



Between Market Failures and Justice Failures: Trade-Offs Between Efficiency and Equality in Business Ethics

Charlie Blunden¹

Received: 5 October 2020 / Accepted: 6 February 2021 / Published online: 1 March 2021
© The Author(s) 2021

Abstract

The Market Failures Approach (MFA) is one of the leading theories in contemporary business ethics. It generates a list of ethical obligations for the managers of private firms that states that they should not create or exploit market failures because doing so reduces the efficiency of the economy. Recently the MFA has been criticised by Abraham Singer on the basis that it unjustifiably does not assign private managers obligations based on egalitarian values. Singer proposes an extension to the MFA, the Justice Failures Approach (JFA), in which managers have duties to alleviate political, social, and distributive inequalities in addition to having obligations to not exploit market failures. In this paper I describe the MFA and JFA and situate them relative to each other. I then highlight a threefold distinction between different types of obligations that can be given to private managers in order to argue that a hybrid theory of business ethics, which I call the MFA +, can be generated by arguing that managers have obligations based on efficiency and duties based on equality *to the extent that these latter obligations do not lead to efficiency losses*. This argument suggests a novel theoretical option in business ethics, elucidates the issues that are at stake between the MFA and the JFA, and clarifies the costs and benefits of each theory.

Keywords Market failures · Justice failures · Efficiency and equality

Introduction

One of the leading theories in business ethics is Joseph Heath's *market failures approach* (MFA) (Moriarty 2017, Sect. 4; Singer 2018, p. 97, 104; Moriarty 2020, p. 113). The MFA generates a list of ethical obligations for managers in businesses that tell them to not exploit market failures because doing so reduces the efficiency of the economy (Heath 2014, p. 34) and this efficiency (which results from competition driving prices towards market-clearing levels) is the value that, in combination with a welfare state, justifies the pursuit of profit in the first place (Heath 2014, pp. 29–31). The MFA is a plausible and attractive theory on a number of grounds, as I shall argue below. However, it has been criticised by Abraham Singer for not taking enough account of the value of justice (understood here as an egalitarian value) when generating ethical obligations

for managers (Singer 2018, pp. 104–106). Singer argues that, in addition to having ethical obligations to address and not exploit market failures, managers have obligations to address *justice failures*: that is, failures of the state to properly “achieve some morally desirable form of equality” (Singer 2018, p. 107). Singer proposed theory of business ethics is an extension of the MFA called the *justice failures approach* (JFA).

In this paper I will clarify what's at stake between the MFA and JFA, how exactly they differ, and where they are in tension with one another. This will help assess the costs and benefits of each approach and set the grounds for choosing between them. I will argue that the JFA is not as attractive an option in business ethics as it may first appear to be. Many of the justice-based obligations generated by the JFA can be either independently justified on efficiency grounds (and thus justified from within the MFA), or else be incorporated into the MFA due to the fact that pursuing such justice-based obligations will not create deadweight losses which represent reductions in economic efficiency. However, there are other justice-based obligations which would create distortions in the price mechanism, and to this extent would compromise efficiency: I argue that this should be seen as

✉ Charlie Blunden
c.t.blunden@uu.nl

¹ Department of Philosophy & Religious Studies,
University of Utrecht, Janskerkhof 13, 3512 BL Utrecht,
The Netherlands

a *cost*, rather than a virtue, of accepting the JFA. However, whether this cost is seen as problematic for the theory ultimately depends on how much efficiency one is willing to give up in order to achieve a certain level of equality.

I will firstly outline the MFA, paying particular attention to the precise kind of “efficiency” that grounds the obligations that the MFA provides and explicating the division of moral labour between the market and the state within the theory. Secondly, I will cover a recent criticism of the MFA. Heath’s view has been challenged in the literature because he seems to slide between two conceptions of efficiency when developing the MFA: Pareto efficiency and Kaldor-Hicks efficiency (Moriarty 2020). I will clarify exactly what kind of efficiency is at work in the MFA. Thirdly, I will outline the JFA in comparison to the MFA. I will describe how the JFA extends the framework of the MFA by questioning the division of moral labour between the market and the state, and I describe the ethical obligations that it generates for market actors. Fourth, I will discuss compliance issues for both the MFA and the JFA, and highlight how these compliance issues might bear on the division of moral labour promoted by the MFA. Fifth, I will highlight an important distinction between different types of obligations that are relevant when comparing the MFA and JFA: between obligations that have a *dual justification*, such that they can be justified either by appeals to efficiency or to justice, obligations that are *foreign to the market*, and obligations that are *antithetical to the market*. With this threefold distinction in hand, I will assess the three domains of justice-based obligations promoted by the JFA in the sixth, seventh, and eighth sections: the obligations concerning *political*, *social*, and *distributive justice* outlined by Singer (2018, pp. 108–113). In each case, I will assess which specific obligations could be generated from within the MFA or else incorporated into it, and which obligations cannot be incorporated due to their efficiency-frustrating effects. In the ninth section, I will outline the key issues at stake in deciding between the MFA and the JFA, and briefly comment on how the question of efficiency-equality trade-offs might be resolved. I will conclude by revisiting some extant options for theories of business ethics: the first being the MFA, the second being what I call the MFA+, which consists of the ethical obligations of the original MFA plus those justice-based obligations that can be incorporated into the MFA, and the third being the JFA, now with a more explicit understanding of the losses in efficiency that will likely be caused by some of the ethical obligations that it recommends.

The Market Failures Approach

The MFA as outlined by Heath¹ is best understood within the context of an overall theory of justice. This overall theory is contractualist and aims at fairly distributing the benefits and burdens of cooperation in a society. Systems of co-operation generate mutual benefit, which participants have a common interest in maximising: however, they also generate a conflict of interest, because each party prefers a larger to a smaller share of the cooperatively achieved gains. Sometimes the conflict involved in cooperation can be resolved by drawing upon shared cultural resources (Heath 2014, 151), but even where this is not possible two normative principles suggest themselves based on the structure of the interaction itself: a principle of efficiency, such that their common interest should be maximised, and a principle of distribution, which stipulates some concept of equality which should be used to resolve conflicts of interest (Heath 2014, p. 182).

The concept of efficiency that the background contractualist theory uses is Pareto efficiency: “the principle that, whenever it is possible to improve at least one person’s condition without worsening anyone else’s, it is better to do so than not” (Heath 2014, pp. 9–10; Varian 2010, pp. 15–16).

Competitive markets are good at promoting Pareto-efficient exchanges because when market actors compete for profit they push prices towards market-clearing levels: the price mechanism creates what are known as scarcity prices which allow supply and demand to reach equilibrium, where the price that consumers pay for a good represents the social cost of that good: namely the opportunity cost of using resources to make that good rather than other goods that could have been made with the same resources (Heath 2014, chap. 1, 2009). These price levels allow the minimisation of waste in the economy, by maximising the resources that are spent producing goods that people want, as opposed to goods that they don’t want (Heath 2014, p. 29).

