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THE UNJUST AUTHORITY APPROACH TO THE FIRM

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ABSTRACT

Certain acts of employer authority are *prima facie* morally wrong and therefore in need of a justificatory criterion. I establish three forms of employer authority that can be judged: authority in, out and via the workplace. I reject a possible egalitarian criterion and look to the Market-Failure Approach to business ethics for a more convincing criterion that is in line with market logic. The approach appeals to transaction cost theory to explain the existence of employer authority. However, the moral logic underlying it denotes that competitive behaviour in the market is only justified if it exists in the spirit of the Pareto principle; it follows that employer authority within the firm is only justified if it exists in the spirit of the reason for the existence of the firm. That reason, according to transaction cost theory, is to combat uneconomical transaction costs. This line of argument allows for a justificatory criterion for employer authority within market logic: acts of authority are only legitimate and uncoercive if they are exerted in the spirit of cutting transaction costs; unjustified acts of employer authority constitute a transaction-cost reduction failure. I test the three forms of employer authority against the criterion and finally suggest a list of tentative guidelines for avoiding transaction-cost reduction failures.

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In the spring of 1998, political activist and journalist Barbara Ehrenreich sets out to live life as an unskilled worker in America. She has a vague inkling of the book she wants to write about the endeavour, but is nonetheless woefully unprepared for the months ahead of her. Ehrenreich retroactively refers to the period as visiting another world. “This world,” she says, “is a dictatorship”.¹

The journalist under cover barely gets by. She stands on her feet without breaks for eleven-hour shifts, serves intoxicated frat boys, cleans a hundred motel rooms in record time and suffers public humiliations and managerial bullying. Halfway through the first month of the experiment, Ehrenreich calculates she will need another job simply to meet rent for her dilapidated apartment. She is stricken by the poverty of her peers, who nonetheless work 80-hour weeks. Yet she is most taken aback by “the extent to which one is required to surrender one’s basic civil rights”.² One manager earnestly informs her she is only allowed to take two toilet breaks in a single shift; another warns her she is not to utter profanities whilst on the premises, on pain of firing.³ Often, there are rules against gossiping or even against talking with fellow employees, at all. Ehrenreich’s first job – waitressing at a chain-hotel in Key West, Florida – sees her purse and her personal locker searched without warning. Of course, since the purse (and locker) are on the employer’s property, this is perfectly legal.⁴ Not only Ehrenreich’s possessions, but also her body and mind may be searched; random drug tests and personality evaluations are common. The journalist remembers how

[i]n some testing protocols, the employee has to strip to her underwear and pee into a cup in the presence of an aide or technician. Mercifully, I got to keep my clothes on and shut the toilet stall door behind me, but even so, urination is a private act and it is degrading to have to perform it at the command of some powerful other. I would add preemployment personality tests to the list of demeaning intrusions... Maybe the hypothetical types of

¹ Matthew Collin, “Wage slaves”, *The Guardian*, August 31, 2002, Accessed March 2019, <https://www.theguardian.com/books/2002/aug/31/highereducation.shopping/>.

² Barbara Ehrenreich, *Nickled and Dimed* (New York: Henry Holt and Company, 2001): 114.

³ Ibid.

⁴ Ibid.

questions can be justified... but not questions about your “moods of self-pity,” whether you are a loner or believe you are usually misunderstood. It is unsettling, at the very least, to give a stranger access to things, like your self-doubts and your urine, that are otherwise shared only in medical or therapeutic situations.⁵

Ehrenreich’s account activated many a moral conscience and was written about extensively. Some decried the glaring inequalities exhumed by *Nickel and Dimed*.⁶ Some argued that our intuitions were incorrect, or that Ehrenreich’s account was false or exaggerated.⁷ Overall, however, it seemed that widely shared intuitions consider this type of power exercised by employers a grave abuse of authority. Therefore, *prima facie*, and without a plausible justification, this type of authority is clearly morally wrong. What (if anything) could then provide the justification necessary to prove our intuitions wrong, or adjudicate exactly to what extent this *prima facie* objectional authority in the workplace is justified? After all: “where we find social authority, we face the question of what establishes its legitimacy”.⁸

In fact, Christopher McMahon, the author of the above quote, is one of those attempting to address the problems of authority arising within the workplace in a way that is tied to a model of political legitimacy (most famously in his 2013 book *Public Capitalism: The Political Authority of Corporate Executives*), along with figures such as David Ciepley⁹ and Abraham Singer.¹⁰ I am sympathetic to this approach and the present text should certainly be considered to follow in their tradition. However, this thesis takes a congenial form as it offers an account of

⁵ Ibid.

⁶ Jeremy Seabrook, “Nickel and Dimed: Undercover in low-wage USA, by Barbara Ehrenreich”, *Independent*, July 6th, 2002, Accessed April, 2019, <https://www.independent.co.uk/arts-entertainment/books/reviews/nickel-and-dimed-undercover-in-low-wage-usa-by-barbara-ehrenreich-182814.html/>.

⁷ Peter Smith, “Homeless: Can you build a life from \$25?”, *The Christian Science Monitor*, February 11th, 2008, Accessed April, 2019, <https://www.csmonitor.com/Business/2008/0211/p13s02-wmgn.html/>.

⁸ Christopher McMahon, *Public Capitalism: The Political Authority of Corporate Executives* (Philadelphia: University of Pennsylvania Press, 2013): 1.

⁹ David Ciepley, “Beyond Public and Private: Toward a Political Theory of the Corporation”, *American Political Science Review* 107, no. 1 (2013): 139-158.

¹⁰ Abraham Singer, *The Form of the Firm: a Normative Political Theory of the Corporation* (New York: Oxford University Press, 2018).

employer authority that does not import political principles. Even from a business ethical perspective amenable to market-logic, I will argue, authority within the firm can be criticized. Ultimately, I will demonstrate that various instances of authority – such as firing someone over a racy blog, or requiring an employee to join a political rally – are illegitimate.

To that end, I will identify three forms of workplace authority that require justification: authority in, out, and via the workplace (section 1). Subsequently, I will search for a criterion that is able to answer which of these three types of employer authority can be justified, and to what degree. I look to Elizabeth Anderson's *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)* for such a criterion, but judge her methodology to be at odds with the logic that justifies the market (section 2). For that reason, I explore Joseph Heath's Market-Failure Approach to business ethics (section 3). Heath's ethical approach incorporates Ronald Coase's transaction cost theory – an economic theory – to explain the presence of employer authority, and thus in turn requires an exploration of that theory of the firm (section 4). I will argue that adopting Heath's approach entails the adoption of a certain justificatory logic that should rightly be applied to Coase's theory, as well (section 5). Subsequently, I will draw from that application a justificatory criterion to be applied to instances of employer authority: all acts of employer authority must be performed in the spirit of reducing transaction costs, or otherwise be instances of illegitimate, coercive authority (section 6). Finally, the previously identified forms of workplace authority will be set against this criterion, culminating in an explorative list of proposed prescriptions for justified employer authority (section 7).

1. Forms of Workplace Coercion

There undoubtedly exists much workplace authority that most people would hardly label coercive or unjustified. A vice-president assigning a manager to a new duty; a superior institutionalizing a new company-wide rule; a project leader rejecting an employee's idea – these are ostensibly all acts of authority that are not characterized as coercion. The problem with poultry workers being denied toilet breaks, forced to urinate and defecate in their clothes, wearing diapers to work and being mocked by their superiors¹¹ is not the exercising of authority, but that this authority seems (at least *prima facie*) unjustly exercised. What is harrowing about the 2012 Human Rights Watch report detailing widespread rape and sexual coercion, as well as “unwanted touching, verbal abuse, and exhibitionism”¹² among immigrant farmworkers is not the *presence* of power, but the *abuse* of that power. Thus, workplace authority only becomes workplace coercion when there is no justification for it.

Ehrenreich's account of low-wage America, the poultry workers' plight and the immigrant farmworkers' harassments, although harrowing in different ways, are similar in that they occur inside of the workplace. According to Christopher Bertram, however, this is only one in three ways that workplace coercion can take form. The professor identifies that “in addition to abridging freedoms on the job, employers abridge their employees' freedoms off the job”.¹³ This entails that employer authority may reach beyond the place of work. For example, in some American states, one can be fired for being gay (which is, if not a state of being, certainly not “performed” in the workplace),¹⁴ for using birth control (the pill

¹¹ *No Relief: Denial of Bathroom Breaks in the Poultry Industry*, Policy Papers, Oxfam America, May 9, 2016, Accessed March, 2019, https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf/.

¹² Human Rights Watch (Organization), *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, New York, NY: Human Rights Watch, 2012.

¹³ Chris Bertram, “Let it Bleed: Libertarianism and the Workplace”, *Crooked Timber* (blog), July 1st, 2012, crookedtimber.org/2012/07/01/let-it-bleed-libertarianism-and-the-workplace/.

¹⁴ Courtney Hodrick, “5 People Who Were Fired for Being Gay, And the 29 States Where That is Still Legal”, *The Williams Institute, UCLA School of Law*, July 24, 2012, Accessed March, 2019, <https://williamsinstitute.law.ucla.edu/press/5-people-who-were-fired-for-being-gay-and-the-29-states-where-that-is-still-legal/>.

being swallowed, presumably, in the comfort of one's home),¹⁵ or for refusing to disclose one's personal Facebook account password.¹⁶ More evidently, workers may be reprimanded for, amongst other things, smoking cigarettes at home, for participating in group sex (outside of the premises of the work place, that is), and for writing scathing critiques of whatever on their personal livejournal blogs.¹⁷ Thus, employer authority often does not end at the company gates; a second type of authority abuse is carried over into real life – although the punishment linked to this type of coercion can fortunately (a strange adverb to use for something that can be such a devastating event) largely only take the form of a firing.

Bertram distinguishes a third, separate category that exists apart from the on-the-job/off-the-job distinction: the “[u]se of sanctions inside the workplace as a supplement to – or substitute for – political repression by the state”.¹⁸ Let us categorize this as authority *via* the workplace. Indeed, since the Supreme Court in the United States decreed *Citizens United*, the campaign finance, constitutional- and corporate law case, valid in 2010, employer authority has made great advances into the political sphere. E-mail and phone conversations may be checked and recorded, certain conversational subjects may be barred and political activity can either be deemed mandatory or forbidden. In essence, *Citizens United* allows corporations and businesses to use their resources to whatever political end they see fit. Empirical research indicates that

[e]mployer political recruitment now runs the gamut from rather benign – and perhaps even normatively appealing – get-out-the-vote (GOTV) campaigns to more worrisome coercion of workers, with employers delivering threats about job loss, plant closures, or wage cuts if workers do

¹⁵ Nadine DeNinno, “Ariz. Birth Control Bill Lets Employers Fire Woman On Pill Based On Religious Views”, *International Business Times*, March 15, 2012, Accessed March, 2019, <https://www.ibtimes.com/ariz-birth-control-bill-lets-employers-fire-women-pill-based-religious-views-425530/>.

¹⁶ “House kills plan to block employers from demanding Facebook PASSWORDS from job applicants”, *Daily Mail Online*, March 30, 2012, Accessed March, 2019, <https://www.dailymail.co.uk/news/article-2122404/house-kills-plan-block-employers-demanding-Facebook-passwords-job-applicants.html/>.

¹⁷ Lewis Maltby, *Can They Do That?: Retaking Our Fundamental Rights in the Workplace*, New York: Portfolio, 2009.

¹⁸ Chris Bertram, “Let it Bleed: Libertarianism and the Workplace”, *Crooked Timber* (blog), July 1st, 2012, crookedtimber.org/2012/07/01/let-it-bleed-libertarianism-and-the-workplace/.

not support particular candidates, policies or issues... Equally troubling is the explosion of workplace technologies that offer methods for employers to track their employees' political preferences well before workers reach the secrecy of the ballot box. These technologies afford managers the opportunity to monitor whether workers actually followed through on the request that a company made, and then to discipline dissenting workers.¹⁹

Thus, in summary, we can identify the following three categories of workplace authority:

Category 1: authority *in* the workplace

Category 2: authority *out of* the workplace

Category 3: authority *via* the workplace

Against what theory, or type of approach, can we judge which of these categories can be justified, and to what extent?

¹⁹ Alexander Hertel-Fernandez and Paul M. Secunda, "Citizens Coerced: A Legislative Fix for Workplace Political Intimidations Post-Citizens United", *UCLA Law Review* 64, no. 1 (2016): 2.

2. The Egalitarian Approach

In her seminal work *Private Government: How Employers Rule Our Lives (and Why We Don't Talk About It)* published in 2017, Elizabeth Anderson advances a powerful approach of this kind. Anderson regards the realities of the modern work place, as illustrated in the previous section, through the lens of egalitarian political philosophy. She contends that to be “an egalitarian is to commend and promote a society in which its members interact as equals”,²⁰ and argues in *Private Government* that the way our firms (the titular private governments) function should be judged against this criterion. Presumably, then, *prima facie* objectional authority should be justified inasmuch as it furthers this end. Indeed, Anderson defends that efficient governance in the workplace *requires* some form of hierarchy and employer authority, but that this “neither explains nor justifies private government in the workplace”.²¹

Initially, *Private Government* furthers a historical analysis, arguing that in the real world, the market started out as an exercise in egalitarianism. Market societies were, up until the nineteenth century, synonymous with opposition to “social hierarchies in the economy, politics, religion, society and the family”.²² Everyone used to have their pre-ordained place in the natural order; the king ruled in God’s stead, the priest proclaimed His words and serfs toiled in His fields. The free market, however, would deliver the common man from the rigid social hierarchies of the preindustrial world.

