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Ethical Frameworks

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ETHICAL FRAMEWORKS

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I. ETHICAL FRAMEWORKS

It is enlightening to employ prominent ethical frameworks to evaluate the morality of contemporary business practices.¹ It is especially intriguing to use ethics to analyze tricky business tactics deemed valid by the law. In a perfect world, perhaps the legal and ethical conclusions would line up -- what is unethical is found to be illegal and vice versa. The problem with such an ideal in the real world is that obtaining consensus on the morality of particular decisions is a difficult exercise.² And . . . many believe that lawmakers should not view the legal decisions through an ethical lens. The law is the law.

At least the judiciary has a structure in place to hand down final, binding verdicts on legality. A plethora of very different frameworks exist to evaluate decision-making from an ethical lens and people disagree bitterly on which is most appropriate.³ The most prominent ethical frameworks roughly fall into five broad categories: the Utilitarian Approach,⁴ the Rights Approach,⁵ the Fairness/Justice Approach,⁶ the Common Good Approach⁷ and the Virtue Approach.⁸ From these approaches, this article selects the three ethical theories - Utilitarianism, Deontology and Virtue Ethics - that prove most helpful in analyzing ethical dilemmas arising at the confluence of the business and legal spheres.⁹ The three frameworks will be discussed in turn.

¹ There are many very interesting works on the topic of ethical frameworks and their application to business. See, e.g., JOHN R. BOATRIGHT, *ETHICS AND THE CONDUCT OF BUSINESS* (4th ed. 2003), THOMAS DONALDSON, PATRICIA WERHANE AND JOSEPH VAN ZANDT, *ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH* (2007) and ROBERT C. SOLOMON, *ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS* (1992).

² See, e.g., Manuel Velasquez, Claire Andre, et al., *Ethical Relativism*, SANTA CLARA UNIVERSITY MARKKULA CENTER FOR APPLIED ETHICS, <http://tinyurl.com/y8huztx> (discussing cultural differences in moral practices).

³ See, e.g., Poll: *Would you consider yourself more of a Utilitarian or Deontologist?*, ESCAPIST MAGAZINE, <http://tinyurl.com/n442x4r> (last visited June 1, 2013) (showing that fifty-one percent of respondents considered themselves Utilitarians and nine percent Deontologists; fourteen percent disagreed with both frameworks and twenty-three percent admitted that they had no idea what these terms mean) and Charles T. Schmidt, *Ethical Decision Making and Moral Behavior*, UNIVERSITY OF RHODE ISLAND, <http://tinyurl.com/l6mhthg> (last visited June 5, 2013) ("It is very difficult to define ethical behavior. Many definitions exist, but most depend on using some standard of ethical behavior from which to judge the individual's behavior. Any standard used is subjective and cultural in nature and subject to intensive debate.").

⁴ A Utilitarian Approach revolves around the idea that a moral action is the one that produces the greatest good for the greatest number of people. See, e.g., *A Framework for Thinking Ethically*, SANTA CLARA UNIVERSITY MARKKULA CENTER FOR APPLIED ETHICS, <http://tinyurl.com/foj7e> (last visited May 30, 2013).

⁵ The Rights Approach revolves around the idea that human beings deserve dignity; therefore, respect for and protection of rights matter a great deal when evaluating potential decisions. *Id.*

⁶ The Fairness/Justice Approach revolves around the idea that "ethical actions treat all human beings equally - or if unequally, then fairly based on some standard that is defensible." *Id.*

⁷ The Common Good Approach "suggests that the interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others - especially the vulnerable - are requirements of such reasoning. This approach also calls attention to the common conditions that are important to the welfare of everyone. This may be a system of laws, effective police and fire departments, health care, a public educational system, or even public recreational areas." *Id.*

⁸ The Virtue Approach revolves around the idea that "ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act according to the highest potential of our character and on behalf of values like truth and beauty." *Id.* (discussing these five approaches in greater detail).

⁹ The three frameworks utilized in this article stem from three of these five approaches; Utilitarianism stems from the Utilitarian Approach, Deontology from the Rights Approach and Virtue Ethics from the Virtue Approach. *Id.* Interesting legal publications delve into these theories from time to time for various purposes. See, e.g., Sherman J. Clark, *Law as Communitarian Virtue Ethics*, 53 BUFFALO L. REV. 757, 757 (2005) ("The governance and regulation of a community can and should be thought about in ways akin to the ways in which virtue ethics looks at the governance and regulation of an individual life.").