The formal proof of this idea comes from *the first fundamental theorem of welfare economics*, the conclusion of which is that a perfectly competitive market would maximise (and exhaust) all possible Pareto-improving exchanges (Arrow and Debreu 1954; Heath 2014, pp. 196–197; Singer 2018, p. 99). The conditions of perfect competition include that there are no market failures (no externalities, no transaction costs, no information asymmetries between customers and suppliers), no economies of scale, and no ability of individual suppliers to influence prices (with all firms

¹ A theory very similar to, if not the same as, Heath’s MFA has been proposed by McMahon (McMahon 1981). On whether these theories are identical or merely very similar, see Moriarty (2020, 115–116). I focus here on Heath’s version of the theory primarily for reasons of simplicity.

being “price-takers and not price-makers” (Scitovsky 1952, p. 21; cited in Blaug 2007, p. 187)). These conditions do not exist in the real world (Heath 2009, Chap. 3). To make matters worse, we also cannot directly use the first fundamental theorem to draw conclusions about our world of non-perfect competition. This is due to another economic theorem called *the general theory of second best* (Lipsey and Lancaster 1956). The general theory of second best shows that once even one of the conditions of perfect competition is not fulfilled, there is no guarantee that the market which best approximates the *remaining* conditions of perfect competition will in fact produce the most Pareto-efficient exchanges. Once one market distortion, for instance a trade barrier, is in place we have moved away from the situation of perfect competition: the second best efficient economy may now in fact be one with *additional* trade barriers (additional moves away from the conditions of perfect competition) (Heath 2009, pp. 78–79). While the theory of second best prevents us from directly using the first fundamental theorem of welfare economics to guide policy decisions, it is nonetheless true that in many cases allowing market actors to compete with one another will drive prices towards market-clearing levels and thus enable the number of Pareto-efficient exchanges in the economy to be maximised (Heath 2009, pp. 79–80, 2014, pp. 40–41, 2019, pp. 25–26).

Crucially, as prices are driven towards market-clearing levels there is a reduction of *deadweight losses* in an economy. A deadweight loss is an unrealised Pareto-efficient exchange. This is a situation in which there is someone willing to sell a good and someone willing to buy it at the price that is lower than the current market price, however, these two parties are prevented from transacting. This is commonly due to the market power of a monopolist, who keeps the price above the level at which the transaction would take place, but the transaction can also be prevented by some other contingency of the world that prevents parties from contracting (Varian 2010, pp. 304–306, 448–49; McEachern 2012, pp. 215–216; Heath 2014, pp. 188–89, 2019, pp. 23–24). Competition between businesses drives prices towards market-clearing levels, which in turn increases the number of mutually-beneficial (Pareto-efficient) exchanges that occur (Heath 2014, p. 100, 197).

However, while promoting Pareto efficiency is one of its key principles, the overall theory of social justice is also concerned with equality, and therefore with some “conception of distributive justice” (Heath 2014, p. 10). Put roughly, the implicit justification of market institutions is that they promote Pareto efficiency by driving prices to market-clearing levels. To the extent that it promotes such market institutions capitalism can receive justification, but:

[I]t is only when embedded within the broader context of a welfare state, which engages in both market-complementing and redistributive policies (primarily through the

tax system), that capitalism as a whole can claim to be just (Heath 2014, p. 10).

While an overall system of social cooperation can only claim to be just if it balances the value of efficiency with the value of equality, this does not mean that all institutions within a society must be equally concerned with promoting both values. As is evident in the previous quote, the MFA holds that there should be an institutional “division of moral labor” in which the purpose of the market is solely to maximise the number of Pareto-efficient exchanges that occur (by competing to drive prices to market-clearing levels), while the state is tasked with resolving market failures to promote efficiency and promoting morally-desirable forms of equality (Heath 2014, p. 203).² If we want the efficiency promoting effects of the price mechanism, then we must keep demands for distributive justice away from the operation of the market and avoid the temptation to pursue distributive goals by fixing prices or by hampering the ability of market actors to compete with each other by means which do not exploit market failures. Instead we should promote equality by redistributing income and wealth via taxation, ideally trying to limit the impact of said taxes on prices (Heath 2009, Chaps. 7, 12). Asking the market to achieve distributive justice is likely to result in prices that do not reflect the market-clearing level: thus some “portion of the utility realizable through exchange will, in effect, be thrown away” as a deadweight loss, and we begin to lose the “massive efficiency gains” that market-clearing prices deliver (Heath 2013a, p. 167).

Justifying the Division of Moral Labour

Singer has argued that the division of moral labour in the MFA is justified by the *second fundamental theorem of welfare economics* (Singer 2018, p. 105): which states that given a particular allocation of initial assets, a competitive economy could generate any one of a set of Pareto-optimal outcomes, including outcomes that would be picked out by “one’s favored concept of equality” (Heath 2014, p. 183; Blaug 2007, p. 185). The second fundamental theorem means that having a market that solely promotes efficiency is compatible, at least under certain conditions, with egalitarian outcomes. While Heath does not explicitly argue that the division of moral labour within the MFA is justified by the second fundamental theorem, Singer holds that the division of moral labour is implicitly “underwritten” by the theorem (Singer 2018, p. 105). Singer then notes that the conditions

² Specifically, the state is tasked with creating legislation to curb market failure when such legislation can be enforced without generating administrative costs that are greater than the efficiency gains from the intervention (Heath 2014, p. 34, see also 2011, pp. 23–28).

under which the second fundamental theorem holds, as with the conditions under which the first fundamental theorem holds, are not fulfilled in the real world: this then forms a jumping-off point for his argument in favour of the JFA (Singer 2018, pp. 105–107). While the second fundamental theorem shows that there is no “conceptual incoherence” in wanting both efficiency and equality (Heath 2009, p. 280), in reality the institutional means to security equality (specifically distributive equality) typically have a distortionary effect on prices and thus lead to a reduction in efficiency (Heath 2009, pp. 281–286, 2014, pp. 183–186; Stiglitz 1994, p. 145).³ Thus, in reality, we are often faced with a trade-off between efficiency and equality.

However, as the previous citations indicate, Heath explicitly acknowledges the point that due to “pragmatic and empirical difficulties” (Heath 2009, p. 281) the “real world never even comes close to satisfying the conditions under which [the second fundamental theorem] would be true” (Heath 2009, p. 280). It could of course be the case that Heath is simply being inconsistent on this point, and that he is implicitly relying on the applicability of the second fundamental theorem to justify the division of moral labour. However, I believe there is a more plausible justification for the division of moral labour contained in Heath’s work, which I will now explicate. It begins with the observation that, empirically speaking, there are more and less inefficient ways of achieving egalitarian gains. For example, trying to achieve morally desirable forms of equality by directly fixing prices will distort the ability of said prices to communicate relative scarcity, and so will lead people to make decisions which will reduce the overall efficiency of the economy (Heath 2009, pp. 154–158). More broadly, ascribing managers obligations based on everyday notions of fairness, equality, and distributive justice is often in conflict with the competitive structure of market interactions: a competitive structure which is justified by its efficiency promoting effects (Heath 2014, pp. 29–31, 110, 199–200). A much less inefficient way of promoting equality is through forms of taxation which aim to be as non-distortionary to prices as possible and to alter people’s incentives as little possible. For example, countries which spend a large percentage of their GDP on their welfare states (with both efficiency and equality promoting functions) typically rely on consumption taxes (such as value added taxes) for funding rather than income taxes, as the latter discourage investment and therefore reduce the capital available for competition (Lindert 2004, pp. 241–43, 295). Value-added taxes are also harder for individuals or businesses to avoid than income taxes, which lowers the cost of collecting the tax: a consideration further discussed in the

“Distributive justice failures” section (Slemrod and Bakija 2008, pp. 197–99). More promisingly still, there are cases where the state can introduce taxes aimed to curb market failure: for instance, a carbon tax. In such cases, the tax can be justified on efficiency grounds because it is aimed at correcting a price (e.g., the price of carbon) which is incorrect due to a market failure (Nordhaus 2013, Chap. 19). Such a tax is likely to promote efficiency, and the revenues can then be used to pursue egalitarian gains (Heath 2009, Chap. 12).