John Locke and Adam Smith alike considered the market, property rights and free trade to be tools of egalitarianism – to be used towards an emancipatory economy. Locke’s insistence on equality, popular sovereignty and staunch opposition to arbitrary authority betray his egalitarian leanings, so argues

²⁰ Elizabeth Anderson, *Private Government: How Employers Rule our Lives*, (Oxford: Princeton University Press): 3.

²¹ *Ibid.*, 64.

²² Stephen Macedo, introduction to *Private Government: How Employers Rule our Lives*, by Elizabeth Anderson (Oxford: Princeton University Press, 2017), ix.

Anderson.²³ Additionally, Smith’s well-known pin factory, a vision of abolished guilds, broken-up wealth and hard work for a just reward constitutes a “deeply humane vision”.²⁴ Inequalities would soon disappear through the market’s emancipatory workings, as

Smith believed that in a fully free market, the commercial and manufacturing sectors would... be dominated by small-scale enterprises, run by independent artisans and merchants, with at most a few employees. Large-scale enterprises were a product of state-licensed monopolies, tariffs, and other mercantilist protections... In a free market, with barriers to entry eliminated, firms managed by their owners would out-compete the directors of joint-stock corporations because the former, risking their own money, would invest more energy, attention and skill in their businesses. With many entrants into the open market, rates of profit would fall. When profits are low, few great fortunes can be accumulated, so nearly all capital owners will have to work for a living.²⁵

Of course, the industrial revolution realized this idyllic vision only at terrible costs, such as horrendous working conditions and child labour. The nineteenth century was characterized by economies of scale and large sprawling factories employing many dozens of workers. Inequality took on monstrous proportions as the differences and hierarchies between employer and employee grew. Yet market egalitarians did not recognize that this social transformation also required a transformation of argument. Indeed, the “earlier arguments for market society... brought about the very opposite of the effects that were predicted and celebrated”.²⁶ Therefore, so Anderson argues, pro-market rhetoric today is primarily focused on abolishing unjust *state* authority, whilst simultaneously being blind to unjust *corporate* authority.

²³ Elizabeth Anderson, *Private Government: How Employers Rule Our Lives* (Oxford: Princeton University Press, 2017): 16-17.

²⁴ *Ibid.*, 22.

²⁵ *Ibid.*, 21.

²⁶ *Ibid.*, 36.

In the end, Anderson is unrelentingly harsh, speaking of “communist dictatorships in our midst, pervasively governing our lives, often to a far greater degree of control than the state”.²⁷ Where competition governs the market and should, according to the liberal view, deliver us unto freedom, Anderson sees no “internal markets in the modern work place”.²⁸ Markets end where the authority of the firm begins, and this authority is often (as corroborated by section 1) arbitrary and dangerously unaccountable. Theories of the firm explain the existence and the somewhat hierarchical nature of modern-day corporations, but do not justify employers’ near-total authority over their employees. They do not at all justify, according to Anderson, authority over an employee’s off-duty conduct.²⁹

Thus, Anderson concludes that unjust employer authority is obfuscated by an old and no longer relevant theory that originated in pre-industrial times. In essence, the theory makes libertarian- and other market-minded thinkers confuse some types of authority with freedom, and some types of freedom with authority. There does seem to be some truth to this, as many prominent libertarian theorists fail to acknowledge the very existence of workplace coercion. Jason Brennan, for instance, seems to hold the view that sexual harassment at work is morally repugnant, but not *coercive*.³⁰ Matt Zwolinski concedes that workplace coercion may exist, but argues, seemingly in the face of much evidence to the contrary, that “libertarians believe that in most cases, employers don’t actually wield as much power over their employees as they might seem to”.³¹ However, attractive as *Private Government*’s account is, it embraces a specifically egalitarian approach that laments the hierarchies of the workplace solely on a historical, political philosophical basis. Undoubtedly, most if not all libertarians and other market-

²⁷ Ibid., 40.

²⁸ Ibid., 39.

²⁹ Ibid., 52.

³⁰ Jason Brennan, “Some comments on Bertram”, *Bleeding Heart Libertarians* (blog), June 1st, 2012, bleedingheartlibertarians.com/2012/06/some-comments-on-bertram/.

³¹ Matt Zwolinski, “Libertarianism and Private Power”, *Bleeding Heart Libertarians* (blog), June 7th, 2012, bleedingheartlibertarians.com/2012/06/libertarianism-and-private-power/.

minded people have not taken the egalitarian approach to the market, but subscribe to a *market-logic approach to the market*. Anderson does not attempt to place the firm in the context of the global market economy, nor does she consider its intricacies. *Private Government* simply applies egalitarian principles directly to the firm. Moreover, such a practice takes the corporation to be so similar to the state as to require no additional considerations.³² Anderson takes this route without justification.

Appropriately and illustratively, business ethicist Joseph Heath argues that political philosophers often “have no hesitation moving from abstract theories of justice... to much more specific “applied” normative questions when dealing with the classic institution of government and the state”;³³ however, in doing so the architecture and, more importantly, justifications of market institutions and regulations themselves are left neglected. Heath emphasizes that moral theories are restricted by non-ideal circumstances, in which the workings of human psychology often play a key role. The egalitarian principles Anderson employs constitute a “first-best framework... that ignores all of this *in the formulation of its principles*”.³⁴ The market, in contrast, is “governed by a set of *third-best* normative principles [emphasis mine]”³⁵ that function as the morality of the market, and justify its practices. I will return to these third-best principles more elaborately in the next section. Relevant for now is that in justifying (or condemning) the existence and practices of the firm – in particular the limits of employer authority – it seems an approach grounded in business ethics may prove to be not only much more convincing, but also more consistent with market-oriented logic.

What would be necessary for such an approach? Historically, business ethicists have chiefly been concerned with “market systems; the regulations of

³² Joseph Heath, Jeffrey Moriarty and Wayne Norman, “Business Ethics and (or as) Political Philosophy”, *Business Ethics Quarterly* 20, no. 3 (2010): 429.

³³ *Ibid.*, 436.

³⁴ Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 176.

³⁵ *Ibid.*, 173.

markets and firms; the self-regulation of firms; and the activities of businesses or the individuals working for, or interacting with, businesses”.³⁶ However, an accurate view of the field requires not only knowledge of contractual relations between employer and employee, fiduciary relations between CEOs and shareholders and relations between corporation and society, but also of corporate law and regulations and practices of governance. To that end, Heath advocates for a normatively comprehensive, consistent approach to business ethics, claiming it is imperative to

encourage the community of business ethicists to take more seriously the need for “unified” normative theorizing... This will require taking up the task of developing a more systematic political philosophy for private-sector institutions like markets and firms. And like the best work in political philosophy on public-sector institutions such as electoral or education systems, it will involve more than merely applying abstract principles of justice.³⁷

Undoubtedly, a theory of the firm that has something to say about employer authority in the workplace is part of such a unified normative theory of business ethics. Moreover, a theory like this should be able to philosophically express the firm as an entity in terms of market logic. In the next section, we will attempt to identify the logic that need underlie such a theory of the firm via Joseph Heath’s very own – and eminently popular – Market-Failure Approach to business ethics.

³⁶ Joseph Heath, Jeffrey Moriarty and Wayne Norman, “Business Ethics and (or as) Political Philosophy”, *Business Ethics Quarterly* 20, no. 3 (2010): 428.

³⁷ *Ibid.*

3. The Market-Failure Approach

The Market-Failure Approach to business ethics (henceforth: MFA) satisfies both sides of the liberal-libertarian divide by on the one hand producing “rather demanding normative standards of conduct in business”,³⁸ and on the other by not denying shareholder primacy and the voluntary nature of the market. The theory emphasizes that the function of profit within the market economy is *instrumental* and not an end in itself, without conceding that corporations have a degree of moral responsibility towards anyone and everyone with a ‘stake’ in their functioning. Even the previously-mentioned libertarian Jason Brennan contends that “Heath has to some degree rescued the field by providing what is perhaps the only good general theory of business ethics”,³⁹ where before the MFA much of the debate within the discipline revolved around the much more ideologically divisive stakeholder- and shareholder theories, seemingly to no avail.

Highly important to our search for a criterion able to adjudicate the justifiability of employer authority is that the MFA is situated within a moral framework that convincingly systematizes the market’s moral logic. Most other theories of ethics in business attempt to draw from moral considerations that lay outside of the confines of the market (not only Anderson’s account, but also Norman Bowie’s Kantian business ethics⁴⁰ and Robert Solomon’s virtue ethical approach to business⁴¹ are prime examples, here). In contrast, Heath’s approach appeals “to normative standards... that are already implicit in the institutions of a market economy”.⁴² If the market is construed as an *expression* of the morality that capitalism requires of us, one can distill out of it an ethos; indeed, Heath asserts that his approach articulates “an ethical ideal... [and] can rightly claim to

³⁸ Rosemarie Monge, review of *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics*, by Joseph Heath, *Business Ethics Quarterly* 26, no. 3 (2016): 433.

³⁹ Jason Brennan, review of *Morality, Competition, and the Firm: The Market Failure Approach to Business Ethics*, by Joseph Heath, *Kennedy Institute of Ethics Journal* 26, no. 1 (2015): 1.

⁴⁰ Norman E. Bowie, *Business Ethics: A Kantian Perspective*, 2nd ed. (Cambridge: Cambridge University Press, 2017).

⁴¹ Robert C. Solomon, *Ethics and Excellence: Cooperation and Integrity in Business* (New York: Oxford University Press, 1992).

⁴² Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 19.

be articulating its true essence”,⁴³ because it is congruent with capitalism’s economic goals. It should be noted, however, that this thesis does not aim to judge the validity of the MFA, nor is it unaware of the legitimate critique urging that

[b]y looking to the logic of the market to derive the morality upon which market actors ought to act, one might say we have essentially capitulated to the economists and financiers; instead of attempting to challenge the hegemony of economic reasoning, it seems that the ethicists are ceding the ground to the economists themselves. The MFA, in this view, is pragmatic in the pejorative sense of being without principle, strategically aligning itself in such a manner so as to gain favor and resonance with the relevant economic discourse of the day.⁴⁴

This thesis merely aims to advance that an account of employer authority grounded in an internally consistent market-logic approach is, as previously mentioned, not only more convincing to market-oriented people, but also more relevant within the firm – undoubtedly an institution under the yoke of ‘economic reasoning’. Of course, this in no way precludes or discounts ‘outside’ approaches such as Anderson’s.

As previously alluded to, Heath asserts that the market as a moral system is governed by a third-best normative framework. The philosopher employs this “apparatus of first-best, second-best, *n*th-best... to find a more precise way of articulating the way that normative principles can be weakened, in order to render them more incentive-compatible, without being dissolved entirely”.⁴⁵ Thus, to achieve maximum compliance with ethical principles, these very principles are effectively watered down. The market as a moral system, then, is a twice-watered-down set of principles: a third-best normative theory. Notably, this approach immediately betrays the MFA’s eminently practical aspirations; a first-

⁴³ Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 372.

⁴⁴ Abraham Singer, “Justice Failure: Efficiency and Equality in Business Ethics”, *Journal of Business Ethics* 149, no. 1 (2018): 104.

⁴⁵ Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 204.

best theory, such as Kantian deontology or act-utilitarianism, requires perfect and full compliance, and considers the demands of morality without reference to the restrictions that may hold in reality. They are ‘ideal’ theories in the truest sense of the word.

Heath asserts that a first-best theory enters *non-ideal* territory when it becomes clear that moral agents may, for whatever reason, fail to do what is morally required. In establishing this first-best, non-ideal theory, it may be discovered that people “may require some non-moral incentive in order to comply with the moral rules... oriented towards getting as close as possible to the satisfaction of the first-best principle”.⁴⁶ Often, social institutions with some coercive or corrective power take upon themselves this non-moral, incentivizing function.

For a variety of reasons, however, it may be necessary to reconstrue the principles the non-ideal, first-best theory was founded on *themselves*. Chief of these reasons may simply be the impossibility of implementation even with the non-ideal incentives in place. Alternatively, forcing compliance may involve an inordinate, unjustifiable amount of institutional coercion (a highly relevant consideration in our contexts).⁴⁷ In any case, in formulating new normative principles, the now ‘second-best’ theory once again assumes full compliance – after all, it was initiated to acquiesce the non-ideal considerations that caused the non-compliance in the first place. Heath advances John Rawls’s theory of justice as a prime example of such a theory, as it draws normative principles from the assumption of restrained altruism, the oft-present psychological inability of self-sacrifice, and other “human frailties that make certain first-best theories unworkable, or unsuitable as candidates for a theory of justice”.⁴⁸ Rawls’s theory does, however, assume full compliance with the principles it advances and thus snaps back from non-ideal to ideal theory – just in a second-best framework.