A. UTILITARIANISM

"Lying does not come easily to me. But we all had to weigh in the balance the difference between lies and lives." -- OLIVER NORTH (TESTIFYING TO CONGRESS AFTER THE IRAN CONTRA SCANDAL)¹⁰

Utilitarianism is the most well known Teleological ethical framework.¹¹ Teleological theories hold that the moral correctness of an action is directly correlated to the good produced by its goal or purpose.¹² In other words, consequences of an action play a major part in ethical decision-making.¹³ This is slightly different from a subset within the Teleological framework, called Consequentialism, where consequences are all that matter in making a moral decision; the means (potentially lies, blackmail, bribery or manipulation) to obtain that end are morally irrelevant as long as good is produced.¹⁴ To a Consequentialist, it would not matter whether someone rescues a drowning person to save that person or to steal his wallet -- the only thing that matters is that the life was saved. Utilitarianism is a Consequentialist framework holding that an action is ethical to the degree that its consequences produce the greatest utility (meaning good or well-being) for the greatest number of people.¹⁵ A decision-maker must place everyone on an equal playing field when making a decision. Acting out of self-interest is a major violation of the theory. This is much different from a related Consequentialist theory called Ethical Egoism where an actor is able to act morally by being selfish.¹⁶

Utilitarian decision-making is relatively straightforward but still requires deep thinking. The Utilitarian rubric has three steps in a business context: (1) the decision maker (often an executive or other management-level employee) must identify the various courses of action that a company could perform when faced with an ethical dilemma; (2) the decision maker then must consider all the foreseeable benefits and harms that would result from choosing each course identified in step one; and (3) the decision maker must choose the course of action that provides the greatest benefits to the greatest number of people after all the benefits and costs have been considered.¹⁷ It is important to note that the chances or odds that each benefit and cost will come to fruition must be part of the analysis. One can ponder many tremendous benefits and horrible costs that have very little chance of occurring. Unrealistic expectations and worries should be highly discounted in a Utilitarian analysis.

¹⁰ See, e.g., Claire Andre and Manuel Velasquez, *Calculating Consequences: The Utilitarian Approach to Ethics*, SANTA CLARA UNIVERSITY MARKKULA CENTER FOR APPLIED ETHICS, <http://tinyurl.com/l7zcaee> (last visited May 30, 2013) (citing this statement and discussing Oliver North's testimony and its relationship to Utilitarianism in greater detail) and *North on the Democratic Process and the "Difference Between Lives and Lies,"* BROWN UNIVERSITY'S UNDERSTANDING THE IRAN-CONTRA AFFAIRS PROJECT (July 8, 1987), <http://tinyurl.com/n552to8> (posting the transcripts of the joint hearings of House Select Committee to Investigate Covert Arms Transactions with Iran and the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition).

¹¹ See, e.g., *Notes on Utilitarianism*, WOFFORD UNIVERSITY, <http://tinyurl.com/3ccho73> (last visited May 29, 2013).

¹² See, e.g., *Terms In and Types of Ethical Theory*, DREXEL UNIVERSITY, <http://tinyurl.com/nk5vwop> (last visited May 29, 2013).

¹³ See id.

¹⁴ See, e.g., JOHN STUART MILL, UTILITARIANISM, ch. 2, pt. 19, (George Sher ed. Hackett 1979, at 17-18) (discussing why it is important to distinguish rules from motives).

¹⁵ See, e.g., *The History of Utilitarianism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://tinyurl.com/dz6pav> (last visited May 29, 2013).

¹⁶ See, e.g., *Egoism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Oct. 4, 2010), <http://tinyurl.com/6g5uzlz> ("Ethical egoism claims that it is necessary and sufficient for an action to be morally right that it maximize one's self-interest.").

¹⁷ See *Calculating Consequences*, *supra* note 19 (discussing the idea that people use this type of moral reasoning frequently and stating:

When asked to explain why we feel we have a moral duty to perform some action, we often point to the good that will come from the action or the harm it will prevent. Business analysts, legislators, and scientists weigh daily the resulting benefits and harms of policies when deciding, for example, whether to invest resources in a certain public project, whether to approve a new drug, or whether to ban a certain pesticide.).

