Business Ethics Journal Review

SCHOLARLY COMMENTS ON ACADEMIC BUSINESS ETHICS

businessethicsjournalreview.com

Cite as: **Bus Ethics J Rev** 5(3): 15–21, http://doi.org/10.12747/bejr2017.05.03

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

ISSN: 2326-7526

Why Justice Matters for Business Ethics

Jeffery Smith[1]

A COMMENTARY ON Abraham Singer (2016), "Justice Failure: Efficiency and Equality in Business Ethics," ***J Bus Ethics*** OnlineFirst, http://doi.org/10.1007/s10551-016-3086-x

ABSTRACT

In a recent critique of the so-called "market failures approach" (MFA) to business ethics Abraham Singer maintains that business firms have ethical responsibilities to voluntarily restrain their profit-seeking activities in accordance with the demands of justice. While I ultimately share Singer's intuition that the MFA has overlooked the importance of justice in business ethics, I argue that he has not presented a fully adequate case to explain why justice-related responsibilities should be assigned to business firms. I conclude by offering a brief – and supportive – alternative to his position.

THE SO-CALLED "market failures approach" (MFA) to business ethics characteristically grounds norms of business conduct in the normative conditions standing behind Pareto efficient markets. Ethical business firms, thus, have a responsibility to uphold the "implicit morality of the market" and, among other things, support voluntary contracting, refrain from "exploiting" standard market failures, such as information asymmetries, low levels of competition and negative externalities,

[1] Seattle University. Email: smitjeff@seattleu.edu

and show respect for laws that improve the efficiency of markets (cf. McMahon 1981; Heath 2014).

Abraham Singer (2016)[2] offers a subtle and important extension of this project in his recent essay "Justice Failure: Efficiency and Equality in Business Ethics." His analysis is framed by critically examining the central role that efficiency plays in the MFA. Ethical business firms, he argues, should not only operate in a manner consistent with the market's aim of efficiency but also act so as to uphold the value of justice.

Singer's position is built from three related claims. The first is that the moral legitimacy of profit-seeking by firms in the market is indirectly a function of how well justice is secured by the state when firms engage in activities that may be inconsistent with it. In this respect, justice, even if it is primarily achieved through public means, is an important value that indirectly underwrites the moral legitimacy of modern, capitalist economies. Second, just as markets fail to produce efficient outcomes, states fail to secure just outcomes. This prompts Singer to emphasize that we should not simply speak of "market failures" but also "justice failures," i.e., failures that originate from incomplete or inadequate responses by government to take action that can help guarantee justice. Third, the voluntary actions undertaken by business firms can serve as a suitable "second best" alternative to address not only failures of the market but also failures of the state to secure justice (7).

These observations help Singer tell a larger story about why business firms have duties to voluntarily "restrain" their activities in a manner consistent with justice (5). Capitalist economies are legitimate not only when they offer the means to better produce an efficient production and allocation of good and services. Their legitimacy is also predicated on institutions that uphold justice. To the extent that profit-seeking by firms can negatively impact the realization of justice, e.g., by limiting employment opportunities, paying low wages, minimizing payment of taxes, or subverting the democratic process, and to the extent that the state may fail in its task to adequately address these problems through public policy, it is appropriate, for Singer, to shoulder business firms with responsibilities to voluntarily undertake efforts to

[2] Hereafter, parenthetical page references not otherwise attributed are to the OnlineFirst edition of "Justice Failure: Efficiency and Equality in Business Ethics" (Singer 2016).

protect justice because their activities are the most reasonable second best alternative to rectify justice failures.

But why should the responsibility of rectifying justice failures fall to business firms? The institutional division of moral labor within a capitalist economy characteristically assigns justice-related tasks to the state and efficiency-related tasks to the market. Singer recognizes the importance of this question and believes he has answer to it; but there is more that needs to be said to make the case that Singer intends.

The Division of Moral Labor and Second Best Options

The MFA emphasizes that in actual economic circumstances efficiency may be better secured through the use of second best, non-market mechanisms (7). These include legal remedies, regulation and restraint through ethical conduct in business (cf. Arrow 1973; Thomsen 2001).

But Singer, like other advocates of the MFA, spends little time explaining why standards of ethical business conduct are *normative* for business managers. This is an important matter. If ethical restraint within the MFA is to be *an effective* mechanism to promote efficiency under non-ideal conditions, then the requirements need to be capable of providing motivating reasons for managers to voluntarily restrain how they conduct business in the marketplace. Whereas regulation can prove to be an effective mechanism because of the pecuniary costs in violating the law, ethics is only effective when managers generally recognize the normative validity of the implied requirements independent of whatever profit-related motivations there may be for compliance.

Singer's explanation is that the MFA's call for ethics in business rests in the "institutional role" of directing profit-seeking activity within a competitive market and the norms tacitly recognized in the assumption of this role (7). The normativity of the MFA's requirements is established simply when firms and their managers enter in to the market and compete. Their mere participation in a competitive market is, in effect, a pragmatic endorsement of the moral legitimacy of the behavioral conditions presupposed by their activity.

Notice, however, it is not clear that such an analytic move can be made in the case of justice. The above interpretation purports to ground the normativity of business ethics through an act of implicit endorsement. But such an act is tied to a well-defined role as a participant in the market. Capitalist economies characteristically separate this role from other social roles – especially public ones concerned with justice – precisely because there are recognized benefits that accrue to the special morality found within competitive social arenas (Heath 2014: 10–12).

