Are Prices Just?

Author : Gregory M. Stein

Date : June 5, 2018

Robert C. Hockett & Roy Kreitner, *Just Prices*, 27 **Cornell J.L. & Pub. Pol'y** (forthcoming 2018), available at SSRN.

Our economic system, and particularly our laws of property and contracts, assumes that prices arise naturally from the workings of a neutral market. Rational actors with complete information operate independently, and the laws of supply and demand establish a unique price for a good or a service. The market price established in this manner reflects the value of that good or service. If these assumptions are correct, then one may conclude that the price of any item is "just" in the sense that it reflects the value the relevant market places on it and conveys this information to those operating within that market.

Robert Hockett and Roy Kreitner challenge this conclusion by questioning the assumptions that underlie it. For instance, some market actors do not act independently of each other, and coordination may lead to price distortions. More significantly, the rules of trade are not neutral but rather reflect choices that import values of their own. The fact that the assumptions underlying the supposed justice of prices are questionable does not necessarily lead to pricing that is unjust. But this fact should cause us to question whether and when prices are just. The authors seek to propose factors that can help us decide the justice of particular prices.

Hockett and Kreitner begin with a brief review of the early economic literature, which largely argued that competition will lead to fair wages and prices. Some economists questioned those conclusions even then, recognizing that land and other assets were held unequally and that those who possessed a disproportionate quantity of these assets could have a greater effect on prices. Such a system might maximize wealth without maximizing distributive justice. But the early consensus seems to have been that a disorganized and decentralized system is neutral and will lead to prices that are just.

The authors challenge the assumptions of these early economists. The supposedly neutral exchanges that create prices are the products of the laws of property and contracts, which themselves are not neutral. This means that "[p]rices do not 'just happen.'" (P. 12.) Rather, decisions we have made in the past influence prices. The government, by adopting zoning and intellectual property laws, affects prices. The monetary and tax systems are controlled by the government. "In short, the price system is deliberately engineered rather than spontaneously generated." (P. 14.)

Returning to the question of unequal resource distribution, Hockett and Kreitner remind us of the injustices inherent in our markets. Some people are at a disadvantage because they possess little property or none at all. And, according to the authors, some market exchanges that proceed should be banned: They raise the examples of sales of bodily organs and the use of child labor. The occurrence of such transactions has ripple effects throughout the market, with the price of a good for sale in one location perhaps artificially reduced by the child labor that helped produce one of its components somewhere else.

One other assumption – that of rational actors with full information – is undercut by the regular recurrence of market bubbles, runs on banks, and hyperinflation. These illustrations demonstrate that markets are not always self-correcting, at least not right away. And any interventions imposed by government in response to these irrationalities will further distort pricing.

Given that private coordination and public intervention in the market occur regularly, it is inaccurate to describe markets as neutral and uncoordinated. Does this inevitably lead to prices that are unjust? The answer will depend on the context. To begin, we must acknowledge the prevalence of these types of intervention. We also must recognize that this quiet participation in the market can hide "sub-rosa decisions with regressive implications." (P. 21.) The authors proceed to describe settings in which a more active intervention in the market to influence prices may be warranted to enhance justice.

After briefly discussing drug prices and public benefits, Hockett and Kreitner conclude with a discussion of retirement funds. The move to defined-contribution plans in recent decades may have increased total returns, but these improvements have come at the cost of greater volatility for investors. Perhaps, the authors argue, investment in local projects that produce lower returns but greater intangible benefits might be preferable. The local community will benefit from the investment. The investor, meanwhile, will enjoy the intangible benefits that come from enhancement of the community, along with reduced portfolio volatility, at the cost of slightly lower returns.

Much of the literature on property law relies, perhaps not explicitly, on the assumption of rational economic actors transacting in a neutral market. By reminding us that this economic model does not always reflect how actual market participants behave, Hockett and Kreitner emphasize that the conclusions we draw from these presumptions are not always accurate. They do not seek to demolish the traditional model, which is well-entrenched in the literature. Instead, they ask us to question when the model is least likely to reflect the reality of how true market participants behave.

In some settings, creative use of the pricing system may allow us to attain desirable goals. But even more important than that, as the authors note in closing, is acknowledging the reality that prices are not any more just than the social relations from which they spring. "That means our efforts to improve the latter will proceed in tandem with our efforts to improve the former." (P. 27.)

Cite as: Gregory M. Stein, *Are Prices Just?*, JOTWELL (June 5, 2018) (reviewing Robert C. Hockett & Roy Kreitner, *Just Prices*, 27 **Cornell J.L. & Pub. Pol'y** (forthcoming 2018), available at SSRN), https://property.jotwell.com/are-prices-just/.