There are two primary lenses focusing this evaluation process: Act Utilitarianism and Rule Utilitarianism. Act Utilitarianism applies the greatest good for the greatest number analysis to every act that a person (or company/entity/decision maker) takes. The ethical action in each case is the one that brings about the greatest utility to all in that particular situation. This can become a very tedious task considering the many acts people undertake each day. Rule Utilitarianism, on the other hand, looks whether a general rule will bring about the greatest good for the greatest number of people. Rules that bring about utility are moral and should be put into effect. Congress and other legislative bodies tend to act as rule Utilitarians as they ponder which rules will make their communities better off.

The so-called Classical Utilitarians are Jeremy Bentham and John Stuart Mill. Bentham formulated the first “systemic account of Utilitarianism.”¹⁸ He believed that “two sovereign masters: pleasure and pain” - ruled human beings.¹⁹ Therefore, good actions are those that tend to promote physical pleasure and bad actions are those that tend to promote physical pain. To Bentham, physical pleasures and pains were deemed equal to mental pleasures and pains and could be quantified in order to assess which actions were moral.²⁰ It was John Stuart Mill, however, whose later interpretation of Utilitarianism gained the most traction.²¹ Mill believed that mental/intellectual pleasures are intrinsically better than hedonistic or purely physical pleasures. To Mill, good actions were those that produce the greatest mental pleasure (happiness or well-being) and bad actions are those that tend to produce mental pain (unhappiness). Mill also looked to the quality of the pleasure/pain instead of merely the quantity.

In the business context, the greatest number of people involves many stakeholders -- employees, customers, shareholders, the families of the three groups just mentioned, community members living nearby corporate property, and potentially society at large. Because this theory does not allow businesses to think of their interests about the interest of their other stakeholders, a Utilitarian analysis of business decisions often becomes very interesting. There are instances when revenue seeking will be unethical because the profit-generating activity will harm more people than the extra revenue benefits. This may be the last thing that a corporate executive desires to hear but Utilitarianism makes the point very clear. However, profit is surely part of the utility that a business decision should consider along with other important benefits such as morale, workplace and community safety, stimulation of learning and creativity, environmental sustainability and employee health.

A few key objections to Utilitarianism exist.²² First, the consequences of an action are not always clear and it is exceptionally difficult to understand how these uncertain consequences will help or harm other people.²³ Do people really want to base decisions on outcomes they cannot fully control or accurately predict? Second, seeking the greatest good for the greatest number of people often leaves out minority groups and violates individual rights.²⁴ For example, the Bill of Rights to the United States Constitution exists precisely because a national government must function primarily on a Utilitarian basis (the majority rules). However, there is no equivalent to the Bill of Rights supplementing minority groups under Utilitarianism. Tough luck if you find yourself outside of the will of the majority. Third, Consequentialist frameworks like Utilitarianism ignore the means to an end as morally irrelevant but

¹⁸ *The History of Utilitarianism*, *supra* note 24.

¹⁹ *Id.*

²⁰ In conducting this analysis of physical pleasure and pain, Bentham looked to its intensity, duration, certainty, remoteness, fecundity (basically, will more of the same pain or pleasure follow the current pain or pleasure), purity (basically, will the pleasure be followed by pain or vice versa) and extent (basically, how many people will be affected). *Id.*

²¹ See, e.g., *Notes on Utilitarianism*, *supra* note 20 (“Although forms of utilitarianism have been put forward and debated since ancient times, the modern theory is most often associated with the British philosopher John Stuart Mill . . . who developed the theory from a plain hedonistic version put forward by his mentor Jeremy Bentham.”) and *Utilitarianism*, WIKIPEDIA, <http://tinyurl.com/7mt8v5o> (last visited June 1, 2013).

²² See, e.g., *Notes on Utilitarianism*, *supra* note 20.

²³ See, e.g., *Most Common Criticisms of Utilitarianism (and Why They Fail)*, UTILITARIAN.ORG, <http://tinyurl.com/n8xdkma> (last visited June 1, 2013).

²⁴ See, e.g., *Utilitarianism*, *supra* note 30 (discussing the idea that Utilitarianism ignores justice).

this cannot be true.²⁵ Means, especially when injurious to others or otherwise unethical, should matter in the decision-making process. A person should not be able to use people as a means to an end even if that leads to a beneficial outcome. Finally, evaluating the greatest good for the greatest number of people is a time consuming process. Many moral decisions require a much faster answer and people will not take the time to implement the calculus.