Singer is poised to provide a response to this concern. Simply put, business firms are particularly well suited to solve justice failures. First, he says that firms are in a position of "power" to effectively respond to justice failures (11). They have resources, capabilities and proximate control over a range of policies that can address justice failures in a way that other actors cannot. Second, he notes that corporations have voluntarily undertaken matters traditionally left to the state in a whole host of areas related to environmental and social governance; by extension, it is "sensible" to expand the domain of ethical responsibility of firms to include the development of business practices that address injustices when the state fails to do so (12).

The central problem with this analysis is that the facts concerning the actual capabilities of firms to address justice failures do not obviously demarcate the normative contours of the institutional roles – and thereby the normative grounds – upon which firms' justice-related responsibilities can be based. An individual firm may be well positioned to address unequal employment opportunities between men and women in its industry or reform compensation packages to assure a living wage among its employees; however, these capabilities are not what confer a responsibility to do so on that particular firm. The mere occasion that this or other firms have actually undertaken such policies does not establish that they were responsible for doing so. There are a host of strategic aims that are served by voluntarily instituting practices that would otherwise be enforced by the state and the fact that we have witnessed actual firms undertake justice-related tasks could suggest nothing more than a convergence of corporate and state objectives, or perhaps an instrumental need to manage the expectations of stakeholders, rather than identifying grounds to say that firms are the actors upon which justice-related responsibilities rest when states have failed.

What I want to stress is that there is a difference between *what is effectively accomplished by firms* and what we *should define their roles to be*. Singer's case for justice-related responsibilities rests on the capabilities and concrete actions undertaken by actual firms. These facts may be a second best option to rectify justice failures; but they do not warrant an alteration to the underlying roles that businesses assume as market actors. Put differently: business ethics as a second best option in the case of market failures simply requires businesses to embrace what is already presupposed by being a market actor. Here the ethical conduct of business as a second best option happens to neatly coincide with the tasks presupposed by being a profit-seeking firm in the marketplace. This coincidence is absent in the case of justice failures where business ethics as a second best option upsets the division of labor that underlies the traditional institutional roles defined by a capitalist political economy.

So, if I am correct, there needs to be a justification of assigning business firms with justice-related responsibilities that is more closely tied to a more subtle institutional understanding of how roles are specified within capitalism in the first place. We should endeavor to provide an alternative justification for ethical responsibilities tied to justice that does not rely on an equivocation of the actual practices (or abilities) of businesses with their role. I will briefly offer one option as a way of concluding this commentary.

The justification of market designs and regulations within contemporary welfare economics supports the notion that market arrangements are designed to satisfy the goal of assuring greater levels of efficiency. But, perhaps even more important, market arrangements reflect a collective decision to realize other "morally important social values" using the decentralized mechanism of the market (McMahon 2012). This means that markets not only serve a Paretian objective; markets are also concurrently designed to realize a plurality of other valuable ends – such as knowledge, education, public health, national defense, autonomy and justice – through the price system that tracks their attendant social costs (cf. Miller 2010). This pluralism is reflected in the manner in which market arrangements are regulated by the state; just as we expect regulation to serve values other than efficiency, we expect responsible firms to conduct business in a manner consistent with the full range of aims that those regulations serve (Norman 2011).

This suggests that markets represent deliberate moves by the state to grant authority to private actors over how to invest, produce and trade goods that serve a range of morally important social values. And thus, to follow Singer's main concern, responsibilities tied to the value of justice are normatively appropriate for business firms because firms voluntarily participate in a decentralized institutional arrangement that has granted them authority over how justice is realized. An inherent part of this role is to exercise discretion over matters – such as setting wages and provisioning employment opportunities – that have been delegated to them by other political authorities. In making decisions about employment, compensation and political engagement, business firms are, in effect, participants in a role that is not merely economic, but also political in that their economic decisions are framed by the task to provision certain morally important social values.

I take it that this alternative picture is friendly to Singer's goal of expanding the domain of ethical responsibility beyond simply those requirements implied by Pareto efficiency to include requirements associated with justice. But the subtle difference here is that justice-related requirements are normative on this picture because firms are ideally understood to be actors tasked with securing public values and not merely actors that happen to have the power and influence to produce outcomes similar to the state.

Received 6 October 2016 / Posted 31 May 2017

References

Arrow, Kenneth. 1973. "Social Responsibility and Economic Efficiency." ***Pub Policy*** 21: 303–317.

Heath, Joseph. 2014. ***Morality, Competition and the Firm: The Market Failures Approach to Business Ethics***. New York: Oxford University Press.

Thomsen, Steen. 2001. "Business Ethics as Corporate Governance." ***Euro J of L & Econ*** 11(2): 153–164.

McMahon, Christopher. 2012. ***Public Capitalism: The Political Authority of Corporate Executives***. Philadelphia: University of Pennsylvania Press.

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

Miller, Seumas. 2010. ***The Moral Foundations of Social Institutions: A Philosophical Study***. Cambridge: Cambridge University Press.

Norman, Wayne. 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(Supp): 43–57.

Singer, Abraham. 2016. "Justice Failure: Efficiency and Equality in Business Ethics." ***J Bus Ethics*** OnlineFirst, http://doi.org/10.1007/s10551-016-3086-x