

KANT, LIES, AND BUSINESS ETHICS

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THE OVER-SIMPLISTIC APPROACH

Recent work has emphasized, in new and different ways, the significance of Kant for business ethics.¹ Yet discussions focusing on the potential contribution by Kantian moral theory to business practices and concerns remain the exception, not the rule. The usual tactic is to offer a very limited overview of Kantian theory that is, often times, nothing more than a mere caricature. Students are left with only a limited appreciation of the richness and applicability of Kantian moral theory and, hence, are quick to conclude that there is no real usefulness therein to the average businessperson or, for that matter, any other embodied creature. This is wrong.

The overall argument of this paper depends upon a shift in focus: from undue attention on a universalizability criterion to a reciprocity and responsibility criterion. Such a shift would allow some to move from “empty Hegelian” and some feminist objections to Kantian theory to a deeper and, perforce, fairer understanding of Kant, his moral theory, and its place within business ethics. This paper proposes that teaching business ethics from the standpoint of Kantian theory may allow us to address challenges intrinsic to the move from philosophical theory to application. A fortiori, such an approach is good for broadening the foundations of business ethics.

In particular, this paper will question the single-tact approach to Kant taken by many textbook authors. They tend to focus on the first formulation of the Categorical Imperative, the Formula of Universal Law and its accompanying question, “What if everyone did that?”² Certainly this is not wrong, but it rests ultimately on a limited vision of the Categorical Imperative. Kant gives many different formulations of the Categorical Imperative and each formulation articulates a specific and unique feature of that principle.

Unfortunately, it is not only lesser-known authors who emphasize the first formulation of the Categorical Imperative; well-known and accomplished philosophers may do so as well. However, in a 1998 article, "A Kantian theory of capitalism" whose discussions suffuse *Business Ethics: A Kantian Perspective*, Norman Bowie tries to determine how the other two formulations might contribute to "a vision of what capitalism ought to be."³ (1998, ABI, p. 1) His strategy for introducing the Formula of Humanity is to connect arguments for a universal right to meaningful work with people's sense of self-respect. He writes:

The message of the second formulation of the categorical imperative in conjunction with some of Kant's other thoughts on ethics is that a corporation cannot be moral if it does not provide jobs sufficient for people to be independent and satisfy some of their desires, and meaningful in the sense of supporting our autonomy and rationality." (1998, ABI, p. 4)

The Formula of Humanity thus appears as part and parcel of an overall argument for a more ethical brand of capitalism, one that would link the quality of human life to domestic and international market transactions. Yet, there is an even richer use of the Formula of Humanity, one where we unpack what it means to take on other persons' ends.

In one of the later sections of "A Kantian theory of capitalism" and in Chapter Two of *Business Ethics: A Kantian Approach*, "Treating the Humanity of Stakeholders as Ends Rather Than as Means Merely," Bowie attempts to derive an account of a corporation as a place where people might be treated in an ethically responsible way.⁴ His account is, in part, based upon certain assumptions about John Rawls's discussion on social unions voiced in *A Theory of Justice*. Such attempts at incorporating Rawls in constructing a viable Kantian ethical theory of business have been at the forefront of re-vitalizing stakeholder theories of corporate responsibility. The work by R. Edward Freeman, as well as his collaborative research with William M. Evan, is a fine example of this approach. Yet, such accounts of corporate responsibility tend to collapse into the same sort of view one would expect from employing only the first formulation of the Categorical Imperative. Bowie, Freeman and Evans provide theories of corporate responsibility that emphasize a priori assumptions about abstract persons and universal, abstract principles. In addition, Child's and Marcoux's criticism of Freeman and Evan in "Free-

man and Evan: Stakeholder Theory in the Original Position” supports this point and expresses additional concerns.⁵

Alternatively, Bowie offers an intriguing discussion which links Rawls’s conception of a just social union to the idea of creating an ethically efficacious corporate setting. Yet, the kinds of claims he offers might have been better supported by an explicit account of the Rawlsian idea of reciprocity. In the end, Bowie’s account has a more disturbing problem; he neglects to explain fully what respect is, how the need to act on this duty arises, and why it is a morally good thing to do. Merely saying that we ought to exercise this duty and that it is Kantian, and, if we agree with Kant, such a duty is an important requirement for a corporation to exercise just is not sufficient. Readers need to know the reasons why this is a morally relevant as well as practically exercisable ethical duty that can be assigned to and, in fact, discharged by a corporation.

