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# Dating, the Ethics of Competition, and Heath's Market Failures Approach

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A COMMENTARY ON Nien-hê Hsieh (2017), "The Responsibilities and Role of Business in Relation to Society: Back to Basics," ***Bus Ethics Q*** 27(2): 293–314, https://doi.org/10.1017/beq.2017.8

**ABSTRACT**

In "The Responsibilities and Role of Business in Relation to Society," Nien-hê Hsieh challenges Joseph Heath's "market failure" or Paretian approach to business ethics by arguing for a "Back to Basics" approach. Here, I argue that two basics of Hsieh's three-basics vision are flawed, because a. ordinary morality is in fact not sufficient for the adversarial realm of the market, and b. the ideal of a Pareto-optimal market economy with perfect competition does in fact provide an adequate basis for normative rules against market failures.

**THE MARKET FAILURES** Approach (MFA) seeks to derive normative standards implicit in the basic economic assumptions underlying institutional rules of the market economy, arguing that business as a competitive enterprise requires different rules than ordinary morality. Nien-hê Hsieh (2017: 295) argues against the MFA by denying two key elements of Heath's MFA approach:

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> The first is that market ethics are adversarial in a way that may sanction or even require participants to ignore duties of ordinary morality. The second is that considerations of allocative efficiency or aggregate social welfare justify this adversarial ethic and the use of markets, more generally.

If Hsieh is correct, then first, the MFA fails to be motivated because ordinary morality will adequately constrain business practices, and secondly the MFA fails to be adequate for a market morality because the Paretian criterion is indeterminate when comparing allocations. Hsieh claims that an ordinary "do no harm" principle better serves the purpose of business ethics.

## Understanding Heath

Joseph Heath (2014) claims stakeholder theory fails because it assumes ordinary morality for business practices, which are by nature competitive. This, he says, is why stakeholder theory (and business ethics) "is often portrayed as anticapitalistic" (2014: 91, 94). Alternatively, the MFA seeks to find the normative standards for business "already implicit in the institutions of a market economy" (2014: 19), namely, the "perfectly competitive market economy [which] will be Pareto-optimal" (2014: 29)—otherwise known as the "Pareto conditions" of exchange (2014: 34). In such a perfectly competitive market, it is "not possible to improve any one person's condition without worsening someone else's" (2014: 30) since Pareto efficiency is the optimum ideal situation beyond which any change would lead to a loss in the allocation of resources. The "conditions that must be satisfied in order for the market economy as a whole to achieve efficiency" require ideal competition, and to that end, an elimination of market failures such as negative externalities, information asymmetries, protectionism, opportunism, etc. (2014: 37). In pursuit and protection of such perfect market ideals, Heath advocates "good sportsmanship" which not only follows regulations designed to prevent market failures, but also refrains from exploiting loopholes while still retaining an adversarial orientation. In contrast, stakeholder theory seems to try "to eliminate the adversarialism of the managerial role" altogether (2014: 91).

In contrast to the ethics of competition, 'ordinary morality' is designed to create win-win outcomes, and it is captured in the "Golden Rule"—treat others as you would like to be treated. It is typically designed to prevent collective action problems—situations in which if everyone acts in a self-interested fashion, the outcomes are actually much worse for all involved, such as in a prisoner's dilemma (Heath 2014: 95). Such rules are of little use in competitive situations—one wouldn't want the other team to score a goal against one, but that doesn't prevent one in a sport from attempting to score against one's opponent! (2014: 102). The ethics of competition provides agents with limited "moral immunity" from the rules of ordinary morality, and would apply to any competitive situations which "demands certain types of non-cooperative behavior" (2014: 110).

Analogously, in business, "there is a significant difference between market transactions [adversarial] and the administered transactions [non-adversarial] that occur within the organizational hierarchy of the firm" (Heath 2014: 85, 94). Ordinary morality works fine for non-adversarial relations such as manager–stockholder, employer–employee, and corporation–investors, where both sides are trying to achieve solutions to collective-action problems and get to win-win solutions. But "[w]hile cooperation is designed to deliver win-win outcomes, competitions are specifically designed to produce win-lose ones" (2014: 96). When businesses work out win-win scenarios with their competitors to maximize profits it is typically called collusion, which is wrong—not because of ordinary morality, but because such behavior is a market failure, undermines the perfect market, and thus violates Pareto conditions of exchange. As Heath says, the Paretian approach to business ethics is "normatively undemanding, it is also the most that a normative theory can require without becoming anticapitalist" (2014: 200). Pareto condition constraints will prevent collusive cooperation, and provide basic rules for competitive market behavior—while ordinary morality cannot seem to handle competition. This, then, is why the two key basics of Hsieh's argument are so pivotal in this discussion.

## Hsieh's Criticisms

Hsieh's (2017) first argument against the MFA is essentially that 1) Dating is competitive, but 2) Dating is covered by ordinary morality, therefore 3) Competitive behaviors can be governed by ordinary morality, therefore 4) The competitive market, too, can also be governed by ordinary morality. His example, dating, is competitive: one lucky guy wins and the other guy loses (is harmed). This, Hsieh thinks, shows that "everyday morality allows us to pursue our self-interest in ways that are adversarial," and from this he concludes "the market is not uniquely adversarial" (2017: 295). Thus, ordinary morality, if it can provide guidance for dating, can likewise provide morality for the market (2017: 300).