Drawing on these examples given by Heath, in my view the division of labour between the state and market in the MFA is best seen as being justified by an empirical generalisation: namely, that when market actors are asked to carry out obligations to promote equality this will often conflict with the competitive orientation that is required in the market, thus reducing the ability of the market to push prices to market-clearing levels, and thus resulting in significant efficiency losses. Conversely, when the state is asked to carry out obligations to promote equality, the resources available to it to carry out these obligations (e.g., taxing to prevent market failures, using value added taxes, etc.) will result either in straightforward efficiency gains or in less serious efficiency losses than if the obligations were pursued by market actors. This argument that the division of moral labour is justified by an empirical generalisation will be further explored in the sixth, seventh, eighth, and ninth sections of this paper.

The Obligations Given by the MFA

Given that efficiency is the value that justifies the pursuit of profit (provided the market is embedded in the broader context of a welfare state), what kinds of ethical obligations apply to managers in the market economy? The MFA replies that managers have an ethical obligation not to engage in behaviours that create or exploit market failures (Heath 2014, pp. 36–37). Market failures are Pareto-inferior outcomes in the market due to less-than-perfect competition, caused by things such as information asymmetries between buyers and sellers or externalities such as pollution (Heath 2014, p. 34). Due to their negative effects on efficiency, engaging in behaviour that creates or exploits market failures goes against the value that justifies the pursuit of private profits within the market in the first place: as such, managers should refrain from all these forms of behaviour. Heath provides the following as examples of the kind of obligations set out by the MFA:

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.

³ For a description of this trade-off specifically in the domain of redistributive taxation see Slemrod (2006, pp. 74–76).

5. Avoid erecting barriers to entry.
6. Do not use cross-subsidization to eliminate competitors.
7. Do not oppose regulation aimed at correcting market imperfections.
8. Do not seek tariffs or other protectionist measures.
9. Treat price levels as exogenously determined.
10. Do not engage in opportunistic behavior toward customers or other firms (Heath 2014, p. 37).

As can be seen, the MFA generates quite a robust set of ethical norms for managers solely on the basis of efficiency. In addition, because efficiency is a value that is internal to the market (it is the value on the basis of which the market is justified), the MFA can claim that its ethical norms are derived from the structure of the market, rather than being imposed on the market from the outside. In this way, the MFA is a kind of ‘immanent critique’ in business ethics: it accepts that the point of having markets is to maximise the number of Pareto-efficient exchanges, but then uses this normative principle to generate a robust set of norms for managers which form a critique of contemporary business practice (Singer 2018, p. 104).

Moriarty’s Criticisms of the MFA

The MFA has recently been criticised by Moriarty (2020) on two separate grounds. Exploring these criticisms is useful for getting clearer on the normative criteria that the MFA uses to generate the above list of obligations, and for understanding the relation of the MFA to the general theory of second best.

Moriarty’s first criticism is that the MFA claims to ground its obligations in the value of Pareto efficiency, but that it actually relies instead on Kaldor-Hicks (KH) efficiency. A transaction is KH efficient if it creates a winner and a loser, but the gains to the winner are sufficiently large such that they could fully compensate the loser while still having benefitted relative to the status quo before the transaction. Thus KH efficient transactions can be thought of as those which improve aggregate welfare, or which are potentially Pareto-efficient. Why does Moriarty claim that the MFA uses KH efficiency rather than Pareto efficiency? Because, so he claims, the MFA cannot justify the above obligations using the standard of Pareto efficiency.

For instance, the fifth obligation on the list, to avoid creating barriers to entry, is clearly designed to prevent monopolies forming. But what, from the point of view of Pareto efficiency, is so bad about the transactions that a monopolist carries out? The monopolist and the customer purchasing from the monopolist both benefit from

the transaction, and so it is Pareto-efficient. Furthermore, getting rid of the monopoly by introducing competitors would increase the number of exchanges happening, but at the cost of severely cutting into the profit margin of the former monopolist. As the monopolist is made worse off, this transition cannot be Pareto-efficient: if we are to justify the MFA’s obligation to prevent monopolies and encourage competition it must be on the grounds that, while monopolists are hurt by such a policy, the policy nonetheless increases aggregate welfare by enabling many more exchanges to happen, and so is KH efficient (Moriarty 2020, pp. 117–120; Heath 2019, pp. 22–23).

The response to this line of objection is that, while any change away from a market failure (e.g. a situation where there is a monopoly) will not be straightforwardly Pareto-improving (Heath 2013b, p. 51), *in general* resolving market failures will enable the price mechanism to function correctly, generating a set of scarcity prices which will maximise the number of Pareto-improving exchanges in the economy. We can thus see that the standard of Pareto efficiency is what underlies the obligations in the MFA (we are not trying to create scarcity prices in order to maximise the number of KH efficient exchanges), while allowing the undeniable point that an exchange between a monopolist and their customer is Pareto-efficient and that monopolists lose out when competitors enter the market.

Moriarty’s second line of criticism can be thought of as targeting the “in general” proviso in the previous paragraph. Given the general theory of second best, how can we claim that managers should follow the MFA’s obligations designed to alleviate market failures on the grounds that this promotes Pareto efficiency, when we know that sometimes an imperfect market can be made more efficient (can be made to create more Pareto-efficient exchanges) by the addition of more market failures? It seems like the second best theory deprives the MFA of its source of justification, rendering it problematically ideal (Moriarty 2020, pp. 120–123). It is true that, due to the theory of second best, one cannot claim that removing market failures will *guarantee* increases in Pareto efficiency: the link between removing market failures and promoting Pareto efficiency is instead an empirical generalisation. However, we can doubt whether, in the messy domain of applied ethics, we can obtain any normative obligations where following these obligations is morally desirable by necessity under all circumstances: this seems like too stringent a standard to set. Furthermore, in most cases where we are directing obligations to managers of firms in reasonably competitive markets, it remains true that exploiting or creating market failures (generating negative externalities, colluding to fix prices above market-clearing levels, etc.)

will decrease the number of Pareto-efficient exchanges that occur (Heath 2019, p. 25).⁴

The Justice Failures Approach

The JFA agrees with the MFA that managers should not exploit market failures (Singer 2018, p. 97). However, the JFA disputes that the MFA's division of moral labour between the market and the state can be upheld in non-ideal conditions. Singer argues that the division of moral labour can only be upheld in conditions where the demands of justice to promote equality are being appropriately met by the state, because it is only in these conditions that the market's sole pursuit of efficiency is justified (Singer 2018, pp. 105–106, 2019, 238–40). However, the state routinely fails to achieve morally desirable forms of equality. In an analogy to the concept of market failures, Singer calls these failures of the state “justice failures” (Singer 2018, p. 107).⁵ Singer characterises a justice failure as a failure “of the welfare state to achieve all possible movements towards equality consistent with efficiency” (Singer 2018, p. 107), and adds that this does not include failures to “level down” towards equality which is why he includes the qualification “equality consistent with efficiency” (Singer 2018, p. 107, Footnote 5). However, these two characterisations differ. Levelling down occurs when a greater level of equality is achieved merely by making the better-off worse off, rather than by increasing the welfare of the worst-off (Arneson 2013; Sect. 6; Weber 2014, pp. 756–57). Levelling down can also occur over a longer period of time: for instance, if some policy aiming to

alleviate inequality slows economic growth sufficiently then it can be the case that an alternative arrangement without the policy, but with a higher level of economic growth, can result in a greater level of well-being for the worst off after a given period of time (Heath 2009, p. 57). For levelling down to occur it has to be the case that a greater level of equality is being achieved by lowering the welfare of the better-off. However, many movements towards equality which are not necessarily instances of levelling down can nonetheless be inconsistent with efficiency in the sense that the policies designed to achieve those movements towards equality create deadweight losses (see the “Justifying the division of moral labour” section). These policies need not level down in the short term, as they may be straightforwardly redistributive: although they may level down in the longer term by negatively affecting economic growth that would otherwise enrich the worst-off to a greater extent than the redistributive policies. I will argue later in the sections on political, social, and distributive justice failures that there are reasons to believe that some of the obligations within JFA would create efficiency costs.