TRYING TO APPLY THE SECOND FORMULATION

So, what should an ethical person do, according to Kant? One answer, coming out of a Rawlsian interpretation, would be to recognize and promote our distinctively human capacity for understanding and engaging in actions that promote a basic respect of ourselves as free and equal rational beings, who can articulate, formulate, and revise our visions of what is truly good for ourselves. A corporation, on this view, would have a similar requirement; that is, it must recognize and promote its employees’ capacity for understanding and engaging in actions that promotes a basic respect of themselves as free and equal rational beings, who can articulate, formulate and revise their conceptions of the good. Certainly, Bowie is correct that, on a Kantian view of corporate responsibility, businesses have a duty to “provide jobs sufficient for people to be independent and satisfy some of their desires, and meaningful in the sense of supporting our autonomy and rationality (1998, ABI, p. 4).” Yet, we still need a clearer, more detailed account of exactly what this duty of respect is, how it arises, and the source of its justification.

The Formula of Humanity requires that we treat each other and ourselves never as simply means, but always, at the same time, as ends. Perfect duties, such as duties of justice, are ethical requirements that help us discharge the first part of our Kantian duties, i.e., not to merely use each other. To anyone, regardless of our familiarity with that individual, we owe such duties. However, imperfect duties, such as duties of beneficence, are obligations that arise when we have a particular relationship

within which specified persons can discharge these kinds of obligations.⁶ Perfect duties are always required of us; imperfect duties are required of certain people who stand in relationship to each other in a particular way. A fully Kantian moral agent must discharge both kinds of duties.⁷

In the next discussion, a more detailed analysis of the Formula of Humanity will be offered. Hence, it will be explained how we take on the ends of each other and how this activity promotes an obligation of respect toward others and ourselves that goes beyond the requirement of not treating people as mere means.

There is a case study that appears in several business ethics textbooks that is fairly infamous for presenting a worse case scenario describing a person who has a conflict between his own personal code of ethics and the expectations of his corporate employer.⁸ The case is, roughly, as follows: There is a new general manager working overseas for a United States based banking corporation, doing business in Italy. This is the first time the corporation is conducting operations in Italy and it is the executive's first job overseas. After several months of operations, the corporation learns about accounting practices in Italy. The manager is told to file a tax return, which underestimates corporate profits by at least a third, preferably two-thirds. He is told this is the usual practice in Italy, for the Italian Revenue Service assumes (by all accounts, correctly) that all businesses underestimate their profits by 30 – 70%. He refuses, files a return reflecting the actual gross income and resulting profit because he views himself as an honest man and that the Italian-style tax practice is inconsistent with tax practices in the parent corporation in the United States. The company ultimately pays three times the amount of income tax on earned income. The manager is recalled to the United States, and is replaced.

Let's now imagine this case study being presented in a business ethics course. How do we think the conversation about the ethical implications of the case would ensue? How would an instructor, charged with teaching her students something about Kantian Ethics, use the example? In a very well respected book on ethical issues in business, the case appears in a section on truth telling. It is followed by an excerpt from Kant's *Lectures on Ethics* entitled "Ethical Duties Towards Others: "Truthfulness."⁹ Most likely, many if not most teachers would focus on a person's ethical duty to be truthful. They might also point to a potential irreconcilability between one's own commitment to telling the truth and having to file a tax return in a country according to the standards of that country. Assume the instructor, using this example, decides that she is

going to discuss Kant and begins her lecture with a discussion of maxims. It seems the most likely maxim for the case would be “In order to make a profit in Italy, I must engage in deception.” If she focuses only on the Formula of Universal Law, she’ll ask the students, “Well, what if everyone did that? What if everyone were deceptive?” Some conversations about the impossibility of the practice of truth-telling would ensue and, if students read the excerpt from Kant’s *Lectures*, the class would be chanting, “A lie, is a lie; it is evil.” Yet, a deeper exploration into Kantian theory is required in order to see the full complexity of this particular case study and to begin to offer more interesting and practicable ethical advice.