B. DEONTOLOGY

“Happiness and moral duty are inseparably connected.” -- GEORGE WASHINGTON²⁶

“Do your duty in all things. You cannot do more, you should never wish to do less.” -- ROBERT E. LEE²⁷

Deontology judges the morality of actions based on the actor’s adherence to duty.²⁸ A duty is moral or legal obligation that informs people how to act in a given situation. The obligation stays the same regardless of the circumstances or projected outcomes. Deontology is the opposite of Consequentialism because consequences are irrelevant to making duty-based decisions (consequences are too difficult to predict or control).²⁹ Deontologists believe that people should be judged for actions within their control, for the things they will as opposed to the things they achieve.³⁰ Acting out of a sense of duty is the right thing to do and the emphasis is on the “*right* thing to do” rather than the “*good* thing to do.”³¹ To a Deontologist, even tremendous amounts of good produced by a decision will never justify immoral actions leading to the outcome. Additionally, Deontology’s emphasis is on a person’s duty as opposed to a person’s motive.³² For example, a person who tells the truth acts morally if and only if the truth is told because it is the right thing to do. Telling the truth is unethical if done with the wrong motive such as seeking approval from others or obtaining a desired outcome.

²⁵ See, e.g., IMMANUEL KANT, GROUNDWORK ON THE METAPHYSICS OF MORALS 24 (T.K. Abbott trans. Prometheus Books 1988.) (“An action done from duty derives its moral worth, *not from the purpose* which is to be attained by it, but from the maxim by which it is determined, and therefore does not depend upon the realization of the object of the action”) (emphasis added).

²⁶ BRAINYQUOTE.COM, <http://tinyurl.com/nyv3mfy> (last visited May 31, 2013).

²⁷ QUOTATIONSBOOK.COM, <http://tinyurl.com/mms26qm> (last visited May 31, 2013) (stating that the quote was attributed to Lee:

[I]n a letter to his son, G. W. Custis Lee, dated April 5, 1852, and published in the New York Sun, November 26, 1864. Although accepted as authentic by many nineteenth century writers, and used for the inscription under Lee’s bust in New York University’s Hall of Fame in 1901, repudiation of its authenticity began shortly after its publication, beginning with articles in two Richmond, Virginia, newspapers.).

²⁸ See, e.g., *Deontological Ethics*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://tinyurl.com/ya6dgay> (last visited June 1, 2013).

²⁹ See *id.* (“In contrast to consequentialist theories, deontological theories judge the morality of choices by criteria different from the states of affairs those choices bring about.”).

³⁰ See *Notes on Deontology*, WOFFORD UNIVERSITY, <http://tinyurl.com/3ae3gjt> (last visited May 31, 2013). See also *Terms In and Types of Ethical Theory*, *supra* note 21 (making the point via the following example: it would not matter if a drunk driver made it home safely after a long night at the bar -- “driving drunk was still wrong because the intention to drive drunk was wrong (or to drink alcohol when one knows one needs to drive)” was wrong.).

³¹ *Deontological Ethics*, SEVENOAKSPHILOSOPHY.ORG, <http://tinyurl.com/lyv8wnc> (last visited May 31, 2013).

³² See, e.g., IMMANUEL KANT, GROUNDWORK ON THE METAPHYSICS OF MORALS (H.J. Patton trans. Harper & Row 1964, at 65), NIGEL WARBURTON, A LITTLE HISTORY OF PHILOSOPHY 116 (2011) (stating that morality for Kant “wasn’t just about *what* you do, but about *why* you do it.”) and NORMAN E. BOWIE, KANTIAN ETHICS, ENCYCLOPEDIA OF BUSINESS ETHICS AND SOCIETY 1499-1500 (Robert Kolb ed. 2008) (“Kant is looking toward reasons rather than motivation in the psychological sense. An action is right if it is performed for the right reason and the person of goodwill is the person whose actions are based on or are in conformity with good reasons.”).

Immanuel Kant remains the world's most famous Deontologist.³³ Kant believed that the humanity comprising the essence of a person makes it immoral to use someone else *merely* a means to an end.³⁴ Under this formulation, it is ethical to use people's talents for your own ends in situations like buying groceries, getting gas or obtaining an education. These service providers receive something valuable from the transaction as well. Using people becomes unethical in situations where people use others only as a means to that end and thereby ignore their humanity.³⁵ Kant argued that people have the capacity to act out of this sense of duty because people have the ability to reason.³⁶ This focus on cool rationality over emotion is equitable because some people possess less emotion than others yet all rational people should be able to make ethical decisions. Emotions are also dangerous because of their ability to cloud a decision-maker's judgment.³⁷ Kant articulated these principles through his major contributions to Deontology -- the Categorical Imperative (CI).

