Business Ethics Journal Review
SCHOLARLY COMMENTS ON ACADEMIC BUSINESS ETHICS
businessethicsjournalreview.com

Cite as: **Bus Ethics J Rev** 2(4): 22–28, http://doi.org/10.12747/bejr2014.02.04

*Edited by* **Chris MacDonald** *&* **Alexei Marcoux**

**ISSN: 2326-7526**

# Is There 'a Point' to Markets? A Response to Martin

Wayne Norman[1]

A RESPONSE TO Dominic Martin (2013), "The Unification Challenge," ***Bus Ethics J Rev*** 1(5): 28-35, http://doi.org/10.12747/bejr2013.01.05

**ABSTRACT**

Dominic Martin attributes to me and other adherents of the market-failures approach to business ethics a narrow account of justification, focused solely on economic efficiency. On the contrary, I argue the appeal to efficiency and market failure is best seen as a pragmatic, Rawlsian, strategy to find common ground and a shared vocabulary for business ethicists who have long been Balkanized by overly ideological "theories." So understood, the market-failures approach is not the reductivist program Martin portrays it to be. Efficiency and the taming of market failures should be seen as one of many grounds (albeit usually the most important) for both regulatory and beyond-compliance norms for business in a capitalist democracy.

**DOMINIC MARTIN'S MOST** challenging criticisms of a recent article of mine can be traced back to vagueness and ambiguity already apparent in the article's title: "Business Ethics as Self-Regulation: Why Principles that Ground Regulations Should be Used to Ground Beyond-Compliance Norms as Well" (Norman 2011). The weasel word "as" in the title leaves unclear *how similar* the concepts of 'busi-

[1] Duke University. Email: wayne.norman@duke.edu

ness ethics' and 'self-regulation' are supposed to be. And the subtitle promises to make a case for *using* regulatory principles to ground (*some*? *all*?) norms that go above and beyond the law, but it leaves open *how* they are used and whether they are *sufficient* for such grounding or merely one part of a more complex argument.

In this response to Martin's commentary, I join a conversation that has broken out amongst at least four of us within the first issues of this *Journal* (see Jaworski 2013, and Heath 2013). It is a conversation about an approach to the academic field of business ethics that has yet to be adequately named and branded. "Business ethics as self-regulation" was my suggestion; Joseph Heath (2006) has called it "the market-failures approach to business ethics," and more recently a "Paretian approach" (Heath 2013: 50). Heath himself sees the outlines of this approach in what Christopher McMahon (1981) had dubbed "the implicit morality of the market." Roughly speaking, and allowing for plenty of ongoing disagreement about details and scope, partisans of this approach believe:

(a) that our grounding for a broad range of obligations and rights in business ethics – including some obligations to follow a "higher standard" than required by law, but also rights, and even obligations, to ignore certain duties of everyday morality – should be *closely related* to our most basic justifications for markets and the regulation of markets; and

(b) that increasing what economists call "efficiency," especially variations on the idea of Pareto optimality, or the "aggregate welfare of society" (Hansmann and Kraakman 2004: 18), is the most basic justification of markets, and serves as the basis for a broad range of market regulations.

These two clauses amount to a screaming denial that "business ethics" is an oxymoron. More to the point, they provide an alternative to the dominant but contested paradigms in contemporary academic business ethics, from urbane versions of what critics refer to as "stockholder theory," to protean interpretations of "stakeholder theory" or "corporate social responsibility."

Martin (2013: 29) argues that tensions are revealed within my approach when some of my intentional vagueness is clarified. At the heart of this critique is his assumption that I am committed to a very stark version of (b): that "*[t]he justification [for regulations that apply to market agents like corporations] is market efficiency*." He notes that this "claim is not made as directly [by me] as the others." But he infers it from the fact that I had presented my approach "as a 'friendly amendment' to Heath's market-failures approach to business ethics" as the latter had been presented in Heath's two paradigm-busting essays (2006, 2007).

In fact, I *don't* think that this general "approach" we are all trying to work out ought to be entirely constrained by *that* particular way of justifying markets and market regulations. Within limits, *whatever* you think the basic principles and arguments are for justifying markets and market regulations, your justifications of many core ethical ("beyond-compliance") obligations for market actors can and should be argued for in a similar way. (So, by *modus tollens*, we argue against a proposed principle for beyond-compliance norms by demonstrating why that principle would be inappropriate for the design and justification of regulatory law.)