⁴⁶ Ibid., 177.

⁴⁷ Ibid.

⁴⁸ Ibid., 180.

Heath asserts that this process is iterative, meaning that other, unforeseen implementation problems may again arise in adopting second-best, ideal principles. And so, non-ideal considerations may once again have to be taken into account, forcing the second-best framework into non-ideal territory. Subsequently, if these new implementation problems end up being too severe to fix, or if another set of unexpected difficulties crops up on account of the non-ideal incentives meant to fix them, the normative principles themselves may *once again* require adjustments. At this time, a third-best theory comes into being.

The market can be seen as the expression of such a third-best theory; Heath argues that “a market economy is best seen as a response to implementation problems encountered when trying to institutionalize a second-best theory of justice over the allocation of goods and resources, and so constitutes a third-best framework”.⁴⁹ It is, in essence, an attempt to approach first-best, ideal normative principles, only twice diluted (presumably, government intervention in the workings of the market is one of the subsequent third-best, non-ideal considerations necessary to attempt to guarantee the market’s intended goal). Of course, the severe dilution of normative principles through two iterations leads to widespread skepticism about ethics coming into play at all; to many, the market seems to be an exercise in quite the opposite since competitive and adversarial behaviour is, by definition, undesirable behaviour in a cooperative, morally structured society. However, so Heath theorizes:

In some cases... there are significant obstacles to directly institutionalizing a system of cooperation. This is particularly true when the interactions are large-scale and anonymous, and so internalized moral constraints on free riding are weakened. Under such circumstances, we may be able to further expand the benefits of cooperation by organizing a competition, in essence harnessing the free-rider incentive and deploying it in such a way as to generate beneficial outcomes as a byproduct.⁵⁰

⁴⁹ Ibid., 181.

⁵⁰ Ibid., 186.

By situating the MFA in this ethical framework, Heath is able to show that even the twice-diluted market framework demands full compliance with a normative principle, and that this in turn produces considerably stringent duties for market actors. The principle ethical market actors are supposed to follow, one that instrumentalizes the free-rider incentive and generates positive externalities is, of course, the well-known Pareto principle.

The Pareto principle originated in the discipline of economics and decrees that “an allocation of resources is efficient if it is impossible to make an individual better-off without making another worse off”.⁵¹ Thus, in following the Paretian principle, the market should be able to distribute the positive externalities of trade efficiently. However, because it can only lead to a maximally efficient state through staging a competition that is “designed to promote Pareto efficiency as a *byproduct* of competitive behavior on the part of firms [emphasis mine]”,⁵² the MFA postulates an adversarial ethic that makes efficiency not the explicit but *implicit* market morality. The MFA’s adversarial ethic grants market actors “temporary and partial exemption from some of the norms that ordinarily structure interpersonal relations”,⁵³ in order to create the desired positive, Paretian externalities. Market transactions that generate these externalities, competitive in nature, are resolved via the price mechanism that moves “prices toward the level that promotes the socially optimal use of resources”;⁵⁴ this is Adam Smith’s oft-cited invisible hand.

Of course, the externalities need to be so greatly beneficial as to outweigh the losses that are incurred by and through the competing market actors. Heath adopts the analogy of a sports competition to illustrate this point. Imagine a yearly

⁵¹ Julian Le Grand, “Equity Versus Efficiency: The Elusive Trade-Off”, *Ethics* 100, no.3 (1990): 562-563.

⁵² Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 198.

⁵³ Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 359.

⁵⁴ *Ibid.*, 368.

eating competition taking place at the Heart Attack Grill in Las Vegas, Nevada. Five contestants have exactly one hour to consume as many 6000-calorie-containing ‘Triple Bypass Burgers’ as possible. Now imagine this competition is wildly popular and broadcasted all over the globe. Triple Bypass Burgers have been known to cause heart attacks,⁵⁵ so the contestants studiously train their stomachs and temperaments for three days a week. Contestant one, a young woman called Beverly, seeks to gain an edge over her rival competitive eaters and starts practicing for four days a week. To be sure, she eats her way to a convincing victory. However, this incites Beverly’s competitors to match her tedious training regimen. Halfway towards the next year’s competition, Beverly picks up on her competitors’ increased training schedules and subsequently ups the amount of days she trains to five. That year, she wins the Bypass Cup only by a whisker. Her competitors immediately match her schedule. The next year around, Beverly trains for six days. The next, seven. Surely, for years now, Beverly as well as her rivals have become nauseous at just the thought of a Triple Bypass Burger, but the spectacle of sheer willpower and sportsmanlike determination emanating from the fierce competition bring about huge positive externalities for the millions of people watching.

The competitors’ motivations are, in light of generating *externalities*, geared towards competitiveness; to them, the cooperative, positive benefits generated by the competition are – necessarily – a happy coincidence. In other words, the explicit logic Beverly and the others adhere to remains adversarial, even though the implicit logic of the achieved externalities is cooperative. Thus, a competition “generates a race to the bottom”.⁵⁶ By and of itself this is not a bad thing, as long as the positive externalities continue to so massively outweigh the actors’ losses. We may feel sad when we realize that Beverly has divorced her partner over her

⁵⁵ Laura Bly, “Customer dies of heart attack at the Heart Attack Grill in Vegas”, *USA Today*, 12th February, 2013, Accessed April, 2019, <https://eu.usatoday.com/story/dispatches/2013/02/12/las-vegas-heart-attack-grill-death/1912493/>.

⁵⁶ Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 361.

singular focus on eating contests, but soon forget about it when we are swept away by Beverly's splendid chewing technique on the fifth burger. But what if, overcome by the adversarial logic she keeps, Beverly starts taking inordinate risks to win the Bypass Cup? Perhaps she forces her already overtaxed body to consume one more burger than she knows she can take, in the process seriously increasing her chances of hospitalization. Perhaps she spikes her opponents' burgers with laxatives. Perhaps she secretly takes illegal and dangerous stomach-expanding drugs, forcing her competitors to match her. At this point, Beverly betrays the Paretian principle that rationalizes and vindicates the competition's adversarial logic, as the losses incurred by the competitive actors now become larger than the positive externalities generated for the spectators.

This is what happens when a market failure occurs. To be sure, an ideal situation would see Beverly realizing that this specific competitive behaviour betrays the cooperative *spirit* of the competition. However, Heath recognizes that “the logic of the collective action problem at the heart of athletic competition generally precludes this sort of high-mindedness”.⁵⁷ Unfortunately, this entails that shareholders, upper-management employees and other market actors generally adopt the adversarial logic unknowing of – or uncaring towards – the market's cooperative spirit. They may abuse or create market failures to make a profit, generating unmatchable losses for society at large – the 2008 global financial crisis being the most evocative example.⁵⁸

The MFA, then, espouses that the “firm should behave *as though* market conditions were perfectly competitive, even though they may not in fact be [emphasis mine]”.⁵⁹ In other words: firms should compete only in a way that drives the generation of positive externalities, only in the name of the market's

⁵⁷ Ibid., 362.

⁵⁸ Borys Grochulski and Wendy Morrison, “Understanding Market Failure in the 2007-08 Crisis”, Economic Brief 14-12 by the *Federal Reserve Bank of Richmond*, www.richmondfed.org/~media/richmondfedorg/publications/research/economic_brief/2014/eb_14-12.pdf/.

⁵⁹ Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 37.

Paretian aspirations, only in the spirit of cooperation. This, in turn, leads Heath to formulate surprisingly demanding and restrictive rules for firms to follow. For instance, negative externalities (climate change being the most evocative) should be minimized, customer-firm information asymmetries should be equalized, barriers to entry should be destroyed and government regulation meant to smooth over market flaws should never be opposed.⁶⁰ Our world would look very different indeed if the world economy would fully adhere to MFA's moral logic. And in fact, so Heath notes, "in the real world, any firm that began to unilaterally respect these constraints would be quickly eliminated from the marketplace".⁶¹

I shall return to the logic underlying the MFA in due time; for now it is important to note that, strangely, the MFA heavily undertheorizes the firm *itself*. For all it says about the moral rules firms should abide by within market competition, it says strikingly little about their inner workings. Heath simply (and briefly) decrees the firm "governed by an essentially cooperative logic"⁶² due to uneconomical transaction costs, appealing to Coase's theory of the firm. The MFA consequently tells us little about a just design or the architectural, moral logic underlying the firm, and less still about the justifiability of Ehrenreich's observations and our three forms of employer authority. Heath tantalizingly postulates, in keeping with the sports analogy, that "there is still a fundamental distinction between what you owe to players on your own team and what you owe to those of a rival team".⁶³ He seems to consider the existence of Coase's theory of the firm to be a more than sufficient answer, however, and subsequently drops the question altogether. Thus, before developing what the MFA's moral logic could mean for justified authority within the firm in section 5, it makes sense to briefly look for the relevant considerations present in Coase's transaction cost

⁶⁰ A full list can be construed from Heath's *Morality, Competition, and the Firm*, but in general, rules can be summarized as "do not abuse market failures".

⁶¹ Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 37.

⁶² Joseph Heath, "An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder", *Journal of Business Ethics* 72, no. 4 (2007): 368.

⁶³ *Ibid.*

theory (henceforth: TCT), seeing as the MFA wholeheartedly adopts it. Coase's TCT will be covered in the next section.

4. Transaction Cost Theory and Workplace Authority

If not the MFA itself, then surely the theory of the firm it appeals to must have something to say about employer authority; we will explore Coase's answer in this section. In "The Nature of the Firm", written in 1937, the late Ronald Coase argues that the firm can only be correctly defined if analyzed as a part of our economic framework as a whole. He proposes TCT to include the firm in this framework. In an analysis of authority in the firm, David Ciepley decries that, although the field of economics still defers to Coase's genius, "few were interested in building upon... [his] insights".⁶⁴ The still-growing field of transaction costs economics, however, is heavily indebted to the transaction cost theory of the firm.⁶⁵ Coase's theory thus remains relevant not only in business ethics, but in economics, as well, and Heath's appeal to it is not borne out of personal preference but out of academic relevance.

One of the neoclassical economic framework's defining features, so says Coase, is that it is self-sufficient; it "works itself... [and] is under no central control, it needs no central survey".⁶⁶ The way supply and demand work in tandem to manage the production of resources is not a conscious decision on the part of bankers or entrepreneurs; it is governed by the price mechanism. To clarify: a product's price constitutes not just whatever its producer can get for it, but is simultaneously indicative of that product's scarcity, production costs and general position in the market with regard to competitors. The point at which the supply and demand curves intersect is the market clearing price.⁶⁷

However, Coase establishes that the firm is entirely unbothered by the economy's ways. Within the firm, the price mechanism is *superseded* – and this is

⁶⁴ David Ciepley, "Authority in the Firm (and the Attempt to Theorize it Away)", *Critical Review* 16, no. 1 (2004): 94.

⁶⁵ Oliver E. Williamson, "The Economics of Organization: The Transaction Cost Approach" *American Journal of Sociology* 87, no 3 (1981): 548-577.

⁶⁶ Ronald Coase, "The Nature of the Firm", *Economica* 4, no. 16 (1937): 387.

⁶⁷ Joseph Heath, "An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder", *Journal of Business Ethics* 72, no. 4 (2007): 364.

indeed its “distinguishing mark”.⁶⁸ If Barbara Ehrenreich refuses to undress and urinate in a cup in the presence of an attendant, this has exceedingly little to do with the price mechanism, and much more with her not accepting her employer’s authority. Yet, if production is entirely managed by the price mechanism, why does authority come into play at all? Why should the firm exist at all? “The Nature of the Firm” sets out to answer this question.

Coase postulates that there must be some type of cost involved in utilizing the price mechanism. These are transaction costs that are

associated with defining and enforcing property and contract rights and which are a necessary incident of organizing any activity on a market model. Coase explained the emergence and limits of firms based on the differences in the transaction costs associated with organizing production through markets or through firms. People use markets when the gains from doing so, net of transaction costs, exceed the gains from doing the same thing in a managed firm, net of organization costs. Firms emerge when the opposite is true. Any individual firms will stop growing when its organization costs exceed the organization costs of a smaller firm.⁶⁹

In short, organizing production can be excessively costly in a myriad of ways. For one, finding out the what the relevant market prices one needs to be aware of at all can be a costly endeavor. For another, it may be necessary to enforce that either (or both) parties keep up their end of the bargain, and this may require a third party that essentially polices the deal. Whatever the type of transaction cost, another manner of economic organization – the firm – would “achieve the same result at less cost than would be incurred by using the market”.⁷⁰ A highly relevant illustration to our case revolves around bargaining costs – more specifically: the “costs of negotiating and concluding a *separate contract* for each exchange transaction which takes place on a market [emphasis mine]”.⁷¹ Imagine a middle-

⁶⁸ Ibid., 389.

⁶⁹ Yochai Benkler, “Coase’s Penguin, or, Linux and “The Nature of the Firm””, *The Yale Law Journal* 112, no. 3 (2002): 372.