How should the existence of justice failures influence our conception of business ethics? While we might have been willing to accept the division of moral labour between the market and the state on the assumption that the state would comply with its obligations to secure the egalitarian component of the overall theory of justice, in reality the state is failing to discharge its obligations on this front. These resultant justice failures raise problems for the justification of the market, because in the context in which we were previously discussing the MFA we were only willing to accept that markets could be justified by their efficiency-promoting effects to the extent that the operation of market institutions was compatible with a measure of equality. Thus justice failures license an extension of the MFA, so that equality-based obligations need no longer be given solely to the state. Singer argues that, while the responsibility for solving justice failures does not necessarily fall on corporations (it falls on other actors as well), there are pragmatic reasons for attributing duties to solve justice failures to them: corporations wield significant “power, influence, and volume with regards to...hiring, investment, governmental lobbying, and so forth”, and so are best able to address these issues (Singer 2018, p. 107).

While Singer does not invoke a specific account of justice or equality in his analysis, he does offer general features of such an account:

- (1) A commitment to individual rights and liberties.
- (2) A priority given to these rights, liberties, and opportunities.
- (3) The assurance that all citizens have the basic goods necessary to use these freedoms (Singer 2018, p. 108).

⁴ To further boost the plausibility of the empirical link between solving market failures in reasonably competitive markets and promoting efficiency, it is worth pointing out that in cases where the truth of the second best theory is felt most sharply the state simply does not allow competitive markets to form. For example, in cases where an attempt to organise competition would fail due to the effect of economies of scale (for instance, the provision of roads, sewers, or power distribution grids) the state actively maintains monopolies: either by organising supply directly or by controlling the prices that the sole private supplier can charge (Heath 2011, p. 26). Here we have the state actively supporting a market failure: maintaining a monopoly. But this is obviously a case the second best theory captures really well: removing this market imperfection would not lead to an increase in efficiency. What is predominantly left over once we take these kinds of cases, in which the state actively maintains market failures due to empirical quirks of certain sectors of the economy, out of the picture are those sectors where reasonably competitive markets can be maintained. The managers to whom the MFA obligations are directed are those who work in these sectors where the empirical generalisation that removing market failures will lead to increased efficiency is the most accurate.

⁵ Though it is arguable that “equality failures” would be a more appropriate term, as Singer's terminology separates the value of efficiency from an overall conception of justice.

From this rough account of justice, the JFA outlines three types of justice failure that managers have ethical obligations to tackle:

- (1) *Political justice failures*: the failure to secure a government sufficiently democratic or independent of special economic and social interests.
- (2) *Social justice failures*: insufficiently equal enforcement of rights and opportunities.
- (3) *Distributive justice failures*: failure to secure a decent distribution of wealth (Singer 2018, p. 108).

I will discuss these obligations in more detail in the sixth, seventh, and eighth sections. For now, it is apparent that the JFA gives managers more obligations than the MFA, and that many of these obligations are generated on the basis of the value of morally desirable forms of equality. These are values which are, according to Heath, external to the market and, according to Singer, *would be* external to the market *if* the state were fulfilling its equality-based obligations. However, it is worth emphasising that while these egalitarian values may be external to the market in the sense described above, they are not, according to either the MFA or the JFA, external to the overall institutional complex of the market and the state. Thus, the JFA is a form of immanent critique in business ethics like the MFA: the difference being that the JFA draws its obligations for businesses from the immanent norms of the market-plus-state, whereas the MFA is a business ethical theory which only draws on the norms immanent to market institutions.

Compliance in the MFA and JFA

The MFA and the JFA both produce obligations that go against the self-interest of managers within market institutions. Both theories require managers to not exploit market failures, even when doing so would be profitable for the firm or would be in the manager's personal self-interest. In addition, the JFA requires managers to modulate their behaviour in accordance with equality-based obligations: these obligations may, one can easily imagine, also proscribe certain courses of action that would either be profitable for the company or in the narrow self-interest of the managers themselves. One could argue that the JFA is less attractive than the MFA because it is less likely to be motivationally effective as a theory of business ethics for managers: assuming that the more obligations people are given which run counter to their self-interest, the less they will comply. This concern may seem particularly sharp due to the fact that managers will be adults at the point that they are first asked to comply with these obligations, and so the potential for socialisation is more limited than with other

demanding ethics (such as demanding religious moralities) where people's motivations can be shaped from an earlier age.

Singer has addressed this argument with two mutually supporting points. Firstly, he argues that his goal is to "articulate a view of business ethics that is appropriate to the institutional setting of the market, not to facilitate its easy implementation by dulling its critical bite" (Singer 2019, p. 253). It is important to work out what businesses *ought* to be doing, even if it is difficult to secure compliance with these obligations. Secondly, Singer points out that we do indeed need "a way of moving from the aspirational to the practical" (Singer 2019, p. 253) so that the principles of the JFA can actually be effective. He suggests that, in current business environments, compliance with the JFA's obligations will be difficult to secure because if a business tried to carry out these obligations unilaterally they would find themselves hobbled in competition with their rivals. Indeed, this point holds for the obligations from the MFA as well: if one company decides to stop exploiting market failures while its rivals do not, then that company will be swiftly driven out of business (Heath 2018, p. 516). Both Heath and Singer agree that the fact that individual companies would go out of business if they followed the MFA or JFA's obligations in the absence of other firms doing the same is at best an excuse for not following those obligations: not a justification for why those firms should not have to follow said obligations (Heath 2018; Singer 2019, p. 253). Furthermore, this excuse is conditional. It is only available to firms on the condition that they are engaged in efforts to try to bring other firms into compliance: for instance, by supporting government regulation aimed at resolving the underlying market failure or justice failure (Heath 2018, pp. 527–531; Singer 2019, pp. 253–254). In my discussion below of the JFA's obligations I will highlight that, in some cases, an argument for the MFA's moral division of labour is that having the state enforce certain obligations through regulation is the best way to deal with the compliance problems that the JFA would otherwise encounter.

Before discussing in more detail the obligations recommended by the JFA, I will first elucidate a distinction that is necessary to properly compare the MFA and JFA.

Three Types of Obligations for Managers

When thinking about the set of obligations produced by both the MFA and the JFA there is a threefold distinction which can help us appreciate the costs and benefits involved in choosing one theory or another. Firstly, as I will argue below, there are several ethical obligations which can be justified on the grounds of either efficiency or equality. I will refer to these as obligations with a *dual justification*. Where

proponents of the JFA recommend that these obligations be given to managers in order to alleviate justice failures, proponents of the MFA can reply that such obligations are already given to managers on efficiency grounds. The independent attractiveness of ethical obligations for managers with a *dual justification* is therefore not going to be sufficient to motivate a shift from the MFA to the JFA, because these obligations can be generated within the framework of the MFA.