What does it take to prove that some principle P *justifies* some institution or institutional design D? Or to demonstrate that the *point of* D is to bring about an outcome (or process) that satisfies the demands of P? For example, what would it take to prove Heath's (2013: 50, my italics) "major claim . . . that *the point of* marketplace competition is to promote Pareto-efficiency"? This is obviously not an *empirical* claim about anyone's intentions; say, the way it *is*, sometimes, when we ask about the point of some particular piece of legislation. And it's not a straightforward historical claim about the emergence or evolution of markets. (If it were, it would be false.) My own reasons for avoiding the reductionist "efficiency justification," which Martin imputes to me, have as much to do with my moral epistemology of justification as they do with my understanding of market designs and market regulations.

My operating model of *justification in academic writing* (see Norman 1998) is the pragmatic view articulated by the great 20th-century American political philosopher, John Rawls (1971: 580–581, my italics):

> [J]ustification is *argument addressed to those who disagree with us*, or to ourselves when we are of two minds. It presumes a clash of views between persons or within one person, and seeks to convince others, or ourselves, of the reasonableness of the principles upon which our claims and judgments are founded. Being designed to reconcile by reason, justification proceeds from what all parties to the discussion hold in common . . . *from premises that we both accept*…

Even if one believes that a more Cartesian or foundationalist form of justification is possible in ethics, the pragmatic approach Rawls describes is still an excellent formula for effective academic writing and discourse. When we want to justify principles, practices, critiques, or what have you, in *business ethics* we are often dealing with interlocutors coming to the discussion with a wide variety of background assumptions, beliefs, and commitments. We will present different justificatory arguments to different audiences. Our aim is to bring our interlocutors closer to our favored principles or conclusions by way of propositions and inferences they are willing to accept. The reason the pair of articles Heath dropped on the field in the middle of the last decade are so extraordinary is that they manage seamlessly to make a case (or different cases) to so many different groups across the spectrum of the supposed "stakeholder–stockholder theory" debate. He was "justifying" to each interlocutor in exactly the ways the quote from Rawls recommends: from shared assumptions and principles to new, shared conclusions. Did Heath show that the justification *simpliciter* of markets is efficiency? No; he didn't even try to. He explained why those already committed to this should *also* embrace a more robust set of ethical obligations for business people; and he showed why those who already pined for more ethical businesses should not fear or ignore the efficiency-promoting rationale for markets.

So why *do* we have markets, then? Again, unless that is a crazy-difficult empirical question for historians, I'm not sure what it means. There are many ethically relevant things people can simultaneously value about markets besides the fact that in the right circumstances, with the right regulations, the right background norms and conventions, and the appropriate behavior by market actors in a variety of roles on all sides of a transaction, markets can sometimes be maximally efficient. For example, we can also like the way they enhance people's freedom or autonomy. We may think they are more consistent with individuals' fundamental rights than are rival economic institutions that would ban mutually beneficial exchanges between consenting adults. We may value the way they facilitate meaningful forms of human activity and human relationships, or just the way they help provide jobs to keep people occupied and to give them income for other valuable desires or needs. We may prefer them in most sectors because the centrally planned alternative would be much *less* efficient and much more corrupt. Markets are surely better at fostering bold innovations, which we may value not merely for their contribution to efficiency, but also because they can totally transform the *quality* of life in ways that are not captured by the quantitative measures of efficiency.

There are many analogous reasons to *criticize* markets, or to reform or regulate particular markets, which cannot be *fully* reduced to "inefficiency" or the classic market failures. Yes, we can criticize a particular market for the fact that the firms in it are legally externalizing some of the costs of production in the form of pollution downwind of their facilities. But surely there are other, perhaps more salient, ethical grounds on which to criticize that market, or the failure of political authorities to regulate it properly, or the decisions made by an actual corporation and its leaders to release toxins they knew would cause great suffering and premature death for individuals who were unaware that they were being poisoned. Yes, when costs are externalized in this way by firms, the price system is subverted, the market has a "failure," and it is not Pareto-efficient. But we shouldn't mistake *that* for an explanation of why actions and decisions taken by a particular firm and its employees (among others) are *unethical*. So a "Paretian approach to business ethics" cannot pretend to explicate all of the relevant issues in the field—even though it is hugely significant that most legitimate ethical concerns about business activities do stem from the creation or exploitation of classic market failures like market power, information asymmetries, and negative externalities. (Heath himself clearly distinguishes between *Paretian justifications of the competitive marketplace*, on the one hand, from very different norms and justifications relevant to relations *within* a firm, on the other. So he does not pretend the Paretian approach covers all of business ethics. What I am suggesting here is that it can't even claim to be the whole "point" of *marketplace* ethics.)