⁷⁰ Ronald Coase, “The Problem of Social Cost”, *Journal of Law and Economics* 3, no. (1960): 16.

⁷¹ Ronald Coase, “The Nature of the Firm”, *Economica* 4, no. 16 (1937): 390.

aged fisherman living in the village of Dunwich. Let us call him Wilbur. Dunwich has three fisheries. Every morning, Wilbur peruses all three fisheries and negotiates with their owners a day-contract, aiming to strike a deal for the least amount of fish caught for the most money. He competes with 150 other fishermen also living in and around Dunwich. Or, perhaps more illustratively, imagine that all the 151 fishermen of Dunwich negotiate a price for every single fish caught; more illustrative still, perhaps they even negotiate a price for every fishing pole swung; in any case, it should be clear by now that no one would get any *actual* work done.

Superseding the price mechanism thus seems a necessity in the case of Dunwich. Of course, this does not mean contracts as a concept stop existing, simply that their contents and occurrence are “greatly reduced”.⁷² Wilbur would engage in a contract with his employer, for example, for a year or two, simply agreeing to catch a minimum of ten fish a day, perhaps stipulating a bonus for every five fish caught beyond that. The point of establishing a contract in this way is that it should thus “state the limits to the power of the entrepreneur”,⁷³ instead of stating the exact *extent of power*. Consequently, within the bounds of the contract, the entrepreneur can direct all other facets of production. Arranging matters in this way is, at least in this case, highly beneficial for both parties.

Of course, this win-win situation need not always exist, as painfully evidenced by the types of authority abuses outlined in section 1. Herbert Simon expresses this tension by building on Coase’s TCT. The famed economist and political scientist differentiates between *employment* contracts and *sales* contracts, the latter of which is “the kind of contract that is assumed in ordinary formulations of price theory”.⁷⁴ Between these two types of contract, so Simon argues, there is always a tentative equilibrium between contractual flexibility and authoritative moral hazard. A sales contract – such as one we can imagine Wilbur signing when

⁷² Ibid., 391.

⁷³ Ibid.

⁷⁴ Herbert A. Simon, “A Formal Theory of the Employment Relationship”, *Econometrica* 19, no. 3 (1951): 294.

he, at the end of the day, attempts to sell that day's catch between the three fisheries – often pays better than an employment contract, for the simple reason that the executive agent “knows the exact cost of the task execution when he decides whether or not to accept the contract offer”.⁷⁵ Wilbur may have agreed to a lump sum payout on a day he barely caught any fish, or conversely, signed a contract stipulating an inordinately high price per fish on a day they were practically jumping in his lap. This is, clearly, in his favor. However, an employment contract – such as the one we can imagine Wilbur having when he has signed a year-contract at one of the fisheries – allows the employer to respond to changes in the state of the world. Wilbur acquires the security of a monthly salary, but no longer receives more money on a really good day. However, in being able to respond to real world vectors (such as the weather, the seasons, or the number of available fishermen) this arrangement allows the employer some leeway in exploiting Wilbur. This is the authoritative moral hazard.⁷⁶ Perhaps his employer decrees that Wilbur should use some sort of fishing apparatus that leaves him dreadfully fatigued at the end of the day, but doubles his output – of course, for the very same monthly salary. Thus, agreeing to a year-long contract diminishes the costs of negotiating a contract for every single fish caught for both parties, but necessarily involves some obscurity in its stipulations, since

owing to the difficulty of forecasting, the longer the period of the contract is for the supply of the commodity or service, the less possible, and indeed, the less desirable it is for the person purchasing to specify what the other contracting party is expected to do. It may well be a matter of indifference to the person supplying the service or commodity which of several courses of action is taken, but not to the purchaser of that service or commodity. But the purchaser will not know which of the several courses he will want the supplier to take. Therefore, the service which is being provided is expressed in general terms, the exact details being left until a later date.⁷⁷

⁷⁵ Björn Bartling, Ernst Fehr and Klaus M. Schmidt, “Use and Abuse of Authority: A Behavioral Foundation of the Employment Relation”, *IZA DP 7029* (2012): 1.

⁷⁶ *Ibid.*

⁷⁷ Ronald Coase, “The Nature of the Firm”, *Economica* 4, no. 16 (1937): 392.

And thus, a firm is erected when the costs involved in utilizing the price mechanism – Coase’s transaction costs – *outweigh* the costs of producing and organizing. To do so, it is

necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of contract are being observed, and so on.⁷⁸

In summary, transaction costs consist of:

- Information costs
- Bargaining costs
- Enforcement costs

Superseding the price mechanism and dodging transaction costs is necessarily achieved, however, by an employer and employee agreeing not on what authority the employer *may* exert, but on what authority the employer *may not* exert. This is because their contract needs to be somewhat open-ended for the employer to be able to adapt to changing conditions in the real world. Being an economist, Coase says little about to what extent such authority within the firm is permissible. There are limits, but for Coase they are solely dependent on the terms of the contract signed between employer and employee and have little to do with the philosophical justifiability of the authority exerted. Simon agrees, simply stating that authority is a “relationship created by the employment contract”.⁷⁹ Ethics, then, does not come into play.

⁷⁸ Ronald Coase, “The Problem of Social Cost”, *Journal of Law and Economics* 3, no. (1960): 15.

⁷⁹ Herbert A. Simon, “A Formal Theory of the Employment Relationship”, *Econometrica* 19, no. 3 (1951): 293.

5. Transaction Cost Theory in the Spirit of Market-Failure Logic

Let us briefly recap. Employers can wield a type of authority in the workplace that is *prima facie* unjustified. This is illegitimate, coercive authority. There are three types of employer authority: authority in, out and via the workplace. We are looking for a criterion to determine which of these types of authority are justifiable and to what extent. We looked at Elizabeth Anderson's account of employer authority, but found her methodology to be unsuited to the logic that justifies the market itself. Therefore, we moved towards Joseph Heath's Market-Failure Approach to business ethics to find out what it says about the subject at hand. Heath's theory appeals to Coase's theory of the firm to explain the existence of the firm. The question we are now pressed to answer in the search for a business ethical theory of the firm that can justify employer authority is the following: why should Heath's appeal to Coase not be sufficient justification? In a way, we have already reached our conclusion: authority exists by and is justified through contracts forged to combat uneconomical transaction costs. A contract stipulates what an employer may *not* do, and if a signed contract does not spell out that an employee will not be, for instance, sexually harassed, then perhaps Jason Brennan is right: perhaps sexual harassment in the workplace is indeed morally wrong, but "not really coercive".⁸⁰ Why, then, would the MFA require something else?

There are two arguments advanced in this section that provide an answer to this question. The first, which I will dub the 'stronger' Singer argument, draws heavily on Abraham Singer's 'justice failures' account. It argues that adopting the MFA entails the adoption of several presuppositions that disqualify a simple appeal to Coase's theory of the firm without further ethical scrutiny. The second argument does not require a full embracement of Singer's conception of a 'justice failure', but appeals to implications that can be drawn from its methodology. This 'weaker' version of the Singer argument holds that, in using the market as a moral

⁸⁰ Jason Brennan, "Some comments on Bertram", *Bleeding Heart Libertarians* (blog), June 1st, 2012, bleedingheartlibertarians.com/2012/06/some-comments-on-bertram/.

framework, Heath is inconsistently referring once again to a purely economic theory when it comes to the firm. Although only the stronger argument adds to the idea that other philosophical or political considerations can be adopted alongside a market-focused approach, both arguments suggest that if the price mechanism is superseded, as happens within the firm, it does not follow that the firm is subsequently absolved from the MFA's Paretian aspirations. As we will see, adoption of either version of the Singer argument leads to consequences for the forms of employer authority that were covered in section 1. In following the line of thought this section advances, we will be able to tentatively sketch a justificatory procedure for employer authority in section 6. Let us firstly look at the 'stronger' Singer argument.

In his 2016 article "Justice Failure: Efficiency and Equality in Business Ethics", Abraham Singer introduces the idea of a justice failure as a complement to Heath's conception of a market failure. The concept suggests a failure on the part of the welfare state to "achieve all possible movements towards equality consistent with efficiency".⁸¹ The business ethicist argues that, as businesses must compete in the spirit of cooperation, so must they compete in the spirit of justice. As they may not make use of market failures because it betrays the market's Paretian justifications, so they may not benefit from justice failures because doing so betrays the moral framework that justifies the market itself. How and why the market is only justified through its positions within a broader pattern of justice is best explained through firstly specifying the three types of justice failure Singer proposes.

Singer's first justice failure, political justice failure, interprets the whole of the political system not *just* as an institution tasked with preventing market failures, but bestows it with the responsibility to promote societal equality. Heath's MFA, primarily referring to government in its capacity as a market regulator, can

⁸¹ Abraham Singer, "Justice Failure: Efficiency and Equality in Business Ethics", *Journal of Business Ethics* 149, no. 1 (2018): 107.

thus only take us “part of the way there”.⁸² If expressed in this way, it becomes obvious that business interfering in politics can sometimes refrain from causing or making use of market failures (as the MFA decrees they should), yet still have some adverse effect on equality. The prime example of this being, of course, business interests having disproportionate influence on electoral processes. Even if, hypothetically, these interests should achieve the election of a staunchly anti-market-failure politician, it can still be rightfully called a justice failure, according to Singer’s theory. Corporate activity that causes some democratic interests to be represented ‘more equally’ than others does not live up to the spirit of justice that validates that activity’s very existence.

Another justice failure, dubbed social justice failure, suggests that certain deep-rooted, often “historically grounded”⁸³ injustices and inequalities necessitate different types of institutions and systems than we would erect in a perfectly equal, just world. Against a background of often institutionalized racism, sexism and other inequalities, access to the boons of market efficiency may be distributed unequally. Consequently: “To say that the market must stay the course of efficiency is to resign oneself to the possibility that one might further perpetuate the initial inequality in the process”.⁸⁴ Doing so would thus constitute a social justice failure. In turn, this entails that businesses are not just required to follow, for instance, the affirmative action laws erected to solve systematic inequalities, but to also follow the spirit of equality *informing* those laws. In a similar vein, Singer proposes a third justice failure – distributive justice failure – that “refers to the institutional maldistribution of resources of income”.⁸⁵ For instance, businesses should, according to Singer, not only follow the tax laws, but their redistributive spirit – in the name of equality –, as well. Thus, they should not engage in tax

⁸² Ibid., 109.

⁸³ Ibid., 110.

⁸⁴ Ibid., 111.

⁸⁵ Ibid., 112.

arbitrage or otherwise misuse tax loopholes. Another way to not make us of a distributive justice failure, is to refrain from union busting.

This brings us part of the way, but it remains partially unclear what justifies this conception of a justice failure, and why the MFA should endorse it. Singer argues that adopting the MFA entails adopting a set of presuppositions in relation to principles that justify it. In other words: where Heath places the market within a moral system, he neglects to subsequently place that very system within the framework that justifies it in the first place. This does not mean that the MFA is false, but simply that its adoption implies further responsibilities on the part of businesses. Its

scope of critique is too narrow. The project is built on the norm of efficiency because efficiency is the implicit morality of the market. However, there is a more substantive implied morality when it is not simply the market being considered, but *the market and its place within a larger scheme of social cooperation*. Unless the MFA wishes to assert efficiency as the most important aspect of justice (as opposed to one component part of it), the morality of pursuing efficiency must rest on the background of a larger scheme of social equality.⁸⁶

In a more concrete sense, this means that businesses should be concerned with values other than efficiency, because the MFA presupposes they can only chase that value *by virtue of the existence of institutions* that preside over other, equally important values. The market can only pursue efficiency because other institutions hold the fort on other values that benefit society.

A similar argument that may help to illustrate this co-dependence of the market and other institutions in the grand scheme of social cooperation is made by Liam Murphy and Thomas Nagel, who assert that

[t]here is no market without government and no government without taxes; and what type of market there is depends on laws and policy

⁸⁶ Ibid., 106.

decisions that government must make. In the absence of a legal system supported by taxes, there couldn't be money, banks, corporations, stock exchanges, patents, or modern market economy – none of the institutions that make possible the existence of almost all contemporary forms of income and wealth.⁸⁷

Although Murphy and Nagel focus on the relationship between *taxes* and justice, their relevance to Singer's point is evident. Singer simply adds that by infringing upon its companion's – government and other institutions erected to bring about equality and fairness – goals, businesses simultaneously renege on that which justifies their very existence. Additionally, this entails certain responsibilities other than those having to do with avoiding market failures. States and other institutions often fail in their endeavors (and not always due to market-actors abusing market failures), and because “the institutional division of labor between efficiency and equality upon which the MFA rests is not tenable”,⁸⁸ businesses are to keep other values in mind.

For our purposes, there are two important conclusions to be drawn from this argument. Firstly, it means that the egalitarian considerations forwarded by Elizabeth Anderson in *Private Government*, as well as political considerations like those advanced by McMahan and Ciepley, can be reached *via* market-logic and within the framework of business ethics; they should, therefore, perhaps not be brushed aside so easily by the market-minded, after all. Indeed, if we go by Singer, these accounts could even exist perfectly in tandem with libertarian or otherwise market-minded inclinations. The second conclusion to be drawn from Singer's justice failures concerns the MFA: Singer's placement of Heath's system in the “larger scheme of cooperation”⁸⁹ and his following analysis concluding that the market is justified through its synergy with other institutions, leaves no reason to believe that *the firm* should be exempt from the broader spirit that also informs the

⁸⁷ Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002): 32.