Secondly, there is a distinction that can be drawn from the perspective of the MFA when discussing managerial obligations based on justice: the distinction between market *foreign* obligations and market *antithetical* obligations. *Market foreign obligations* are those obligations recommended by the JFA that, while they are not justified on the basis of efficiency, can nonetheless be carried out by managers without reducing efficiency in the market: notably by not hampering businesses ability to compete, and thus reducing the ability of the market to drive prices towards market-clearing levels. *Market antithetical obligations* are those justice-based obligations which would reduce efficiency in the market if they were carried out: normally these would be obligations which would require managers to spend resources which would otherwise be spent realising efficiency gains through competition (by, for example, investing to bring down costs or increase quality). As such, *market antithetical obligations* come with a cost attached: if followed, they can be expected to reduce the number of Pareto-efficient exchanges that will occur in the economy.

In what follows, I will argue that the MFA already contains several of the obligations promoted by Singer as features of the JFA: these are then obligations with a *dual justification*. I will also argue that there are several *market foreign obligations* in the JFA that can be incorporated by the MFA.

As I described in the first section, the MFA does have a conception of justice that includes the promotion of morally desirable forms of equality as part of its overall normative schema. It is simply the case that obligations to promote equality are to be predominantly taken care of by the state, because giving such obligations to the market, particularly obligations of distributive justice, is very likely to represent a channelling of resources away from competition, thus distorting the price mechanism and therefore leading to losses of efficiency (Heath 2009, pp. 162–163; 2013, p. 167). But, for something to be a *market-foreign obligation* as described above, it would be the case that said obligation will not lead to efficiency losses: and so the rationale for not asking managers to follow such obligations is not present. If managers can fulfil such obligations then it would be better if they did, because in so doing they would enhance the egalitarian component of justice in their society while not decreasing efficiency. In the next three sections, I will briefly describe

the three kinds of justice-based obligations prescribed by the JFA, and in each case see if there are any obligations with a *dual justification* or *market foreign obligations* that could be incorporated into the MFA. Those obligations with a *dual justification* can be argued to be already implicit within the original MFA. Meanwhile, the original MFA, plus any *market foreign obligations* that can be identified, I shall call the MFA+. Of course, one could also refer to this hybrid theory as the JFA-. I leave this matter of preference up to the reader. The fundamental point to understand about the MFA+/JFA- is that it treats losses of efficiency as a hard constraint on the equality-based obligations that can be given to managers in market institutions. I will now turn to the three classes of obligations for managers promoted by the JFA. In my discussion of these obligations I will also point out how the effects of the obligations on efficiency bears on the division of moral labour that is promoted by the MFA.

Political Justice Failures

The JFA gives managers justice-based obligations to not exploit or exacerbate political justice failures. One key obligation is to not attempt to bypass the democratic process by funding political campaigns or lobbying governments to adopt policies that the corporation would prefer (Singer 2018, p. 109). It is in the case of political justice failures that the MFA has the easiest time incorporating the JFA's obligations. This is because much of the lobbying undertaken by corporations is *rent-seeking*: where corporations attempt to secure subsidies or other public policies from government that benefit them but harm their competitors (Mueller 2003, Chap. 15; Marotta 2013). Such rent-seeking does not generate any wealth, it simply redirects it, and straightforwardly goes against the MFA's obligation to "[c] ompete only through price and quality" (Heath 2014, p. 37). In addition, rent-seeking behaviour among firms generates large deadweight losses (Brennan 2016, E-3-E-4): as such it can easily be condemned on efficiency grounds alone. In the case of corporations lobbying politicians in order to secure rents, both the MFA and the JFA condemn such behaviour and give managers an obligation not to pursue such actions: as such, we have a clear case of a *dual justification*. As such, the desirability of such an obligation will not count in favour of switching from the MFA to the JFA, as the obligation can already be motivated by concerns of efficiency.

Not all instances of lobbying are rent-seeking which can be condemned on efficiency grounds: sometimes there is the influence of strong political interests in the democratic process, and such influence seems straightforwardly unjust, rather than inefficient (Singer 2018, p. 109). Nonetheless, since the prescription is therefore that corporations should not engage in such practices, this obligation can be

incorporated into the MFA+. Here's why: asking corporations to *not* lobby for political causes will not divert any resources away from competition, and therefore will not lower their contributions to overall efficiency. In asking managers to not partake in such lobbying on the grounds that it is unjust, we are giving them a *market foreign obligation* consistent with their pursuit of profit as constrained by the MFA's efficiency-based obligations.

However, there is a further case of lobbying which is harder to condemn from within the MFA or the MFA+. This is the case of a company spending money on political lobbying, but where the lobbying is also part of the company's branding and thus part of their competitive strategy within the marketplace. In such a case, the *quality* that some consumers see in the company's products would be partly constituted by the political lobbying: and so the spending would not constitute a channelling of resources away from competition, because the spending would itself be a competitive strategy designed to increase sales.⁶ An obligation to ameliorate this type of political justice failure would need to be justified from within the JFA.

Social Justice Failures

The key obligation that Singer discusses as following from social justice failures is the ethical obligation of businesses to engage in affirmative action projects to try to alleviate historical injustices against (for example) women and ethnic minorities (Singer 2018, pp. 110–112). It seems intuitively ethically plausible that we should try to alleviate such inequalities, and affirmative action programmes are an option to achieve this. To some extent the MFA is weaker when responding to social justice failures than political ones. For one thing, sometimes discrimination against certain disadvantaged social groups can actually be justified on efficiency grounds; not directly because of factors like race, sex, or gender, but rather because discriminated-against groups will often be (for instance) poorer, less skilled, or less credit-worthy as a result of historical disadvantage (Sunstein 1991, pp. 26–30). Having affirmative action in these circumstances is likely to reduce efficiency: thus it would be a *market antithetical obligation*. However, there can be circumstances in which affirmative action can actually promote efficiency, when it allows efficient “use of minority and female human resources” that has previously been prevented by discriminatory attitudes (Holzer 2007, p. 49). While the evidence is complex (Holzer and Neumark 2006), and it is difficult to measure the effects of affirmative action

(Joseph and Coleman 1997, pp. 267–268; Durlauf 2008), there is some indication that beneficiaries of affirmative action programmes do not perform worse in the job market, and generate positive externalities for others (Holzer 2007, p. 64). In addition, a recent study by Beaurain and Masclet (2016) has suggested that having hiring quotas for women does not affect firm efficiency: this is positive news for the MFA+, as it suggests that in certain cases affirmative action will not affect a firm's ability to compete with other firms, and thus to help drive prices towards market-clearing levels. However, it will depend on the evidence whether there are negative effects on efficiency for any given affirmative action programme (Joseph and Coleman 1997, p. 270). Thus, the obligations to carry out certain affirmative action programmes may count as obligations with a *dual justification* where they also promote efficiency, or as *market foreign obligations* where they have no negative effect on efficiency, whereas obligations to carry out other affirmative action programmes may be *market antithetical obligations* which conflict with corporations' contributions to overall efficiency.⁷ The MFA will already contain the first set of obligations, while the MFA+ should contain the first and second category of obligations, but not the third.