The problems with this argument are twofold:

1. Hsieh characterizes Heath's view as being that "market morality is uniquely permissible with respect to harm in comparison with ordinary morality," which is why he considers his dating analogy to be a knock down argument—since it involves competition, yet is not a market activity (Hsieh 2017: 301). However, Heath never argues that the markets are *uniquely adversarial*. As mentioned above, Heath (2014: 102) actually uses sports as another example of competition not governed by ordinary morality.
2. More importantly, Hsieh's argument fails because dating, insofar as it is competitive, like sports and the market, also does not abide by ordinary morality. The ethics of competition would apply to dating because in dating "consequences of defecting from the cooperative arrangement [ordinary morality] constitutes a genuine harm for the other competitors, but that the wrongness of this harm is outweighed by the positive externalities generated by the competition as a whole . . . and thus the action in its context is morally permissible" (Heath 2014: 103).[2] Heath's second central claim for the MFA, which Hsieh denies, is "[t]hat considerations of allocative efficiency or aggregate social welfare justify this adversarial ethic . . ." (Hsieh 2017: 295).

The problems with Hsieh's lines of argumentation to deny Pareto efficiency as a basis for ethics are as follows:

1. Hsieh (2017: 302) says that Heath's MFA claims the responsibilities of business managers "are to comply with regulations and to act in ways that are consistent with maintaining the efficiency of the markets . . ." In an attempt to undermine this, what he takes to be this efficiency-regulations connection, Hsieh (2017: 302) points out that some regulations like rent control and minimum wage may not be Paretian efficient. However, Heath (2014: 38) does not think all laws are aimed at market failures (and so, maintaining efficiency of the market), but nevertheless managers

[2] For arguments on the positive externalities of dating competition, see Buss (2003).

should act "within the framework of the law" generally. Ideally, the best laws "create the conditions necessary for private enterprise to generate an efficient allocation of goods and services in the economy" and managers should respect the spirit, not just letter, of the laws (Heath 2014: 39, 111–113).

2. More importantly, Hsieh (2017: 302) also argues that Paretian efficiency "is indeterminate" and "silent on the questions of regulations." In considering, for example, whether or not to prohibit a harmful product, he claims "[a]lthough consumers may be better off with the regulation, the sellers of those goods and services are not" and so Pareto efficient decision-making is of no use (Hsieh 2017: 302).

   Here Hsieh is denying the basis of the first fundamental theorem of welfare economics, as many public choice theorists have done. One response might be: the genius of the MFA is that it appears to draw ethical water from the rock of economics, particularly its assumptions of the ideality of Pareto-conditioned markets. For those still accepting these basic economic theorems, the MFA can provide normative rules for behavior. For those who deny those theorems, it won't.

   But one could double down, and say that Pareto efficiency works when determining rules for ideal conditions of markets, but isn't meant to apply to particular transaction decisions (compare: rule-utilitarianism versus act-utilitarianism). Heath (2014: 100) specifically points out that "the reason that price competition is desirable is not that it benefits the people involved [in competing with each other], but rather that it generates external benefits for society at large"—lower prices, better products, some knowledge of price and so supply. At a macro-level, certainly the pursuit of "perfectly competitive markets" and Pareto conditions for such a perfect competitive environment have successfully provided the basis for the many regulations created specifically to prohibit behaviors leading to market failures. Heath (2014: 31) claims, "The entire legal structure of the firm, along with the regulatory environment, has been organized in such a way as to promote not just competition, but the precise type of competition that is likely to generate market-clearing prices. This is true of everything from antitrust to consumer protection law."

3. Third, Hsieh (2017: 302) raises the question of "the relevant conception of well-being to be maximized," citing various views of well-being. Here he is asking for much more than Heath's minimalism ever promised, and again questioning traditional economics itself. Heath gives baseline guidelines for managers – found in the basic laws to prevent market failures – not a full-blown decision making ethics. The rules of the market are derived according to the well-established notion that the well-being of society is best achieved when prices reflect social costs, and when no firm benefits by exploiting market failures.
4. Finally, Hsieh asks how the CEO of a pharmaceutical company should decide whether or not to develop a new drug according to MFA implying that the MFA fails to provide good guidance. In Heath's (2014: 90) words, "if all companies fully internalized all costs, and charged consumers the full price that the production of their goods imposed upon society, I believe it would be impossible to make the case for any further 'social responsibility' with respect to the environment." This gets at the heart of the MFA. The CEO should do what he can to maximize profit, while following regulations, particularly those which exist to preserve healthy competitive markets, and the spirit of those laws: i.e., not exploiting market failures, and not trying to change rules through lobbying to get an exploitative advantage (Heath 2014: 37, 111–112). This is likely to be much simpler, less-abstract, more practical, and more precise for managers than Hsieh's alternative that they consider instead how they might promote individual autonomy. Hsieh's view would also require that the value of autonomy or liberty be given justification—in this author's view, best supplied by Mill's utilitarian argument for it on the basis of social welfare, found in *On Liberty*.

## Conclusion

In summation, Hsieh's arguments against two key components of the MFA – the distinction between ordinary morality and competitive morality, and then the efficiency basis for market regulations – appear to fail. Dating is competitive, and not subject to ordinary morality, and the ideal of a perfectly competitive market provides a basis for an ethics oriented towards preventing market failures. MFA provides normative standards implicit in basic assumptions of economics itself.

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