⁸⁸ *Ibid.*, 106.

⁸⁹ *Ibid.*

market. In other words: if the MFA’s presuppositions lead to certain justificatory considerations that trickle down from a higher-level analysis (i.e. the ‘larger scheme of cooperation’), they would naturally continue trickling down to lower-level considerations *within that same scheme*. The firm exists in service of the market, as the market exists in service of the society. Therefore, internally, the firm should also operate in spirit of the higher-level values and consequently has duties towards them. Contract or not, employer authority is not exempt from the very same morality that informs the market.

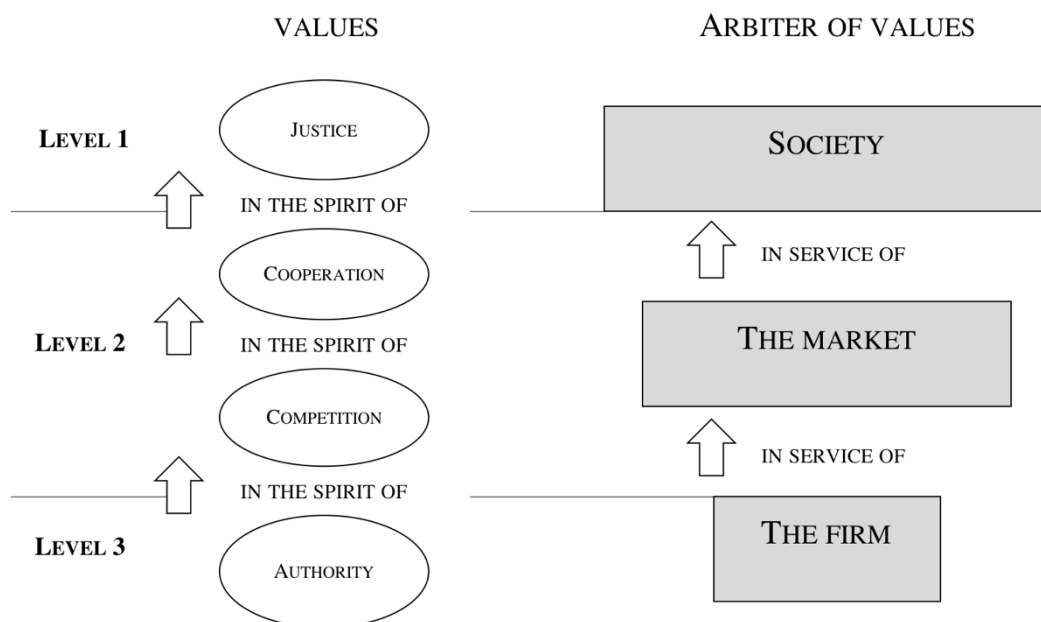


fig. 01.
 This figure expresses how the institutions tasked with promoting certain values exist in service of each other. The firm exist to enhance the market, whereas the market exists to enhance society. In turn, the authority exerted within the firm exists to enhance competition, and the MFA shows competition exists in the spirit of cooperation. Subsequently, cooperation brings about justice in society.

But, of course, one may disagree with Singer’s conception of justice failures. Perhaps one thinks it a weakness that the concept requires a specific formulation of justice, or equality;⁹⁰ perhaps one feels the justice failure overextends Heath’s

⁹⁰ Ibid., 108.

moralization of the market. Whatever the case, our hypothetical critic is not at all convinced that businesses carry duties towards anything other than efficiency, and Anderson's account therefore also falls flat. Even still, Singer's project lays bare the MFA's methodological base in a way that reveals Heath's appeal to Coase's theory of the firm to be inconsistent. The MFA moralizes the market by placing it in the framework of first-to-third-best, thereby expressing the logic of the market as in service of social cooperation in the case of the allocation and production of goods. Singer's project exhibits that this re-articulation of an economic phenomenon as a *moral* phenomenon is inconsistent when it – seemingly arbitrarily – appeals once more to an utterly economic phenomenon when it comes to the firm. Heath himself argues that the MFA is characterized by the fact that the approach's “*ethical* ideal is one that is consistent with the *economic* ideal of the free market”⁹¹ – so then why should this ethical ideal not follow the economic ideal to the firm? Or, more poignantly: why should the previously consistent ethical ideal not be *valid* in the case of the economic ideal of the firm?

Thus, the ‘weak’ Singer argument goes as follows: it is only consistent that rephrasing one single kink necessitates a rephrasing of the entire chain. The MFA's moral contents are not in the market's price mechanism, but in its Paretian aspirations, in its workings in the spirit of cooperation. Superseding the price mechanism should therefore not release the firm from ethical rule. To the contrary, Singer's reconstruction of the MFA seems to suggest a justificatory chain; it is this chain that will allow us to sketch out an approach to the firm in the next section.

⁹¹ Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 359.

6. The Unjust Authority Approach to Intrafirm Business Ethics

At this point we are able to work out that the MFA, when combined with the transaction cost theory of the firm, has the resources to distinguish just from unjust employer authority within a Paretian framework. We do not need to rely on egalitarian considerations external to the market to ground an objection to workplace coercion. This section will first sketch out the step-by-step justificatory process observed to reach this conclusion. Subsequently, it will theorize out of this process the concept of a ‘transaction-cost reduction failure’ and define it. This will lead to the contours of an approach, an extension of the MFA, that can be applied to employer authority: the ‘Unjust Authority Approach to the firm’.

Let us once again return to the MFA. Heath’s approach postulates that the ethical principle society must adhere to – the third-best principle – is the Pareto principle. This, in turn, requires market competition. Extending the logic entails that, to benefit market exchange, firms must be erected to cut Coase’s transaction costs. Finally, to accommodate the negation of uneconomical transaction costs, some employer authority is required. Market competition is justified by the Pareto principle and the cutting of transaction costs is justified by market competition. Authority then, is justified by the cutting of transaction costs.

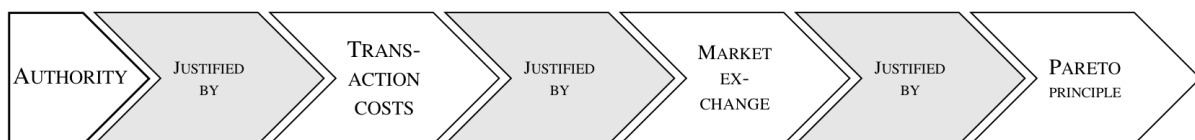


fig. 02

This figure illustrates the justificatory chain that becomes evident when applying Singer’s considerations to the MFA. Heath shows that the Pareto principle justifies market exchange. In turn, market exchange justifies the transaction costs that are the cause of the erection of the firm. It follows that transaction costs justify the authority exerted within the firm.

The MFA, of course, already subscribes to the first two steps of this justificatory chain. The present thesis simply adds a logical third. Firstly: Heath

asserts that a third-best framework is erected in the spirit of highly ideal first-best principles, aiming to approach them as much as possible within the real-world constraints we have to contend with. This happens through a two-partite dilution process of first-best principles, and generates the principle of “constrained Pareto efficiency”.⁹² Secondly: to fully maximize this Pareto principle, firms should “respect the “spirit” of the regulatory structure that governs marketplace competition”.⁹³ The adversarial ethic should be adopted without forgetting to keep its larger function to society in mind. The point this thesis aims to make is simply a logical extension of this framework, which is, thirdly; the firm is erected to augment marketplace competition by cutting uneconomical transaction costs. This necessitates at least some authority within it. It follows that, to maximize the cutting of transaction costs, authority must exist in the spirit of that end. As a general rule, we can say that the exercise of workplace authority is unjust when it does not plausibly serve the purpose of the firm – which is to reduce transaction costs in enabling competition. It is already clear how this allows us to distinguish some forms of authority – such as a senior manager telling her subordinates how to implement a project – from other forms – such as a business owner telling his employees how to spend their free, private time.

Like the conclusion the MFA itself draws, this as well is not at all a radical one to draw. Nonetheless, again like the MFA, it carries far-reaching consequences – in this case specifically for the way authority within the firm must be structured. Exerted authority not engaged in the spirit the cutting of transaction costs goes against the rules of the game – as making use of market failures go against the rules of the game – and leads to something we can analogously, in the spirit of Heath, call a ‘transaction-cost reduction failure’. Of course, before I am able to construe the approach detailing how to avoid causing

⁹² Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 203.

⁹³ Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 372.

such a failure, we must first carefully define what a transaction-cost reduction failure is.

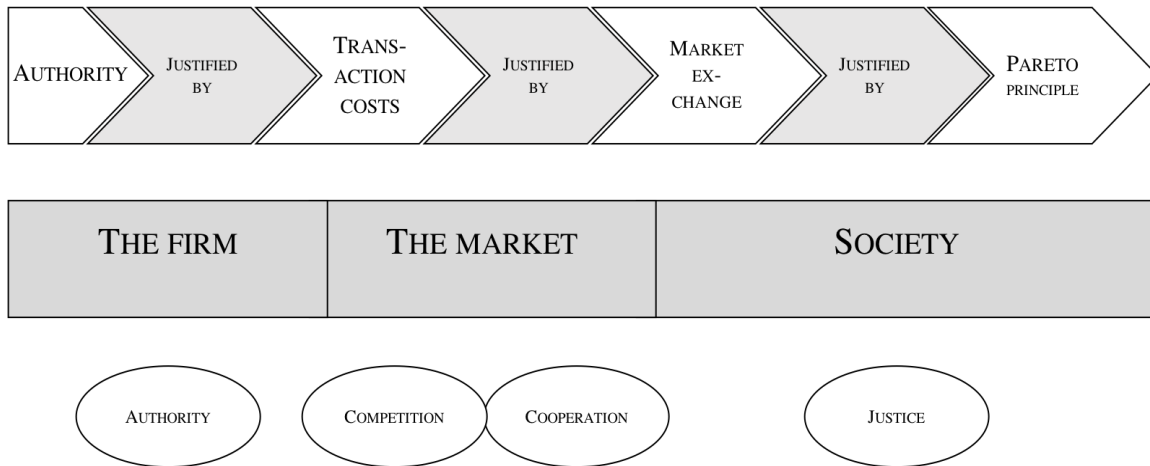


fig. 03
 This illustration shows how the chain of justification linked with the firm, the market and society, aligns with the values these institutions uphold as exhibited in fig. 01 and fig. 02.

Authority exerted in the spirit of cutting transaction costs can entail two conceptions of a transaction-cost reduction failure. The first, narrow conception implies some limited duties for employer authority.

- *Narrow transaction-cost reduction failure*: an act of employer authority that *increases* the transaction costs.

Thus, if an employer exerts their contractual authority resulting in an increase in information costs, bargaining costs or enforcement costs, a transaction-cost reduction failure occurs. Conversely, any authority exerted that does not increase transaction costs is justified, uncoercive authority. A second, wide conception implies somewhat more stringent duties for employer authority.

- *Wide transaction-cost reduction failure*: an act of employer authority that *does not decrease* the transaction costs.

Thus, if an employer exerts their contractual authority resulting in anything *but* a decrease in information costs, bargaining costs or enforcement costs, a transaction-cost reduction failure occurs. Conversely, authority exerted that decreases transaction costs is justified, uncoercive authority. Before we argue for choosing one of these conceptions, let us briefly look at what each conception would entail.

Not causing a *narrow* transaction-cost reduction failure would require an employer not to use his authority in such a way as to increase transaction costs, or otherwise have the price mechanism be more beneficial than a hierarchical relationship.⁹⁴ Let us return to the village of Dunwich for an illustration. Our illustrious fisherman, Wilbur, is currently employed by a gentleman named Obed Marsh, owner of the Dagon Fishery. Some time ago, Marsh and Wilbur signed a contract stipulating a monthly payment of \$1000 for all the fish Wilbur should catch in any given month, during which he should fish at least eight hours a day. The contract is valid for a full year and Marsh had in fine print added to it that he may break the contract if ever he found Wilbur's performance lacking – Wilbur agreed; it was a contract pleasing to both.

At the end of Wilbur's fourth month, Marsh approaches Wilbur and tells him that his wife has fallen ill and requires care. Wilbur's employer expects him to come over to his house after work for a minimum of two hours to wash and feed her. Otherwise, so Marsh utters darkly, Wilbur's performance will be deemed severely lacking. The contract both men signed stipulated that Marsh could fire Wilbur in this context, so contractually it is well within his rights to do so. Indeed, their contract bears a striking resemblance to American 'at-will' employment contracts, which establish "the absolute right of the employer to

⁹⁴ Ronald Coase, "The Problem of Social Cost", *Journal of Law and Economics* 3, no. (1960): 17.

discharge a worker”,⁹⁵ with or without just cause. Legal or not, however, our moral question is as follows: are Marsh’s contractually permissible actions performed in the spirit of not increasing transaction costs?