Most of us will agree that the form of the maxim “In order to make a profit in Italy, I must engage in deception” fails. Nor could everyone will such a law. But who is the real subject—for we surely know someone who would engage in deception and give a pretty convincing argument that he did knowingly and willingly do so (Hume’s sensible knave, for example). The Formula of Universal Law focuses on the formal aspect of Kant’s supreme principle of morality. While it is implicit that the other features of the Categorical Imperative are present, an analysis of the content, the “Who is everyone” or “What is deception,” can be performed by focusing on the Formula of Humanity. “Everyone” is ‘persons’ in the technical sense of being bearers of legal, social, and moral rights and duties, capable of being praised and blamed. Persons have such rights and duties because they can engage in rational decision-making; that is, they can set goals for themselves and devise ways of achieving these goals. Hence, persons commit intentional acts. It is because of these features of human nature that Kantian prohibitions against merely using persons and exhortations to refrain from hindering persons from pursuit of appropriate ends and promoting these ends arise.¹⁰ In the Italian tax example, ‘persons’ include the general manager, other employees, the Italian revenue agents, the hired go-betweens for the corporation, and the corporation (albeit ‘artificial’). Through a discussion of some of these persons and their duties and obligations, we will see how interesting Kantian theory can be.

We may discuss this case from a non-moral purely practical (in the vulgar sense) business perspective and from a practical (in the philosophical sense) ethical business perspective. In both discussions, it is assumed that the corporation, the general manager, Italian tax officials, and employees of the corporation are full-fledged moral agents holding Kantian rights, duties, and obligations to others and to themselves.

Additional information about specific tax practices in Italy is required. As already mentioned, there is the assumption that Italian corporations underestimate their profit. The tax authorities know this, and the corporations know that the tax authorities know. Six months after the actual filing of corporate tax returns, complex tax negotiations are initiated. The corporation hires a negotiator, called a *commercialista*, to represent its interests to the Italian Tax authorities. The literature suggests that no employee of the corporation usually attends these negotiations; the only people present are an Italian tax revenue agent and the *commercialista*.¹¹ The previous year's return is the starting point for discussions between the corporation and the Italian Revenue Service. The profit declared on that return serves as the "floor," the minimum amount of money that the revenue service assumes was made. A tax-deductible fee, called a *bustarella*, is paid to the tax revenue agent for his services in the negotiations. The *commercialista*'s fees are tax deductible as well. This Italian practice of income tax reporting is cumbersome, expensive, and time-consuming. One need not rise to the high moral ground to find this procedure problematic. Why not just be truthful about the monies earned? It's simpler, cost-effective, and takes less time.

RECONCEPTUALIZING THE CONTRIBUTION OF KANTIAN ETHICS

Surely, no individual person or corporation can change the accounting practices in a country, however. While an ethically satisfying conclusion might not be immediately available, an overall structure of how to arrive at one is possible on a Kantian view.

In the section "A Simplified Account of Kantian Ethics," in "The Moral Perplexities of Famine Relief," Onora O'Neill discusses some limitations of Kantian theory. The one relevant for our current discussion concerns the impossibility of assessing the acts of persons and groups that lack decision-making procedures, e.g., movements such as the women's movement. While O'Neill does think that Kant's ethics can be employed to assess acts of corporations, she believes that Kantian ethics "is most at home in assessing individuals' acts."¹² This paper endorses an even stronger position, i.e., Kantian ethics is equally capable of assessing the acts of corporations and individuals. Both kinds of agents pose challenges for Kantian ethics in determining the morality of their actions; yet, moral agency is possible.