The issue of social justice failures raises an interesting point about the division of moral labour promoted by the MFA. The division of moral labour states that we should leave egalitarian obligations to the state, rather than giving them to the market: because giving them to the market would result in significant efficiency losses. Let's assume that a certain kind of affirmative action program is obligatory from the point of view of a morally desirable form of equality, and let us also assume (not completely implausibly) that said program would lead to unrealised Pareto-efficient exchanges. Now return to the division of moral labour: why is it preferable, from the standpoint of efficiency, that this obligation be carried out by the state legislating that businesses follow the affirmative action program rather than that this obligation apply directly to businesses? It would seem that the effect on efficiency would be the same in either situation. It also seems undesirable to claim that the negative efficiency effects simply rule out the pursuit of the obligation: after all, it was part of the attraction of the MFA that, while market actors are only accountable to efficiency, some obligations of equality can still be discharged by the state.

The strongest argument for giving the obligation to the state in this case would seem to be that doing so is the best

⁶ Thanks to an anonymous reviewer for pointing out this kind of political justice failure.

⁷ An interesting question (which I cannot pursue fully here) is who is responsible for doing the painstaking empirical work needed to work out whether a given affirmative action programme is likely to reduce efficiency. If this responsibility goes to businesses, then it will certainly constitute a channelling of resources which could otherwise go towards competition.

way to ensure compliance. If the obligation is given to businesses, and not enforced by the state, then it seems likely that there will be widespread non-compliance. If the state enforces the obligation on businesses and punishes them for deviating, then there is at least a mechanism in place to try to ensure compliance. It is interesting that the natural response to compliance problems under the JFA in this case would seem to be to re-apportion the division of moral labour back towards the state.

Distributive Justice Failures

Singer argues that business have obligations to alleviate distributive justice failures by not dodging taxes, by respecting collective bargaining processes with unions, and by taking steps to pay more than the market wage in situations where the market wage would be intolerable in a just liberal society (Singer 2018, pp. 112–113). The second obligation I leave for reasons of space and complexity.⁸ The first obligation, to not evade taxation, is one which Heath would likely argue in favour of as well. However, the MFA has something of a problem here. The MFA generates a powerful argument in favour of not evading taxes when (as is often the case) those taxes are being raised in order to be used by the state to promote efficiency: evading such taxes would run counter to the value of efficiency (Heath 2014, pp. 200–201). However, taxes are also raised for redistributive purposes, and it is hard to see how the evasion of these taxes could be condemned from within the MFA on efficiency grounds. In reality, of course, it is likely not possible to only evade those taxes which are going to be used for redistribution: but it remains ethically uncomfortable that the MFA would be seemingly unable to condemn such targeted evasion were it an option.

Regarding the third obligation, to pay more than the market wage in situations where the market wage would be intolerable in a just liberal society, Singer argues that this would be best carried out through a fair or living wage. Singer himself is agnostic about the best way to determine wages in order to address “the concerns of justice failure without sacrificing too much by way of efficiency”, but he considers that efforts to promote a living or fair wage may help to combat this distributive justice failure (Singer 2018, p. 113).

⁸ There is a debate within economics on whether collective bargaining by unions promotes Pareto efficiency or not. Empirical evidence suggests that in some markets negotiations between unions and employers results in the exploitation of all potential gains from trade between the two parties (the *Efficient Bargaining* model). However, in many other cases this model is not vindicated, and there is a need for new models to be proposed (Lawson 2011).

If promoting a living or fair wage is indeed the policy that the JFA would recommend, then it seems that this policy could be condemned by the MFA as an example of the “just-price fallacy”: fixing wages in this way will take the price of labour away from the market-clearing price, thus distorting the signalling function of the price of labour, and reducing efficiency (Heath 2009, pp. 150–175, 2013a, p. 168).⁹ The MFA would, instead, recommend redistributing wealth via taxes: however, it would largely recommend taxing people only to increase efficiency (for instance, to provide a public good such as healthcare that is not efficiently provided by private businesses due to market failures (Heath 2009, pp. 81–97), or to discourage an externality, like pollution), and then using this money to achieve an egalitarian distribution, either by straightforwardly redistributing tax money or by implementing taxation in a progressive fashion, or both (Heath 2009, p. 287). Focussing on these specific kinds of taxation is done to mitigate the deadweight losses associated with taxation. There is an administrative cost involved in collecting taxes, and, in addition, taxes raise transaction costs so that some transactions that would otherwise occur do not (and so we have some deadweight loss). Following Heath, we can suppose that it ‘costs’ (through administrative and transaction costs) the state on average 15¢ to collect every \$1 of tax revenue¹⁰ (Heath 2009, p. 284): if the purpose of the tax is to promote efficiency by curbing a market failure, then the efficiency gains created by any particular tax should ideally be greater than the efficiency loss associated with the deadweight loss of collecting that tax. So, in most cases, the MFA would always recommend fulfilling the demands of redistributive justice through such taxes rather than through fixing the price of labour. Obligations for managers to set minimum wages would lead to efficiency losses, and thus be *market antithetical obligations*.

However, there is a set of situations in which the MFA could endorse the setting of minimum wages. This is the situation where a labour market is dominated by a monopsony: a company which is the sole buyer of labour (Varian 2010, pp. 488–491). In such a case, the state should set the minimum wage at the rate that it would be in a competitive market: this is represented by the notation [Wc]. With the price of labour being set at a certain rate, the monopsonist

⁹ On the efficiency problems that can result from fixing wages see also Brennan (2019, p. 25). Brennan also highlights how fixing wages can hurt the workers that such measures are intended to help due to capital substitution or job gentrification (23–24).

¹⁰ On how this figure is estimated, see Heath (2009, p. 284, Endnote 8). For brief survey of other estimates of the deadweight loss associated with taxation see Lindert (2004, p. 232): estimates range from a low of 50¢ per dollar of tax raised to a high of \$2.49 per dollar of tax raised, though Lindert notes that this latter estimate is atypical and, indeed, implausible given empirical evidence.

company will be forced to hire workers until the value of the marginal product equals $[Wc]$. This will “make the firm behave as though it faced a competitive market” (Varian 2010, p. 491). In such a case, an obligation to pay a minimum wage that equals $[Wc]$ could be justified from within the MFA on efficiency grounds. Justifying a higher wage than this would have to be done from within the JFA, as such wages would be likely to create efficiency reducing distortions to the price mechanism (Brennan 2019) and so could not be justified from within the MFA +.

As in the previous section, we can ask how the discussion about distributive justice failures bears on the division of moral labour. We have seen that fixing the price of labour will lead to deadweight losses. However, the state fixes the price of labour through minimum wage laws, and this state action is justified by distributive justice considerations (Heath 2014, p. 191). So why, in this case, should we uphold the division of moral labour and insist upon the state carrying out this obligation? The reason, as in the previous section, seems to be that having the state enforce the minimum wage is the best way to avoid compliance problems. Zooming out from the minimum wage to take account of more general distributive justice considerations, it is also the case (as mentioned in the “Justifying the division of moral labour” section) that the state has many means to secure distributive justice at minimal efficiency cost that are simply unavailable to businesses: and so the division of moral labour can be recommended on these grounds also.

Which Theory: MFA, MFA + , or JFA?

I have now sketched the outlines of three closely related theories of business ethics. All three theories agree that efficiency and equality are crucial elements of the overall theory of justice that we should use to assess the overall system of social cooperation. The disagreement that separates the MFA and MFA + from the JFA is on how obligations to promote efficiency and obligations to promote equality should be divided between market actors and state actors (Smith 2019, pp. 134–137): it is a disagreement about the moral division of labour.