To be sure, if taking care of Marsh’s wife had been included in the contract from the beginning, fisherman Wilbur would not have signed it. Indeed, he would have gone to either of the two other fisheries in Dunwich and arbitrated a different contract – one that did not include caring for Marsh’s wife. Of course, Marsh knows this, and this is why he uses the contract’s firing clause as a threat. However, the clause was *intended* to be activated only in the event that Wilbur’s performance became so miserable that it cost more “than the costs of the market transactions which are superseded”.⁹⁶ Therefore, in this case, employer authority has been exerted that would have increased the bargaining costs. A transaction-cost reduction failure has occurred; this instance of authority is unjustified.

Alternatively, let us imagine a situation in which the same contract was signed, but in which Marsh’s wife had not fallen ill. Instead, a new technology is discovered that lures fish towards nets so efficiently that it nearly doubles a given fisherman’s output. Marsh decrees that all of his fishermen must now use this technology, but Wilbur refuses; he argues that it is unfair that he now produces twice as much in the same time for the same \$1000. Marsh points towards their contract, but to no avail. The next day, Wilbur shows up to the fishery with only a good old fishing rod and an obstinate demeanor. Marsh fires Wilbur on the spot and immediately hires another fisherman in his place.

Since the discovery of the new fishing technology, the other two fisheries would undoubtedly have picked up on it, as well. In fact, had they not, independent fishermen would have quickly filled the gap. In turn, that would have brought the price mechanism in effect again, since the costs of market transactions and sales contracts may have gone down enough to annul its supersession. Thus,

⁹⁵ James Bowman and Jonathan West, “Lord Acton and Employment Doctrines: Absolute Power and the Spread of At-Will Employment”, *Journal of Business Ethics* 74, no. 2 (2007): 119.

⁹⁶ Ronald Coase, “The Problem of Social Cost”, *Journal of Law and Economics* 3, no. (1960): 16.

Marsh's authority – both in decreeing the usage of the new fishing technology and in firing Wilbur – is exerted in the spirit of cutting the bargaining costs; if Wilbur had refrained from using the newly discovered technology, the Dagon Fishery would have been better off signing a sales contract with an independent fisherman that was willing to use it. There is no transaction-cost reduction failure; this usage of authority is, thus, justified.

Finally, let us consider a third scenario. Wilbur has signed the very same contract. He has just slaved away for eight hours in the hot sun when Marsh approaches him. Marsh's secretary has just passed away, and he has no money to hire another. Therefore, says Marsh, Wilbur is now required to make him a cup of coffee every morning before he starts his shift. Marsh will not count the fish he cannot catch in that time against him, and anyway, it will only take him about five minutes every day. Additionally, so Marsh reminds Wilbur, there is nothing in their contract that withholds him from changing Wilbur's activities thusly. The fisherman is nonplussed. He does not enjoy making Marsh coffee – in fact, he finds it a little demeaning –, but the inconvenience is so very small that, in reality, he would have signed the exact same contract if the daily cup of coffee *had* been specified. Additionally, because the time Wilbur spends making coffee is counted as if he is catching fish, it does not interfere with his work at all. In essence, then, this exerted authority is entirely transaction-cost-neutral and therefore in keeping with not increasing transaction costs. This exertion of authority is justified.

The wide conception of the transaction-cost reduction failure is nearly, but not quite, identical to the narrow conception in a way that has quite significant consequences. To recall, not causing a *wide* transaction-cost reduction failure would entail an employer only use his authority in such a way as to *decrease* transaction costs. Clearly, in the case of Marsh's sick wife, employer authority is exerted in a way that would increase transaction costs and therefore causes both a narrow and a wide transaction-cost reduction failure. Similarly, in the case of Wilbur's refusal to use the new fishing technology, Marsh acts in the spirit of

cutting transaction costs and therefore avoids both the narrow and the wide transaction-cost reduction failure. The difference lies in Marsh's request for morning coffee.

If Marsh is only allowed to use his authority in the spirit of *decreasing* transaction costs (and not just *not increasing*, as with the narrow transaction-cost reduction failure), all transaction-cost-neutral acts of authority become unjustified. In ordering Wilbur to make him a cup of coffee every morning, Marsh is not acting towards a decrease in transaction costs, even though he is not increasing them either. If we adopt the wide conception, then a transaction-cost reduction failure occurs; Marsh's authority is unjustified.

Initially, this slight difference might seem negligible. However, as we will see in the next section, it may have quite far-reaching consequences for intra-firm practices; many acts of authority have little to do with cutting transaction costs, even if they have entirely transaction-cost-neutral results. Before we look to that, however, let us first adjudicate which version of the transaction-cost reduction failure is most plausible to adopt. Although the narrow conception may seem most attractive – at least to employers –, there are good reasons to hold the wide conception is more valid. Let us once again look towards the MFA for those reasons.

Perhaps the most effective way of arguing for the wide conception of the transaction-cost reduction failure is to draw parallels with other chinks in the MFA's justificatory chain and to apply them analogously. Therefore, analyzing the market failure in lieu of the transaction-cost reduction failure may yield convincing results. Contrary to the transaction-cost reduction failure, however, there are many types of market failures. In a particularly insightful response to criticism by Peter Jaworski, levelled at the term 'market failure' as it is used in the MFA, Heath differentiates between a government failure and a market failure, arguing that a market failure prompted by government policy can still rightly be

called a market failure, simply by virtue of happening to a market transaction.⁹⁷ In general, then, the ““Pareto conditions” that define the structure of a perfectly competitive market provide the chief guidelines for determining what counts as a market failure”.⁹⁸ Conversely, a non-Pareto condition constitutes a market failure. Thus, a market failure is simply a “market transaction failing to deliver an efficient outcome”.⁹⁹ Therefore, the question we must now answer is: does the MFA require market actors to act in ways that *do not increase* inefficient outcomes, or in ways that *decrease* inefficient outcomes? Let us look at some of the MFA’s general edicts to find the answer. Market actors should, amongst other things:

1. Minimize negative externalities.
2. Compete only through price and quality.
3. Reduce information asymmetries between firm and customers.
4. Do not exploit diffusion of ownership.
5. Avoid erecting barriers to entry.¹⁰⁰

Is there a way of minimizing negative externalities only to the extent that they *do not increase* inefficient outcomes? It seems not: by their very nature, by merely existing, negative externalities are inefficient. Is there, then, a way to compete only through price and quality to a certain extent, only insofar that it *does not increase* inefficient outcomes? Fundamentally, competition not waged through price and quality is “non-productive competition... [and] imposes significant deadweight losses on the economy”.¹⁰¹ Furthermore, can one partially not exploit diffusion of ownership? Can one half-avoid erecting barriers to entry?

⁹⁷ Joseph Heath, “Market Failure or Government Failure? A Response to Jaworksi”, *Business Ethics Journal Review* 1, no. 8 (2013): 54.

⁹⁸ Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 370.

⁹⁹ Joseph Heath, “Market Failure or Government Failure? A Response to Jaworksi”, *Business Ethics Journal Review* 1, no. 8 (2013): 54.

¹⁰⁰ Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 37.

¹⁰¹ *Ibid.*

At this point it should be clear that there can be no such thing as a market-failure-neutral situation. Something either is a market failure, or it is not, and there does not seem to be middle way as there can be in transaction-cost reduction failures. Analogously, however, this observation makes for a very good reason to think the wide conception of transaction-cost reduction failures is the correct one. Now, armed with this robust conception, we can assert that any instance of intra-firm authority must be tested against the following question: *is it exerted in the spirit of decreasing transaction costs?* This is the Unjust Authority Approach's justificatory criterion. With this in mind, let us return to our previously established forms of employer authority in the next section.

7. To What Extent Can Employer Authority Be Justified?

We can now set the justificatory criterion identified in the previous section against the three categories of workplace authority that we had observed in section 1. Subsequently, drawing from the results, I will be able to suggest some general, conceptual rules for employers to attend in thinking about justified acts of authority. First, however, let me reiterate that the categories of authority we had observed constitute:

Category 1: authority *in* the workplace

Category 2: authority *out* of the workplace

Category 3: authority *via* the workplace

Let us examine and test these categories one at a time - moving from category 3, through category 2, to category 1 - and return to Dunwich once again when in need of particularly illustrative examples. Note at this point that the village of Dunwich is deliberately an “invocation of the ideal of perfect competition”.¹⁰² It does not exist and cannot exist. However, as in the MFA, judgements reached through the Unjust Authority Approach should explicitly be made “*as though* market conditions were perfectly competitive”.¹⁰³ In Dunwich, no fisherman signs a contract because they have no other options; in Dunwich, in fact, options are inexhaustible.

Now, Category 3 - authority *via* the workplace - you will remember, entails some form of political shepherding or other “political intimidation at work”.¹⁰⁴ Dunwich’s economy and social life is heavily reliant on its three fisheries, and so most political discussion revolves around taxation, labour laws and environmental concerns. Out of the political fray, two mayoral candidates emerge. One professes

¹⁰² Joseph Heath, “An Adversarial Ethic for Business: or When Sun-Tzu Met the Stakeholder”, *Journal of Business Ethics* 72, no. 4 (2007): 369.

¹⁰³ Joseph Heath, *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics* (New York: Oxford University Press, 2014): 37.

¹⁰⁴ Alexander Hertel-Fernandez and Paul M. Secunda, “Citizens Coerced: A Legislative Fix for Workplace Political Intimidation Post-Citizens United”, *UCLA Law Review* 64, no. 1 (2016): 2.

a strong pro-labour sentiment and vows to raise corporate taxes as well as tighten employment laws. The other candidate maintains a strong libertarian slant and speaks of unleashing the free market and allowing only small government. Obed Marsh, the Dagon fishery's owner-cum-CEO, sends all of his employees a strongly worded email in which he reminds them that, in fact, the latter candidate is his best friend. Furthermore, he organizes a mandatory, four-hour rally for the libertarian mayoral nominee and tasks several interns with hanging up galvanizing posters all around the Dagon fishery. Finally, just a week before the general election, Marsh asks all fishermen to visit a website on which they can pre-emptively cast their ballot for Marsh's friend. He is quite transparent about the fact that he uses software allowing him to check whether his emails were opened and which of his employees voted via the website. In fact, the few fishermen that not only attended the rally, but participated in it exuberantly and subsequently immediately voted for Marsh's friend, are given a respectable raise just some days later. Some of the worst slackers – those that did not even open Marsh's email or loudly proclaimed they would not vote for Marsh's friend – are fired.

As farfetched as this situation may seem, note that several not wholly dissimilar – perhaps only more overt – and widely reported on situations occurred during the United States presidential election of 2012. For instance, the CEO of Westgate Resorts, David Siegel, made it known via email to all of his employees that

[t]he economy doesn't currently pose a threat to your job. What does threaten your job, however, is another four years of the same presidential administration... If any new taxes are levied on me, or my company, as our current president plans, I will have no choice but to reduce the size of this company.¹⁰⁵

¹⁰⁵ Steven Greenhouse, "Here's a Memo From the Boss: Vote This Way", *The New York Times*, October 26, 2012, Accessed May, 2019, <https://www.nytimes.com/2012/10/27/us/politics/bosses-offering-timely-advice-how-to-vote.html/>.

Let us take the Dunwich case and set it against our justificatory criterion; has a transaction-cost reduction failure taken place? Did Marsh use his authority as the CEO of the Dagon fishery in the spirit of decreasing transaction costs?

In essence, simply sending one's employees an email about one's political preferences is – although somewhat unprofessional – not explicitly an act of authority. Marsh's position of power, however, makes it so that such an email is easily construed as a conditional. Threatening, like David Siegel, to use one's authority is – in itself – an act of authority. Subsequently, this authoritative act decidedly goes against the spirit of decreasing transaction costs: an employment contract stipulating that in taking the job one is required to vote for the mayoral candidate of Marsh's choice, would most certainly have most potential Dagon fishermen run to one of the other two fisheries in search of contracts securing their electoral freedom. In response, Marsh would plausibly have to offer a higher salary, perhaps even up to the point that a regular price-mechanism-supported sales contract becomes more viable. Even if the Dagon fishery would be able to hire only employees that either do not care about where their vote goes or consistently agree with Marsh's politics, structurally refusing the other-minded would certainly give the other two factories an edge in negotiating contracts. None of this goes towards *decreasing* transaction costs, at all, even if it would by happenstance not increase them. Therefore, this act of authority causes a transaction-cost reduction failure and is unjustified.

However, let us assume Marsh is simply being friendly and acts only to inform his employees of what he thinks is the correct decision. He does not attempt to influence his employees' votes using his authority as an employer, but acts only as a fellow citizen, concerned about this future of his country. Let us say that this is possible in his position and that all of his employees know this to be the truth. In that case, the email could indeed be argued to have little to do with employer authority. Organizing a mandatory rally for your employees can

certainly not be construed as anything other than an act of authority, however. Although generally well within an employer's contractual purview, setting up such events would most certainly increase transaction costs. A contract stipulating mandatory political meetings would undoubtedly have many fishermen pursue a contract at another fishery, or otherwise force Marsh to increase the offered salary or provide other benefits to regain the edge, perhaps to the point of making a sales contract more viable. A transaction-cost reduction failure occurs; this act of authority is unjustified.