Standard economics textbooks notice that there are many goals a society may have besides economic efficiency; and that governments can justifiably design and regulate markets to promote these goals as well. (It would be extraordinary over-reach for economists *as social scientists* to deny such a claim.) Markets and firms are routinely regulated for the sake of distributive justice (e.g., minimum wage), human rights (e.g., anti-discrimination laws; guaranteed provision of essential services), democracy (e.g., lobbying and political contributions), national security (e.g., banning sales to certain regimes, providing information on customers), respect for religious and cultural values (e.g., mandatory holidays, restricting pornography), and so on.

I am not claiming these other social goals (equality, social justice, national security, piety, and so on) are always justifiable grounds for public policy, including the design and regulation of market or non-market institutions. Indeed, it is often counter-productive to try to promote goals such as these by interfering with the basic structures of firms or markets. (A negative income tax may be a better way to help the working poor than a minimum-wage law, for example.) We will almost always want to have markets in most sectors, and also to regulate these markets, in order to increase the efficient production and distribution of goods and services. But we can *argue in favor* of the design of any given market regulation or beyond-compliance standard by appealing to other socially desirable values it promotes. And we can surely *criticize* particular markets, or the activities of particular market actors (firms, employees, owners, customers, etc), because they fail *not necessarily* or *merely* on efficiency grounds, but by the standards of other values and principles we care about. Of course, many such arguments will be flawed. But at least some justifications of this sort deserve to carry the day..

This brings us back to the seemingly trivial, but tactically important, question of what *to call* this general "approach" to business ethics that many of us have been trying to sketch out. Every suggestion so far is potentially misleading if taken too literally. I had flagged a number of potential misinterpretations of my suggestion "business ethics as self-regulation," and Martin has confirmed that those misleading or distracting connotations cannot easily be stripped away. McMahon and Heath have revealed the surprisingly powerful ethical resources hiding in plain sight within the "implicit morality of the market." We need to supplement this with a careful attempt to identify and adapt business-ethics norms implicit within the best public-policy debates, in a democratic society, over the facilitation and regulation of commerce. "Business ethics as political philosophy" is too broad, not to mention nerdy. But that is what we are all doing.

*Received 31 May 2014 / Posted 2 June 2014*

## References

Hansmann, H. and R. Kraakman. 2004. "What is Corporate Law?" In ***The Anatomy of Corporate Law: A Comparative and Functional Approach***, eds. R. Kraakman, J. Armour, P. Davies, L. Enriques, H. Hansmann, G. Hertig, K. Hopt, H. Kanda, and E. Rock Oxford: Oxford University Press. 1–19.

Heath, J. 2013. "Market Failure or Government Failure? A Response to Jaworski." ***Bus Ethics J Rev*** 1(8): 50–56, http://doi.org/10.12747/bejr2013.01.08

Heath, J. 2007. "An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder." ***J Bus Ethics*** 72(4): 359–374, http://dx.doi.org/10.1007/s10551-006-9175-5

Heath, J. 2006. "Business Ethics Without Stakeholders." ***Bus Ethics Q*** 16(4): 533–557, http://dx.doi.org/10.5840/beq200616448

Jaworski, P. M. 2013. "Moving Beyond Market Failure: When the Failure is Government's." ***Bus Ethics J Rev*** 1(1): 1–6, http://doi.org/10.12747/bejr2013.01.01

Martin, D. 2013. "The Unification Challenge." ***Bus Ethics J Rev*** 1(5): 28-35, http://doi.org/10.12747/bejr2013.01.05

McMahon, C. 1981. "Morality and the Invisible Hand." ***Phil & Pub Aff*** 10(3): 247–277.

Norman, W. 2011. "Business Ethics as Self-Regulation: Why Principles that Ground Regulations Should Be Used to Ground Beyond-Compliance Norms as Well." ***J Bus Ethics*** 102 (S1): 43–57, http://dx.doi.org/10.1007/s10551-011-1193-2

Norman, W. 1998. "Inevitable and Unacceptable?: Methodological Rawlsianism in Contemporary Anglo-American Political Philosophy." ***Pol Stud*** 46(2): 276–294.

Rawls, J. 1971. ***A Theory of Justice***. Cambridge, MA: Harvard University Press.