The MFA holds that market actors should be given obligations justified by the promotion of efficiency, and that the state should carry out obligations justified by efficiency and obligations promote morally desirable forms of equality. Market actors are to be held account only to this weaker criterion of social justice, namely Pareto efficiency, on the grounds that giving them obligations to promote more robust values of fairness and equality is likely to undermine the competitive orientation of market interactions, which will have the downstream effect of distorting prices and so undermining the efficiency gains that justify market institutions

in the first place (Heath 2013a, pp. 167–169, 2014, Chap. 7). Equality is to be pursued by the state, through various means (“through progressive taxation, cross-subsidization within social insurance schemes, provision of means-tested benefits, reduced barriers to intergenerational social mobility, etc.” (Heath 2014, pp. 203–204)), so that we might get the benefits of equality while minimally undermining the efficiency gains made possible through market institutions. However, I have also highlighted that there are several equality-based *market-foreign* obligations which can be given to market actors without leading to efficiency costs. These are the obligations which divide the MFA + from the MFA, and they show that the division of moral labour can be broken without efficiency costs. There are other instances where pursuing an equality-based obligation will seemingly lead to equivalent efficiency losses whether it is given to the state or to market actors: in these cases, the best argument for the division of moral labour is that giving these obligations to the state is a better way to secure compliance than giving the obligations to market actors. One important conclusion of this paper is therefore that the division of moral labour is more like a heuristic than a law (and in this respect the JFA is vindicated). It is an empirical matter whether giving certain equality-based obligations to market actors will reduce efficiency, and in situations where equality-based obligations can be expected to reduce efficiency it is an empirical matter whether the state will be able to carry out such obligations at a lower efficiency cost than market actors.

The JFA holds that, as far as the division of moral labour is concerned, the state is not keeping up its end of the bargain. We are faced with numerous justice failures: and as powerful and resourceful actors within our societies, businesses have a duty to try to resolve these justice failures. In my discussion of the MFA + I have tried to bring out the most likely efficiency costs of giving these equality-based obligations to market actors. However, clearly the mere prospect of these costs (even if I am correct in thinking that they would be likely to occur) is not enough to settle the issue of which theory of business ethics we should prefer: below, I will attempt to sketch the considerations that might be relevant to resolving the trade-offs between equality and efficiency that we face. I have also argued, as mentioned above, that many of the compliance problems that the JFA would likely encounter would be most plausibly ameliorated by trying to get the state to enforce equality-based obligations on businesses: thus restoring the division of moral labour that the MFA promotes.

One issue at stake at stake in deciding between the MFA and the JFA is how much efficiency we are willing to give up for how much (and what kinds) of equality. This is a normative issue, but it is deeply bound up with practical issues of the feasibility of different kinds of institutional arrangement. Heath has argued that in the non-ideal world

in which we find ourselves we should accept a compromise in which we use competitive markets to generate prices (with their associated efficiency-promoting effects), even though using this form of large-scale, anonymous, and decentralised form of cooperation means that we largely lose “direct control over the system of allocation, and so are unable to ensure that it satisfies the norm of equality” (Heath 2014, p. 191). Singer also shares a concern with balancing efficiency and equality as normative principles, as we saw in the third section. While I have not suggested that tasking market actors with obligations to combat justice failures will lead to levelling down, it is likely to be the case that giving them such obligations will lead to reductions in efficiency. However, maybe this sacrifice of efficiency is acceptable in exchange for egalitarian gains? I will discuss further below how we might go about resolving this question.

A second, and related, issue at stake is whether it is feasible that the MFA’s proposed division of labour in which the state takes care of egalitarian concerns is likely to be successful. Put bluntly, if we think it’s possible to get a large amount of the egalitarian benefits that the JFA argues businesses should try to secure through state action instead, and if we think that having these obligations discharged by the state will be more efficient than if they were discharged by businesses in a competitive market, then the choice facing us doesn’t seem particularly stark. Should we prefer situation A, with levels of social, political, and distributional equality x and with a greater number of Pareto-efficient exchanges, or situation B, with levels of social, political, and distributional equality x and with fewer Pareto-efficient exchanges? It is of course unlikely that the two options would be identical with regard to the kinds of equality that could be secured: however, as our estimation of the egalitarian gains that the state could secure grows closer to the egalitarian gains that we believe could be secured by the state *and* market actors then the corresponding efficiency cost of having market actors secure those gains would be increasingly meaningful when considering the trade-off between efficiency and equality that we face with some of the JFA’s obligations for managers. The relative efficiency costs of having the state pursue an equality-based obligation vs. having market actors do so is an empirical question, which must be assessed in each individual case using empirical evidence.

How might we decide what level of efficiency costs we are willing to bear for a certain level of equality? It does not seem possible to decide this question at a theoretical level: instead I am inclined to agree with Singer and Amit Ron that this is the kind of question that must be resolved politically through democratic means (Singer and Ron 2020), as it is a matter of political opinion how much one values equality

relative to efficiency.¹¹ However, if such a decision is to have implications for which obligations go to market actors and which to the state, then it will also need to take into account a great deal of complex empirical information about the relative efficiency costs of different ways of securing egalitarian gains. For example, Jeffrey Smith and Singer & Ron argue that corporations cannot merely be seen to be governed by norms of efficiency, because they are also beholden to “a host of other social values we seek to pursue through the construction, regulation, and legal implementation of commerce” (Singer and Ron 2020, p. 143; Smith 2019). However, how effective the market is at promoting efficiency, how effective it is at promoting various other values, and how effective other institutional arrangements are at promoting efficiency and other values are all empirical questions that have a great deal of bearing on how we should divide moral labour among institutions. One of Heath’s central points is that markets are unique in the kinds of efficiency gains they can secure through the price mechanism: and that it is primarily their effectiveness *in this regard* which justifies them. While it is a normative question of how desirable this efficiency is, how effective markets are at promoting efficiency when compared to other institutional arrangements is an empirical question.

Trying to resolve the issue of an acceptable efficiency-equality trade-off through democratic decision-making is, I believe, the most defensible path of action available, as I do not see how this issue can be decided a priori through normative theory. However, because the issue is both empirically and normatively complex we should be concerned that issues of political ignorance and irrationality (Achen and Bartels 2016; Brennan 2020) could severely hamper the prospects of a democratic resolution to this problem. Taking such problems seriously would be an important part of thinking about how issues of business ethics could be addressed democratically.

Conclusion

We now have three business ethics theories to choose from: the MFA, the MFA + (the MFA plus all the *market foreign obligations* outlined above, and any others which can be

¹¹ As Singer and Ron point out, a commitment to using democratic means to resolve such value questions may also be a source of obligations for market actors: market actors would then have an obligation to “have an understanding of, and ethical disposition toward moderating, their effects on democracy” (Singer and Ron 2020, p. 151). Because such norms would be immanent in the process that is used to resolve questions of efficiency-equality trade-offs, it does not seem plausible that efficiency consequences could be used to object to these obligations.

discovered), and the JFA. Which should we prefer? The MFA + is arguably more ethically attractive than the MFA, as it includes several justice-based obligations which, by definition, do not come with the cost of reducing the efficiency of the economy. Our choice of business ethical theory may also be influenced by the motivational point raised in the fourth section: the more ethical obligations one puts into a theory, the more one should worry about compliance problems. However, it is an open question the extent to which compliance problems should affect our choice of normative theories. If compliance problems are a concern, then the MFA may appear more attractive than the MFA +: however, this is more of an intramural dispute than the choice between market failures approaches and the JFA. The JFA no doubt promotes equality, but, as we have seen, it generates several obligations which will reduce efficiency. The market antithetical obligations which are unique to the JFA all come with a cost in efficiency: in each case this should make us seriously consider whether there are other ways to achieve the same desirable kinds of equality without the efficiency costs.