A similar process transpires when Marsh uses his authority – although not as overtly as Siegel – to insinuate some form of retribution for those that did not cast their ballot online. Of course, one could once again plead ignorance, but that claim would be quickly offset by the “correct” voters’ salary raise. In fact, in granting them those raises for a reason wholly unrelated to their employment activities, Marsh is *directly* increasing bargaining costs and thereby provoking a transaction-cost reduction failure. Conversely, firing or otherwise punishing an employee for not voting, or voting incorrectly, would also serve only to increase transaction costs by giving the Dagon fishery’s competitors a considerable bargaining edge.

In conclusion, it seems that the entirety of authority exerted in Category 3 constitutes a transaction-cost reduction failure and is therefore unjustified, coercive authority. *Even if* we grant that an employer communicating diatribes on political candidate x or extolling the virtues of political candidate y is not an act of authority, meeting that very same employer in the break room threateningly asking whether you agreed with the fourth argument made in their email, most certainly is. And by virtue of not decreasing transaction costs, this authority is coercive.

Let us now turn towards Category 2: authority *out of* the workplace. This category comprises those acts of employer authority that “abridge their

employees' freedom off the job".¹⁰⁶ Let us reiterate the examples employed in section 1 and set them against the Unjust Authority Approach's justificatory criterion. These examples consisted of being fired or otherwise being punished for:

1. Being gay
2. Using birth control
3. Refusing to disclose your Facebook password
4. Participating in group sex
5. Smoking cigarettes
6. Writing personal blogs

Let us take them one by one. First, whether one's employee is gay or not has exceedingly little to do with decreasing transaction costs. In fact, a contractual stipulation (thou shalt not be gay) might even serve to increase them by inciting both the gay and the social justice-minded part of one's potential workforce to find employment elsewhere. In any case, firing or punishing one's employee for being gay is never an act of authority exerted in the spirit of cutting transaction costs, as being gay simply does not affect the work that was contractually agreed upon. Second, using employer authority to fire or reprimand someone for being on birth control runs into the same obstacle: there is no conceivable way in which subsequently bargaining a contract with someone *not* on birth control would yield a decrease in transaction costs (and in fact, an increase is highly likely, due to giving birth control-accepting competitors a bargaining edge). Third, access to employees' Facebook accounts would be of ill assistance in securing a more lucrative bargaining position, or in more effectively superseding the price mechanism. Fourth, group sex as well is entirely transaction-cost unrelated, as long as it does indeed happen outside of the workplace.

These first four examples have so far only resulted in glaring transaction-cost reduction failures and have therefore been prime examples of unjustified,

¹⁰⁶ Chris Bertram, "Let it Bleed: Libertarianism and the Workplace", *Crooked Timber* (blog), July 1st, 2012, crookedtimber.org/2012/07/01/let-it-bleed-libertarianism-and-the-workplace/.

coercive employer authority. Our fifth example, smoking cigarettes, requires a somewhat more rigorous analysis. Imagine our now-erstwhile fisherman from Dunwich, Wilbur, after refusing the new fishing technology at the Dagon fishery, is once again looking for a job some two years later. In the meantime, Wilbur has taken up an intensive programming course as well as a nasty smoking habit, though only in the comfort of his own home. He has sent around résumés and has been offered two jobs. The first is a programming position – a nice and comfortable, standard nine-to-five desk job. The other spells a return to his old fishing days. In fact, the job entails he catch fish with his bare hands as the owner loathes the new fishing technology nearly as much as Wilbur himself. The job is quite physically demanding, involving a lot of swimming and running around.

Now, imagine Wilbur takes the programming job. Some months in, his employer finds out that Wilbur is a heavy smoker and promptly fires him. Is this a transaction-cost reduction failure? Indeed, it is, for Wilbur would not have signed the contract (but perhaps for a higher salary) if the no-smoking rule had been specified and, more importantly, the smoking does not affect his work at all; and thus, a contract bargained with a non-smoker would not incur any decrease in transaction costs. Wilbur's firing was an unjust, coercive instance of authority.

But what if Wilbur would have taken the physically demanding fishing job? What if his smoking habit would have quickly shown to heavily affect the number of fish he can catch per day? Let us imagine, even, that Wilbur's output is so low, that his employer would have been better off negotiating a sales contract with a private fishing contractor. Surely, then, Wilbur's very presence goes against the spirit of decreasing transaction costs and he can rightly be fired according to our justificatory criterion.

But note that, conversely, Wilbur may have a rare genetic predisposition that keeps his lung capacity remarkably stable. He can smoke a pack a day for years and yet comfortably run marathons. Or perhaps he just does not smoke enough to affect his constitution. In any case, cigarettes do not perturb his work

in any way, and firing Wilbur in order to negotiate a contract with a non-smoker will therefore not yield any reduction in transaction costs. Is his employer still within his rights to fire him? Not without failing our justificatory criterion and causing a transaction-cost reduction failure. Thus, we can conclude that firing or otherwise punishing one's employee for smoking cigarettes – at least in the comfort of one's own home – is an example of unjust, coercive authority. However, firing someone for not doing their job properly, *which happened to be caused by smoking cigarettes*, is not.

Finally, our last example of authority *out* of the workplace – writing personal blogs – takes a somewhat more contingent form. Ostensibly, an employee's blog has little effect on transaction costs. Being fired over a scathing write-up on abortion, feminism, politics or other traditionally polarizing subjects, should only serve to increase transaction costs by granting competitors a bargaining advantage, as many employees would plausibly not sign away their rights to free speech cheaply. However, a notable exception to this transaction-cost reduction failure would be an employee blogging negatively *about their place of employment*. Blogging about your job's abominable working conditions and employer's arbitrarily tyrannical rule may, in fact, comprise a sort of negative marketing campaign that forces your employer to spend more money on positive marketing in some shape or form, as to match their competitors' advantage. Bargaining a new contract with a non-blogger may, in that case, in fact decrease transaction costs (of course, it must be noted that, unless the blogger is lying, their employer has already caused several transaction-cost reduction failures through offering abominable working conditions and enforcing an arbitrarily tyrannical rule). In this light, many recent blogging cases can be analyzed. For instance, Google computer engineer James Damore's highly publicized firing over a critical memo on the firm's diversity policy in 2017,¹⁰⁷ was justified according to the

¹⁰⁷ Robert Booth and Alex Hern, "Google employee fired over diversity row considers legal action", *The Guardian*, August 8th, 2017, Accessed May, 2019, <https://www.theguardian.com/technology/2017/aug/google-employee-fired-diversity-row-considers-legal-action-james-damore/>.

Unjust Authority Approach to the firm. Were he fired over a scathing blog on diversity policy *in general*, however – without any mention of Google or his tenure there – it would have constituted a transaction-cost reduction failure and thus an unjustified, coercive expression of authority.

However, cases like Damore’s imply an immediate counterargument that is especially relevant in the Information Age: imagine Damore *had* written his blog on his grievances with diversity policy in general. Furthermore, imagine Google had adopted the Unjust Authority Approach to the firm and subsequently could find no legitimate reason to fire him. Finally, imagine a high-profile newspaper had – through some light investigative journalism – picked up on Damore’s employment at Google, prompting pro-diversity protestors to boycott the company until they fire him. To be sure, because of the boycott, Damore’s continued employment at Google is now increasing transaction costs as the firm would be better off bargaining a contract with a non-Damore employee. It follows that the computer engineer’s employer is now justified in exerting their authority to fire him.

In fact, there is a difference between these two versions of the Damore case. In the former (real) case, Damore actively and directly acts against decreasing transaction costs by writing negatively about his place of employment. In the latter (fake) case, Damore passively and indirectly acts against decreasing transaction costs by writing negatively on a topic that *some percentage of the target group of his place of employment finds important*. The resulting increase in transaction costs have little to do with the employer-employee relationship itself, and all the more with consumer considerations.

To illustrate this distinction and why it is important, let us imagine our Dunwichian Wilbur is a fanatical neo-Nazi. However, he is also a recluse, and no one has ever visited his home and seen his SS-paraphernalia, nor the large Iron Cross tattooed on his chest. Furthermore, Wilbur rarely speaks to colleagues – or to anyone for that matter – and if he does, it is decidedly not about Nazism.

Wilbur, however, is also an avid blogger, writing prodigiously on Hitler's virtues, but using an untraceable pseudonym. One day, he reveals on one of his widely circulated blogs that he is employed at the Dagon Fishery. The village of Dunwich explodes; a secret neo-Nazi is working at the Dagon Fishery – how horrible! The mayor decrees that the neo-Nazi's identity should be found out and that they should subsequently be flogged in the town square. Dunwich is in quite an uproar, but is the Dagon Fishery's image damaged? Do the people of Dunwich blame Obed Marsh for accidentally hiring a secret neo-Nazi? Hardly. It is not the firm that is the problem; it is the neo-Nazi. No transaction-cost reduction failure has taken place.

Now imagine Wilbur is still an avid anonymous blogger, but instead of about Nazism, he writes about his experience as a Dagon fishery employee living under the rule of a revolting management team that routinely harasses female members of Dagon workforce. Marsh commands the identity of this anonymous blogger is found out and plans to subsequently fire them. Once again, Dunwich is in quite an uproar. Is the Dagon Fishery's image damaged? Is Obed Marsh blamed for tolerating a managerial reign of terror? Absolutely. It is not the blogger that is the problem; it is the firm. Marsh would be better off hiring a non-Wilbur employee. And thus, in this case, a transaction-cost reduction failure *has* taken place (of course, it is once again important to note that the Dagon fishery has already caused several transaction-cost reduction failures by tolerating a managerial reign of terror).

The same process, of course, can also occur in reverse. For example: conceivably, in certain places, firing an employee for being gay would *decrease* transaction costs. Perhaps the exceedingly bigoted would rather work for a company that explicitly does not hire members of the LGBTQA+-community – and for less pay at that! Perhaps overall sales would even increase. This hypothetical is not entirely unreasonable, as there are strong suspicions that the American-based Chick-fil-A's stance on gay rights, and a subsequent liberal

boycott, has actually *increased* revenue for the fast-food chain.¹⁰⁸ However, similarly to the case of Wilbur’s anonymous blogs, there is no direct relation between being gay and transaction costs, only an indirect relation that occurs through alignment with (hopefully transient) consumer considerations. Therefore, a transaction-cost reduction failure does not take place and such a firing would be an unjustified, coercive use of authority.

Finally, we turn towards Category 1: authority *in* the workplace. This covers those acts of authority most traditionally associated with the employer-employee relationship. Any command issued by an employer *at* the workplace and/or regarding something *in* the workplace falls under this category. To be sure, many acts of authority that most intuitively feel are justified, are exactly those that have a very unambiguous relationship to transaction costs. A manager tasking an employee with a new assignment is an act of authority clearly exerted in the spirit of decreasing transaction costs; indeed, if the employee refuses to do the assignment, transaction costs would be much reduced by negotiating a new employment contract, or even by signing a sales contract, with someone that will, in fact, do the work. Similarly, a vice-president reprimanding a worker for spending too much time on social media is far from an unjustified act of authority when considered in the light of a transaction-cost reduction failure. Most regular acts of authority in the workplace are therefore not coercive or unjustified according to the Unjust Authority Approach to the firm.

Conversely, authority exerted in Category 1 that has *no relation at all* to transaction costs is much more transparently and intuitively unjustified. Wilbur – now rehired at the Dagon Fishery – would immediately pursue a contract at another fishery if Marsh imposed a maximum of one toilet break per shift, forcing him to soil himself, instead of investing in diapers (unlike American poultry

¹⁰⁸ Kate Taylor, “Chick-fil-A is the fast-food chain of the year, and things are only getting better”, *Business Insider Nederland*, December 28th, 2018, Accessed May, 2019, <https://www.businessinsider.nl/chick-fil-a-is-the-fast-food-chain-of-2018-2018-12/>.

workers in similar situations,¹⁰⁹ Wilbur can easily leave and bargain a contract elsewhere). Furthermore, a contract stipulating acquiescence to sexual advances by Marsh, would either be much, much harder bought or rejected wholesale. In that light, looking at Barbara Ehrenreich's account using the lens of the Unjust Authority Approach casts an eerie light on employer authority in America at the turn of the millennium. Remember that Ehrenreich is not allowed to utter profanities on the premises or talk with fellow employees. Her locker is searched, she is subjected to random drug tests and she is forced to urinate in front of others; all of these acts of authority are quite clearly, we can now see, causing transaction-cost reduction failures – and therefore evidently instances of unjustified, coercive employer authority.