Kant's Categorical Imperative determines whether a person has a duty to act or refrain from acting.³⁸ In other words, the CI declares how people, acting rationally, should behave.³⁹ An *imperative* is an unavoidable obligation or an order.⁴⁰ The fact that Kant's formulation is *categorical* means that obligations deemed to be duties under his rubric must be performed without exception each and every time the obligation arises.⁴¹ Kant's CI declares: "Act only according to that maxim by which you can at the same time will that it should become a universal law."⁴² Kant's formulation of a categorical imperative is a little clunky due to the philosophy-speak, but it is rather elegant when put into practice for most ethical dilemmas. Translated to plain English, the CI contains three distinct steps:

1. **Define a maxim (a short, pithy statement) that states your reasons for acting as you propose.**⁴³ It is important to identify the action to be evaluated with some specificity but it need not contain all the details. For example, "I may act dishonestly when lying would better suit my needs" is better than "I may be dishonest to the partners in a law firm about my expertise when lying will allow me to work on the most important case the firm has ever litigated." Less specific maxims will assist in universalizing the maxim -- the work of step two.
2. **Can this decision be universalized?**⁴⁴ If you are able to make an exception for yourself, you must be able to imagine a world where others always take the same exception for themselves. If this produces an irrational result (you cannot imagine such a world making any sense), you have what Kant called a perfect

³³ See, e.g., *Deontological Ethics*, *supra* note 37.

³⁴ See, e.g., *Notes on Deontology*, *supra* note 39 and *Kant's Moral Philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://tinyurl.com/dejz25> (last visited June 1, 2013) (explaining that Kant did not:

[R]ule out using people as means to our ends. Clearly this would be an absurd demand, since we do this all the time. Indeed, it is hard to imagine any life that is recognizably human without the use of others in pursuit of our goals. The food we eat, the clothes we wear, the chairs we sit on and the computers we type at are gotten only by way of talents and abilities that have been developed through the exercise of the wills of many people. What [Kant's idea] rules out is engaging in this pervasive use of Humanity in such a way that we treat it as a *mere* means to our ends.).

³⁵ See *id.*

³⁶ See, e.g., *Kant's Moral Philosophy*, *supra* note 43 (stating that Kant "argued that conformity to the [Categorical Imperative] . . . and hence to moral requirements themselves, can nevertheless be shown to be essential to rational agency.").

³⁷ See, e.g., WARBURTON, *supra* note 41, at 116.

³⁸ See, e.g., *Kant's Moral Philosophy*, *supra* note 43.

³⁹ This is different from *hypothetical imperatives* which only require a person to act in certain circumstances. A good example of a hypothetical imperative would be, "If you want to avoid prison, don't steal." WARBURTON, *supra* note 41, at 118. Kant believed that "morality was a system of categorical imperatives" instead of hypothetical imperatives. *Id.*

⁴⁰ See, e.g., *Imperative Definition*, DICTIONARY.COM, <http://tinyurl.com/me4gzwm> (last visited May 30, 2013).

⁴¹ See, e.g., *Categorical Definition*, DICTIONARY.COM, <http://tinyurl.com/m4qj94c> (last visited May 31, 2013).

⁴² IMMANUEL KANT, FOUNDATIONS OF THE METAPHYSICS OF MORALS 39 (Lewis White Beck trans., Library of Liberal Arts 1959) (1785).

⁴³ See, e.g., *Kant's Moral Philosophy*, *supra* note 43.

⁴⁴ See *id.*

duty to avoid taking the exception.⁴⁵ If you have a perfect duty, you must act according to that obligation every time it arises.⁴⁶ In the example above, step two entails asking whether the maxim of lying when it suits your needs can be universalized. If you are allowed to lie when it suits your needs, then you must be able to imagine a rationally functioning world where everyone acts dishonestly whenever lying suits their needs as well. Such a world would not make any sense. People would continually be deceived, contracts and handshakes would have no meaning and people would stop believing each other. Eventually, people would even stop listening to each other's promises completely. It would not make sense to lie to others in such a world because it is irrational to lie to someone who is not listening.⁴⁷ This new world would thwart your maxim of lying in order to suit your needs. It would never work. Additionally, by taking this exception for yourself, you treat people as mere means to your end and ignore the humanity of the people you deceive -- an unethical action under Kant's Deontology. The answer to the second question of Kant's CI proves that lying cannot be universalized and, therefore, people have a perfect duty to tell the truth even when lying would better suit their needs.