Ultimately, the key decision between the MFA/MFA + and the JFA has to rest on how much efficiency one is willing to sacrifice a certain level of equality. I have not tried to resolve this question in this paper: in large part this is because I am not sure about what the answer should be, and I am inclined to think that it is the kind of question that must be resolved politically, and with attention to the problems with democracy which make it difficult to politically resolve such empirically and normatively complex questions. However, I am sure that such a discussion must require a clear and perspicuous counting of the costs and benefits of each theory.

Acknowledgements Many thanks to Hanno Sauer, Sünje Clausen, and Enrico Bergamini.

Funding European Research Council (Grant Number: 851043).

Compliance with Ethical Standards

Conflict of interest The author declares that they have no financial or non-financial conflicts of interest.

Ethical Approval This article does not contain any studies with human participants or animals performed by any of the authors.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not

permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

References

- Achen, C. H., & Bartels, L. M. (2016). *Democracy for realists: Why elections do not produce responsive government*. Princeton, NJ: Princeton University Press.
- Arneson, R. (2013). Egalitarianism. *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/egalitarianism/>.
- Arrow, K. J., & Debreu, G. (1954). Existence of an equilibrium for a competitive economy. *Econometrica*, 22(3), 265–290. <https://doi.org/10.2307/2223855>.
- Beaurain, G., & Masclet, D. (2016). Does affirmative action reduce gender discrimination and enhance efficiency? New experimental evidence. *European Economic Review*, 90, 350–362. <https://doi.org/10.1016/j.euroecorev.2016.04.009>.
- Blaug, M. (2007). The fundamental theorems of modern welfare economics, historically contemplated. *History of Political Economy*, 39(2), 185–207. <https://doi.org/10.1215/00182702-2007-001>.
- Brennan, J. (2016). Morality, competition, and the firm: The market failures approach to business ethics by Joseph Heath (review). *Kennedy Institute of Ethics Journal*, 26(1), 1–4. <https://doi.org/10.1093/acprof:osobl/9780199990481.001.0001>.
- Brennan, J. (2019). Should employers pay a living wage? *Journal of Business Ethics*, 157(1), 15–26. <https://doi.org/10.1007/s10551-017-3724-y>.
- Brennan, J. (2020). Democratic theory after sixth grade. *The Philosophers' Magazine*, 91, 20–25. <https://doi.org/10.5840/tpm20209188>.
- Durlauf, S. N. (2008). Affirmative action, meritocracy, and efficiency. *Politics, Philosophy and Economics*, 7(2), 131–158. <https://doi.org/10.1177/1470594X08088726>.
- Heath, J. (2009). *Filthy Lucre*. Toronto: Harper Perennial.
- Heath, J. (2011). Three normative models of the welfare state. *Public Reason* 3(2): 13–43. <http://www.publicreason.ro/pdfa/49>.
- Heath, J. (2013a). Ideal theory in an nth-best world: The case of Pauper Labor. *Journal of Global Ethics*, 9(2), 159–172. <https://doi.org/10.1080/17449626.2013.818455>.
- Heath, J. (2013b). Market failure or government failure? A response to Jaworski. *Business Ethics Journal Review*, 1(8), 50–56.
- Heath, J. (2014). *Morality, competition, and the firm*. New York: Oxford University Press.
- Heath, J. (2018). 'But everyone else is doing it': Competition and business self-regulation. *Journal of Social Philosophy*, 49(4), 516–535. <https://doi.org/10.1111/josp.12259>.
- Heath, J. (2019). Is the 'Point' of the Market Pareto or Kaldor-Hicks Efficiency? *Business Ethics Journal Review*, 7(4), 21–26. <https://doi.org/10.12747/bejr2019.07.04>.
- Holzer, H. J. (2007). The economic impact of affirmative action in the US. *Swedish Economic Policy Review*, 14(1), 41–71.
- Holzer, H. J., & Neumark, D. (2006). Affirmative action: What do we know? *Journal of Policy Analysis and Management*, 25(2), 463–490. <https://doi.org/10.1002/pam.20181>.
- Joseph, A. M., & Coleman, H. A. (1997). Affirmative action and economics: A framework for analysis. *Public Productivity & Management Review*, 20(3), 258–271.
- Lawson, N. P. (2011). Is collective bargaining Pareto efficient? A survey of the literature. *Journal of Labor Research*, 32(3), 282–304. <https://doi.org/10.1007/s12122-011-9112-y>.

- Lindert, P. H. (2004). *Growing public: Social spending and economic growth since the eighteenth century* (Vol. I). Cambridge: Cambridge University Press.
- Lipsey, R. G., & Lancaster, K. (1956). The general theory of second best. *The Review of Economic Studies*, 24(1), 11–32. <https://doi.org/10.7135/upo9781843318637.008>.
- Marotta, D. J. (2013). “What Is Rent-Seeking Behavior?” *Forbes*, Retrieved from February 2013. <https://www.forbes.com/sites/davidmarotta/2013/02/24/what-is-rent-seeking-behavior/>.
- McEachern, W. A. (2012). *Economics: A contemporary introduction* (9th ed.). Mason, OH: South-Western Cengage.
- McMahon, C. (1981). Morality and the invisible hand. *Philosophy & Public Affairs* 10 (3): 247–77. <https://www.jstor.org/stable/2264895>.
- Moriarty, J. (2017). “Business Ethics.” *Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/ethics-business/>.
- Moriarty, J. (2020). On the origin, content, and relevance of the market failures approach. *Journal of Business Ethics*, 165(1), 113–124. <https://doi.org/10.1007/s10551-019-04106-x>.
- Mueller, D. C. (2003). *Public choice III*. Cambridge: Cambridge University Press.
- Nordhaus, W. (2013). *The climate casino: Risk, uncertainty, and economics for a warming world*. New Haven/London: Yale University Press.
- Scitovsky, T. (1952). *Welfare and competition*. London: George Allen & Unwin.
- Singer, A. (2018). Justice failure: Efficiency and equality in business ethics. *Journal of Business Ethics*, 149(1), 97–115. <https://doi.org/10.1007/s10551-016-3086-x>.
- Singer, A. (2019). *The form of the firm: A normative political theory of the corporation*. New York, NY: Oxford University Press.
- Singer, A., & Ron, A. (2020). Prioritizing democracy: A commentary on Smith’s presidential address to the society for business ethics. *Business Ethics Quarterly*, 30(1), 139–153. <https://doi.org/10.1017/beq.2019.38>.
- Slemrod, J. (2006). The consequences of taxation. *Social Philosophy and Policy*, 23(2), 73–87. <https://doi.org/10.1017/S0265052506060171>.
- Slemrod, J., & Bakija, J. (2008). *Taxing ourselves: A citizen’s guide to the debate over taxes* (4th ed.). Cambridge, MA: MIT Press.
- Smith, J. (2019). Navigating our way between market and state. *Business Ethics Quarterly*, 29(1), 127–141. <https://doi.org/10.1017/beq.2018.40>.
- Stiglitz, J. E. (1994). *Whither socialism?* Cambridge, MA: MIT Press.
- Sunstein, C. R. (1991). Why markets don’t stop discrimination. *Social Philosophy and Policy*, 8(2), 22–37.
- Varian, H. R. (2010). *Intermediate microeconomics: A modern approach* (8th ed.). New York: W. W. Norton & Company.
- Weber, M. (2014). Prioritarianism. *Philosophy Compass*, 9(11), 756–768. <https://doi.org/10.1111/phc3.12175>.

Publisher’s Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.