A moral agent, on Kant's view, forms maxims that reflect means-ends reasoning or, put another way, practical reasoning. The corporation

is recognized as a person, albeit artificial, thus having certain rights and duties and obligations. It is not an ontological category that the corporation can choose to give up or exercise only arbitrarily if it is to continue to enjoy one identifying feature of its existence, to make a profit. As situations such as the Ford Pinto case and defective tires and SUV vehicles demonstrate, we hold these artificial persons responsible for their actions. Corporate ethical responsibilities arise because, as persons, these entities are capable of engaging in means-ends reasoning and, therefore, are responsible for doing so ethically.

A striking feature of the Italian tax case is the sheer lack of knowledge about Italian tax practices by and resulting non-communication between the corporation and its new general manager. Why didn't the general manager know, before he accepted the assignment, that business was conducted in a manner different from corporate and accounting practices in the United States? Did the corporation itself know about the Italian tax practices? Aren't both these persons required, practically and ethically, to obtain the requisite information about activities for which they are responsible?¹³ Isn't part of good decision-making having all the relevant facts in order to make a decision at all? On a Kantian analysis of the case, knowledge is a prerequisite to forming an assertoric hypothetical imperative (AK4: 415), i.e., a counsel of skill, a principle which helps to identify the steps we must take in order to achieve our end, although not determine whether that end is morally good.¹⁴ Hence, the road to Kantian morality is blocked at the very beginning of the manager's deliberation. If one is ignorant of the conditions for the initial stages of moral deliberation that involve non-moral conditions of knowledge, it will be impossible to identify and then perform a moral action. Thus, an individual who holds her personal code of ethics valuable must determine initially whether this code can be followed.

Yet, the bank manager is not the only one who fails to meet minimal Kantian requirements for moral deliberation and, a fortiori, moral agency. It has been generally understood in the literature that no one in the business knew what was involved in the Italian tax system until it came time to prepare the tax return. Consequently, the bank does not live up to its moral duty towards the general manager and, ultimately, its stockholders because it failed to determine how business was to be conducted in Italy and, thus, did not have stated established accounting practices unique to this country.

The ethical failure of the general manager is two-fold. First, it is surprising that the manager did not consider the possibility of unique tax

requirements or practices when conducting business in a foreign country. One might think that this is an important question to ask during an interview.

Second, and more importantly, one wonders why the manager refused to accept the collective decision-making of his employer and the local Italian tax consultants. The simplistic Kantian view, criticized earlier, suggested a conflict between the employee's personal ethical code and a business's desire to make a profit.¹⁵ Yet, accepting this view obfuscates a morally relevant feature of this case. This second ethical failure, starting with the manager's refusal to accept the corporate decision-making procedure's verdict of following the usual practice or at least trying to talk to the tax authorities, is that of the general manager's not discharging an imperfect obligation, that is, abrogating his fiduciary duty to stockholders. In doing so, he demonstrated a lack of respect for the ends of the corporation and its shareholders and a denial of the reciprocal quality of the employer-employee relationship. He is given monetary remuneration for providing a particular service to his employer and is charged with maintaining the fiscal health of this organization. Turning to the analysis of the Formula of Humanity, the above judgments about ethical failures in business can be better understood, by asking ourselves whether and, then, how the corporation and the general manager failed to discharge their specific sets of obligations. Through these discussions, Kantian respect and Rawlsian reciprocity and the full moral import of ethical decision-making and obligations will be explained.

One often-neglected feature of Kant's ethics is the way in which full moral agency arises and can be discharged. As discussed earlier, imperfect duties, i.e., obligations, are embedded in particular voluntary relationships through which these specific kinds of responsibilities arise. Both the corporation and the general manager are in such a relationship.¹⁶ Thus, they are in the position to identify goals, individual and collective, and take steps necessary for achieving them.

