not shared evenly) really immoral or evil? In that case, no mutually beneficial or ‘profitable’ trade would ever be allowed.

Perhaps the worst that can be said about a cartel is that by charging a ‘high’ price, it may leave some gains from trade unexploited. Some resources may not move from low- to high-valued uses. In other words, the cartel misses out on some profit. But that hardly qualifies as ‘theft’ or as being ‘unfair’.

Price-fixing only involves a violation of property rights when participants are protected by government regulation or artificial barriers to entry. For example, in most modern economies, the largest and most extensive cartel is organised labour. Unions bid up their members’ wages and then try to prevent non-members (‘scabs’) from working at a lower wage.

Unions are protected by minimum wage laws and other labour market regulations that are designed to help them achieve this goal. But here it is the property rights of ‘scabs’ or potential entrants that are violated. And it is the government that violates their rights by erecting these artificial barriers, not the union itself.

In summary, cartels are not thieves, and are not ‘unfair’. On the contrary, in a free society, firms should be permitted to *ask* whatever price they wish. Nobody is forced to agree to this price. Outlawing price-fixing is a violation of private property rights. *Preventing* price-fixing is theft.

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