A final observation we must touch upon before I go on to make some tentative suggestions for conceptual rules to be drawn from the Unjust Authority Approach to the firm concerns cultural contingency. This thesis has mainly been concerned with bargaining costs, as these are the type of transaction cost most interconnected with employer authority. However, (and perhaps because of that fact) bargaining costs are also highly culturally contingent, being much influenced by values and tradition – after all, bargaining costs concern *people*, who are themselves entrenched in a cultural system – as opposed to, for instance, information costs that take on a more mechanical, or calculative form relating to the accessibility and presence of market-relevant information. To illustrate; if Dunwich were a village where random floggings are generally seen as a normal part of life, contracts including them may be the only ones on offer and seen as the standard; it may be literally unthinkable a contract *without* random floggings included could even exist. In that case, bargaining costs do not come into play, and the Unjust Authority Approach to the firm would judge an employer

¹⁰⁹ *No Relief: Denial of Bathroom Breaks in the Poultry Industry*, Policy Papers, Oxfam America, May 9, 2016, Accessed March, 2019, https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf/.

randomly flogging an employee to be a perfectly valid use of authority. This is plainly false.

At this point, Abraham Singer's considerations reenter the equation. Indeed, if authority exists in service of competition, which itself exists in the spirit of cooperation – e.g. making everyone better off – random floggings go against the firm's higher-order goal. In other words: if the reduction of transaction costs is seen as existing in the spirit of market exchange, which itself exists in the spirit of the Pareto principle, random floggings are exceedingly counterproductive *even if not having them would cause an increase in transaction costs*. It makes no sense to transgress the principles of justice to achieve a slight reduction in transaction costs, itself extant in the spirit of justice. Thus, in the Unjust Authority Approach to the firm (as in the MFA) higher-order principles naturally take precedence over lower-order principles. The meta-ethical inferences to be drawn from this and the debate surrounding it, however, lay far beyond the scope of this thesis.

Now, from the analysis conducted in this section, I can generate a tentative list of prescriptions in line with the Unjust Authority Approach to the firm as we have explored it so far. Note that this list contains *suggestions* only, and requires much further exploration to be authoritative. Some examples of the rules the approach implies for employers are:

- Do not attempt to influence or otherwise steer one's employee's political opinions
- Do not attempt to influence or otherwise steer one's employee's activities outside of their place of work, in so far as they do not engage with that place of work
- Do not punish employees for things unrelated to their activities and functioning as a contractual employee at their place of work
- Do not order employees to do things that, reasonably speaking, have little or nothing to do with what is covered in their job description
- Do not forgo the principles of justice in employer-employee conduct to gain a competitive edge
- Do not exploit or make use of restrictions in employment choice an employee or a group of employees may have

- Do not justify behaviour that causes a transaction-cost reduction failure by referring to contractual agreements
- Do not exploit or make use of a previously accepted or institutionalized company rule or practice that amounts to a transaction-cost reduction failure
- Attempt to alleviate previously accepted or institutionalized company rules or practices that amount to transaction-cost reduction failures

Broadly, these rules are indicative not only of the restraint the approach requires of employers, but also adequately express the responsibility the employer has to their employees. Donning the mantle of power appears to be no small thing and, moreover, it is apparent that the employer-employee relationship adhering to the Unjust Authority Approach to the firm is one that is constantly aware of the transient and contingent nature of power. In adopting these rules, employers would signal the *extent* of their authority alongside the contract that signals its *limits*. All in all, such an approach would be much more in line with Adam Smith's marketplace that bestows upon all people "liberty and security".¹¹⁰ In fact, the Unjust Authority Approach to the firm, like the MFA, judges that an employer act as if such a market is already extant.

¹¹⁰ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (New York: Oxford University Press, 1976): 405.

8. Conclusion

In developing the Unjust Authority Approach to the firm, we have established three forms of employer authority that need to be justified: authority in, out and via the workplace. In the pursuit of a justificatory criterion able to adjudicate these forms, we looked to Elizabeth Anderson's account of employer authority, but found her criterion unconvincing to the market-minded and the logic the market adheres to. Therefore, we explored business ethics and Joseph Heath's MFA. Heath appeals to Ronald Coase's TCT with regard to the firm and, with the help of Abraham Singer, we showed that adopting the logic underlying the MFA has profound consequences for authority in Coase's theory of the firm. We were subsequently able to express the justificatory criterion against which acts of employer authority must be set: each act of authority must be exercised in the spirit of decreasing transaction costs to be a legitimate, justified instance of authority. Finally, we judged the three forms of workplace authority previously identified against this criterion and constructed a tentative list of rules for employers to follow in exerting only justified authority.

The present thesis exhibits that we can identify and critique authority in the firm without leaving the framework of a broad market-minded, business ethical approach. There are many theories that condemn unjust authority and, surely, they may also be correct. However, the Unjust Authority Approach to the firm can be convincing to those that are not already committed to the philosophical or political principles required to adopt those theories; adherence to the market suffices. Additionally, and in a similar vein, there may be a place for labour rights, unions and cooperatives – I certainly believe so. However, even when it is considered in isolation, this thesis has shown that the market already carries significant moral requirements for those that wield authority.

BIBLIOGRAPHY

- Anderson, Elizabeth. *Private Government: How Employers Rule our Lives*. Oxford: Princeton University Press, 2017.
- Benkler, Yochai. “Coase’s Penguin, or, Linux and “The Nature of the Firm””. *The Yale Law Journal* 112, no. 3 (2002): 369-446.
- Bertram, Chris, Corey Robin and Alex Gourevitch. “Let It Bleed: Libertarianism and the Workplace”. *Crooked Timber*. July 1st, 2012. Accessed March, 2019. crookedtimber.org/2012/07/01/let-it-bleed-libertarianism-and-the-workplace/.
- Björn, Bartling, Ernst Fehr and Klaus M. Schmidt. “Use and Abuse of Authority: A Behavioral Foundation of the Employment Relation”. *IZA DP* 7029 (2012): 1-36.
- Bly, Laura. “Customer dies of heart attack at the Heart Attack Grill in Vegas”. *USA Today*. February 12th, Accessed April, 2019. <https://eu.usatoday.com/story/dispatches/2013/02/12/las-vegas-heart-attack-grill-death/1912493/>.
- Booth, Robert and Alex Hern. “Google employee fired over diversity row Considers legal action”. *The Guardian*. August 8th, 2017. Accessed May, 2019. <https://www.theguardian.com/technology/2017/aug/google-employee-fired-diversity-row-considers-legal-action-james-damore/>.
- Bowie, E. Norman. *Business Ethics: A Kantian Perspective*, 2nd ed. Cambridge: Cambridge University Press, 2017.

Bowman, James and Jonathan West. “Lord Acton and Employment Doctrines: Absolute Power and the Spread of At-Will Employment”. *Journal of Business Ethics* 74, no. 2 (2007): 119-130.

Brennan, Jason. Review of *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics*, by Joseph Heath. *Kennedy Institute of Ethics Journal* 26, no. 1 (2015): 1-4.

Brennan, Jason. “Some comments on Bertram”. *Bleeding Heart Libertarians* (blog). June 1st, 2012. [Bleedingheartlibertarians.com/2012/06/some-comments-on-bertram/](https://bleedingheartlibertarians.com/2012/06/some-comments-on-bertram/).

Ciepley, David. “Authority in the Firm (and the Attempt to Theorize it Away)”. *Critical Review* 16, no. 1 (2004): 81-115.

Ciepley, David. “Beyond Public and Private: Toward a Political Theory of the Corporation”. *American Political Science Review* 107, no. 1 (2013): 139-158.

Coase, Ronald. “The Nature of the Firm”. *Economica* 4, no. 16 (1937): 386-405.

Coase, Ronald. “The Problem of Social Cost”. *Journal of Law and Economics* 3, no. (1960): 1-44.

Collin, Matthew. “Wage slaves”. *The Guardian*. 31 August, 2002. Accessed March, 2019. <https://www.theguardian.com/books/2002/aug/31/highereducation.shopping/>.

DeNinno, Nadine. “Ariz. Birth Control Bill Lets Employers Fire Women On

Pill Based On Religious Views”. *International Business Times*. March 15, 2012. Accessed March, 2019. <https://www.ibtimes.com/ariz-birth-contr-ol-bill-lets-employers-fire-women-pill-based-religious-views-425530/>.

Ehrenreich, Barbara. *Nickel and Dimed*. New York: Henry Holt and Company, 2001.

Greenhouse, Steven. “Here’s a Memo From the Boss: Vote This Way”. *The New York Times*. October 26, 2012. Accessed May, 2019. <https://www.nytimes.com/2012/10/27/politics/bosses-offering-timely-advice-how-to-vote.html/>.

Grochulski, Borys, and Wendy Morrison. “Understanding Market Failure in the 2007-08 Crisis”. Economic Brief 14-12 by the *Federal Reserve Bank of Richmond*. https://www.richmond.org/~media/richmondfedorg/publications/research/economic_brief/2014/pdf/eb_14-12.pdf/.

Heath, Joseph. “An Adversial Ethics for Business: or When Sun-Tzu met the Stakeholder”. *Journal of Business Ethics* 72, no. 4 (2007): 359-374.

Heath, Joseph. “Market Failure or Government Failure? A Response to Jaworski”. *Business Ethics Journal Review* 1, no. 8 (2013): 50-56.

Heath, Joseph. *Morality, Competition and the Firm*. New York: Oxford University Press, 2014.

Heath, Joseph, Jeffrey Moriarty, and Wayne Norman. “Business Ethics and (or as) Political Philosophy.” *Business Ethics Quarterly* 20, no. 3 (2010): 427-452.

Hertel-Fernandez, Alexander and Paul M. Secunda. "Citizens Coerced: A Legislative Fix for Workplace Political Intimidation Post-Citizens United." *UCLA Law Review* 64 no. 1 (2016): 1-12.

Hodrick, Courtney. "5 People Who Were Fired for Being Gay, And the 29 States Where That is Still Legal." *The Williams Institute, UCLA School of Law*. July 24, 2012. Accessed March, 2019. <https://williamsinstitute.law.ucla.edu/press/5-people-who-were-fired-for-being-gay-and-the-29-states-where-that-is-still-legal/>.

"House kills plan to block employers from demanding Facebook PASSWORDS from job applicants". *Daily Mail Online*. March 30, 2012. Accessed March, 2019. <https://www.dailymail.co.uk/news/article-2122404/house-kills-plan-block-employers-demanding-Facebook-passwords-job-applicants.html/>.

Human Rights Watch (Organization). *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harrassment*, New York, NY: Human Rights Watch, 2012.

Le Grand, Julian. "Equity Versus Efficiency: The Elusive Trade-Off". *Ethics* 100, no. 3 (1990): 554-568.

Maltby, Lewis. *Can They Do That?: Retaking Our Fundamental Rights in the Workplace*. New York: Portfolio, 2009.

Macedo, Stephen. Introduction to *Private Government: How Employers Rule our Lives*, by Elizabeth Anderson, vii-xviii. Oxford: Princeton University Press, 2017.

- McMahon, Christopher. *Public Capitalism: The Political Authority of Corporate Executives*. Philadelphia: University of Pennsylvania Press, 2013.
- Monge, Rosemarie. Review of *Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics*, by Joseph Heath. *Business Ethics Quarterly* 26, no. 3 (2016): 430-433.
- Murphy, Liam and Thomas Nagel. *The Myth of Ownership: Taxes and Justice*. New York: Oxford University Press, 2002.
- No Relief: Denial of Bathroom Breaks in the Poultry Industry*. Policy Papers, Oxfam America. May 9, 2016. Accessed March, 2019. https://www.oxfamamerica.org/static/media/files/No_Relief_Embargo.pdf/.
- Seabrook, Jeremy. “Nickel and Dimed: Undercover in low-wage USA, by Barbara Ehrenreich”. *Independent*. July 6th, 2002. Accessed April, 2019. <https://www.independent.co.uk/arts-entertainment/books/reviews/nickel-and-dimed-undercover-in-low-wage-usa-by-barbara-ehrenreich-182814.html/>.
- Simon, Herbert. “A Formal Theory of the Employment Relationship”. *Econometrica* 19 (1951): 293-305.
- Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. New York: Oxford University Press, 1976.
- Smith, Peter. “Homeless: Can you build a life from \$25?”. *The Christian Science Monitor*. February 11th, 2008. Accessed April, 2019. <https://www.csmonitor.com/Business/2008/0211/p13s02-wmgn.html/>.
- Singer, Abraham. “Justice Failure: Efficiency and Equality in Business Ethics”.

Journal of Business Ethics 149, no. 1 (2018): 97-115.

Singer Abraham. *The Form of the Firm: a Normative Political Theory of the Corporation*. New York: Oxford University Press, 2018.

Solomon, C. Robert. *Ethics and Excellence: Cooperation and Integrity in Business*. New York: Oxford University Press, 1992.

Taylor, Kate. “Chick-fil-A is the fast-food chain of the year, and things are only getting better”. *Business Insider Nederland*. December 28th, 2018. Accessed May, 2019. <https://www.businessinsider.nl/chick-fil-a-is-the-fast-food-chain-of-2018-2018-12/>.

Williamson, Oliver E. “The Economics of Organization: The Transaction Cost Approach”. *American Journal of Sociology* 87, no 3 (1981): 548-577.

Zwolinski, Matt. “Libertarianism and Private Power”. *Bleeding Heart Libertarians* (blog). June 7th, 2012. [Bleedingheartlibertarians.com/2012/06/libertarianism-and-private-power/](http://bleedingheartlibertarians.com/2012/06/libertarianism-and-private-power/).