The discharge of contractual obligations is a first step in 'persons' acting ethically; yet, something more is required. A contractual obligation is a duty that is enforced in some sense outside of that relationship, for legal recourse is available in disputes about failures to perform contractual duties. However, assuming that this relationship was freely entered into, additional obligations arise. Think of spouses getting a divorce, and their saying that the best thing they did for each other was to divide their property fairly and live up to pre-nuptial agreements. They did the right thing. But, didn't they owe something more to each other in addition to

merely discharging contractual obligations? In the same way, the corporation and the general manager need to do more than discharge employment conditions. Once the manager's position was made known, the corporation should have recognized the importance of his goal of living up to his ethical beliefs. Some other individual could have been hired to prepare and sign returns and replaced the manager before rather than after financial disaster. Put another way, the corporation needed to respect its employee's beliefs by not putting him into a position of having to lie. Respect, for the Kantian, is the active recognition that persons engaging in rational deliberation will identify morally appropriate ends (another way to put this point is to say that people set goals for themselves) and take the steps necessary to achieve them. Minimally, both the corporation and the general manager have a "negative" obligation to refrain from getting in the way of each achieving these ends. Yet there is an additional requirement that persons actively promote these ends. This reciprocal requirement, however, is much more difficult to achieve. The corporation and the general manager are in a position to know each other's ends as well as to further them. They are not ideal rational agents having no temporal or spatial relationship to each other; they are particular existing entities in a certain time and certain place, having specific responsibilities to each other.

CONCLUSION

The general manager's insistence on ignoring the advice of other corporate officials and Italian tax experts is a failure of respect as well. Explicitly or implicitly, the corporation's goal of making a profit had to be known by the manager.¹⁷ He did not believe that Italian tax authorities assume that corporations underestimate profit by two-thirds. He refused to actually meet with the authorities until a final notice from the Italian Revenue Service was received in which profits were "inflated" and some normally permitted deductions (earned interest by depositors!) were disallowed. The claim is not that the manager should have known that the tripling of taxation would occur—that would be a consequentialist conclusion! For Kantians, the morally relevant point is that the manager made a judgment without having enough information, which was, in fact, accessible. He believed the information he received about corporate taxation in Italy was wrong. He could have found out that his judgment was wrong by meeting with the tax authorities who extended several invitations to discuss the tax return. If he did this, he could have removed him-

self from this particular job and, perhaps, requested a transfer. This may not be the most satisfying outcome but no one ever said that morality was easy.

Integrating stakeholder theory and Kantian ethics is, very likely, the right way to proceed in constructing a viable and a correct theory of business ethics and to teach such a theory. The last two formulations of the Categorical Imperative need to be the basis of such a theory. The present discussion has been a very brief sketch of how the Formula of Humanity might be used in this endeavor. This paper has tried to avoid global a priori claims about morality, moral agency, and ethical obligations and, instead, offer an account of how specific duties and obligations arise out of the specific and real relationships members of a business and the business itself have to each other and to the various people and institutions that are affected by such relationships. The focus has been on what a moral agent does and why she, he, or it (i.e., the artificial person of the corporation) should engage in such actions.¹⁸

NOTES

¹ See Darryl Koehn, "Can and should business be friends with one another and with their stakeholders?" Journal of Business Ethics, v17 no. 15 (Nov. 1998): 1755-63 and Norman Bowie, "A Kantian theory of capitalism," Business Ethics Quarterly, Special Issue no. 1 (1998): 37-60.

² Trevino, L.K. and Nelson, K.A., Managing Business Ethics: Straight talk about how to do it right, 2nd Ed. (New York: John Wiley and sons, Inc., 1999), 81-83, for example.

³ Bowie, Norman, "A Kantian Theory of Capitalism," in Business Ethics Quarterly, Special Issue I, pp. 37-60 and Business Ethics: A Kantian Perspective (Malden, MA: Blackwell, 1999).

⁴ See Business Ethics: A Kantian Perspective, see pages 63-81. There is no apparent change in views articulated in the 1998 article.

⁵ Business Ethics Quarterly, v9n2 (April 1989): 207-223.

⁶ There is a wonderful body of literature by Kantians on the complexity and virtue of distinguishing between perfect and imperfect duties. For example, see Onora O'Neill, "A Simplified Account of Kant's Ethics," in "The Moral Perplexities of Famine Relief", in Matters of Life and Death, T. Regan (ed.), 1st edition (New York: Random House, 1980), 285-294; "Between Consenting Adults," in Philosophy and Public Affairs, 14(3) (1985): 252-77; and 1996, "Embodied Obligations," in Towards justice and virtue (Cambridge University Press, Cambridge), 146-53. Barbara Herman, "On the Value of Acting from

the Motive of Duty,” in *The Practice of Moral Judgement* (Cambridge, MA: Harvard University Press, 1993), 1-22.

⁷ In this paper, I refer to perfect duties as “duties” and imperfect duties as “obligations.” The intuition behind the distinction can be captured roughly in the following example: Corporations have duties to file federal, state and local income tax returns; they have obligations, according to Bowie, to “provide jobs sufficient for people to be independent and satisfy some of their desires, and meaningful in the sense of supporting our autonomy and rationality (1998, ABI, p. 4).”

⁸ See, for example, Donaldson and Werhane, *Ethical Issues in Business: A Philosophical Approach*, 2nd Ed. (Englewood Cliffs: Prentice Hall Inc., 1983) “Case Study -- Italian Tax Mores,” by Arthur Kelly, pp. 84-87.

⁹ Donaldson and Werhane.

¹⁰ See O’Neill’s “Between Consenting Adults.”

¹¹ In the process of conducting research on this tax case, it was very surprising that accounting firms do not explicitly mentioned the practices of preparing and filing tax returns in Italy. Price Waterhouse has a very nice series of books on conducting business outside of the United States; yet, even they do not discuss the Italian practice of negotiating corporate tax liabilities. The only reference to and brief discussion of these practices that found was on the web page of the University of Pittsburgh, Joseph M. Katz, Graduate School of Business (www.pitt.edu/~ethics/Italy/tax.html). There are individuals and groups who belong to “Docetti Commercialisti,” i.e., ‘teachers’ who offer consulting services about conducting business in Italy. Unfortunately, web pages devoted to this group which were found on the Internet in 2001 seem to have disappeared.

¹² Onora O’Neill, “A Simplified Account of Kant’s Ethics,” in “The Moral Perplexities of Famine Relief,” in T. Regan (ed.), *Matters of Life and Death*, Chapter 8, 1st edition (New York: Random House, 1980), 285-94

¹³ This claim for the necessity of having enough information is tied, in part, to being sure that parties can give their consent to whatever end is being proposed or promoted. It is hard to give consent to something which one is ignorant about. O’Neill’s discussion on this issue is superb. See “Between Consenting Adults” (1989).

¹⁴ Immanuel Kant (1785), *Grounding for the Metaphysics of Morals*, in J. Ellington (trans), *Ethical Philosophy*, 2nd ed. (Indianapolis, IN: Hackett, 1994).

¹⁵ This view is as uninteresting as the conclusion that Sophocle’s *Antigone* is about conflict between politics and religion; that is, the view that allegiance to God (or the gods) supersedes one’s duty to the city-state. In the *Antigone*, both Creon and Antigone were members of the same royal household; so, they were praying to the same gods -- the gods of the polis. The conflict is better located in the duties of the individuals themselves and their roles. Creon was head of polis and head of the oikos. He was political leader, father, husband, and uncle. Antigone was sister to the traitor and the hero as well as niece and citizen. Similarly, the general manager has responsibilities as a personal moral agent as well as employee.

¹⁶ Darryl Koehn has a very interesting discussion about the role of friendship in business and the connection between stakeholder theory and virtue ethics in “Can and should business be friends with one another and with their stakeholders?” (1998). It is not clear how extensively a reader might agree with her reading of Kant in this work. Yet, Koehn’s argument for the ethical impor-

tance of friendship as a particular kind of relationship in which parties are in a specific position to benefit each other in a variety of ways supports the plausibility of this paper's position that the employer/employee relationship generates its own special kinds of obligations.

¹⁷ This paper assumes that profit is a morally appropriate end for the corporation. Given the Italian tax practices, reporting a lower profit is the only way to pay the true tax liability on the profit actually made.

¹⁸ This paper has been delivered in several different venues. My heartfelt thanks to the members of the Society for Ethics Across the Curriculum, faculty in the College of Business and Technology and fellow colleagues in the Department of Philosophy and Religious Studies at Western Illinois University, and especially, David Sullivan.