3. **Would you want to live in such a world?**⁴⁸ This third step is only reached if you could imagine a world that still functions rationally when everyone is always able to take the exception you desire.⁴⁹ Under these circumstances you must now ask whether you are willing to still take the exception for yourself and live in such a place. The lying example would not be analyzed under this third question because the world would cease functioning rationally if people lied whenever being dishonest suited their needs. This was established under the second question.

However, there are other scenarios where a person would reach this third step. Assume the maxim: "I need not give anything to charity when I am succeeding financially in life and others are suffering." After evaluating step two, the decision-maker would conclude that the world would not cease to function rationally if no one ever gave anything to charity. Just because such a world can rationally exist, however, does not mean that it would be a hospitable place for rational person to live. If a decision maker feels that such a world would be awful then that person possesses an imperfect duty to give to charity. Imperfect duties like giving to charity generate praise when undertaken but fail to generate blame when avoided. This all leads to the conclusion that imperfect duties are those that a person cannot perform all the time (even the wealthiest person would run out of money eventually), but must be done some of the time and to a certain extent.⁵⁰ The question is not whether a person should be charitable if financially capable, but rather, when that person must be charitable.

Do not forget that there is a final scenario that may arise under Kant's CI. There are situations where a rational person would have no qualms living in a world where the proposed maxim could be universalized. These cases provide neither a perfect nor an imperfect duty. In these circumstances, acting on the proposed maxim is morally acceptable.⁵¹

There are a few key objections to Deontology.⁵² First, the categorical imperative is just that - categorical - meaning that it "yields only absolutes."⁵³ A lie would always be wrong under the CI even if were just a "polite lie" or a lie that

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ See JAMES BRUSSEAU, THE BUSINESS ETHICS WORKSHOP § 2.3 (Flat World Knowledge 2011), available at <http://tinyurl.com/khhqddm> (last visited May 31, 2013).

⁴⁸ See *Kant's Moral Philosophy*, *supra* note 43.

⁴⁹ See *id.* (stating that this step requires a decision-maker to recast the maxim "as a universal law of nature governing all rational agents, and so as holding that all must, by natural law, act as [the maxim proposes] to act in these circumstances.").

⁵⁰ See *id.*

⁵¹ See *id.* (stating, if the maxim passes all the steps of the CI, "only then is acting on it morally permissible.").

⁵² See generally *Deontological Ethics*, *supra* note 40.

⁵³ *Notes on Deontology*, *supra* note 43.

saves someone's life.⁵⁴ This does not resemble the real world where the toughest ethical dilemmas involve grey areas.⁵⁵ Second, Deontology has no clear answer on what to do when duties conflict.⁵⁶ For example, what must a person do when confronted with a duty to be honest and a duty to protect human life in a situation where a criminal asks if you have seen a potential victim run past. A person cannot choose the lesser of the two evils because that would be Utilitarian thinking about consequences. Finally, do the duties that applied to generations past still bind actors in the twenty-first century? Values and thoughts about morality change drastically over time and Deontology struggles to keep pace. Despite these criticisms, many commentators have applied Kant's Categorical Imperative to business practices.⁵⁷

C. VIRTUE ETHICS

"Excellence is an art won by training and habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit." -- ARISTOTLE⁵⁸

Eudaimonia. This word roughly translates from Greek to mean human flourishing or success.⁵⁹ Eudaimonia is not a temporary emotion. It is the lasting sense of wellbeing a person obtains from living a moral life. It is more than just happiness, which ebbs and flows.⁶⁰ It is more than wealth, attractiveness or popularity. Many people achieve these goals yet fail to flourish morally.⁶¹ Virtue Ethics frameworks propose that achieving authentic eudaimonia will be the ultimate goal of every rational individual whether or not the purpose is identified as such.⁶² People expend great energy -- they exercise, invest, study, travel, work -- all in order to achieve the "Good Life." The problem to a Virtue Ethicist is that many fail to equate the good life with the correct interpretation of eudemonia and, therefore, fail to flourish.

Unlike the teachings of Utilitarianism and Deontology, Virtue Ethics is not an action-guiding theory. Seeking the greatest good or determining duty is not the way for people to reach eudaimonia. The proper question is not: What types of actions must I take to act ethically? Under Virtue Ethics a person must ask: What type of life must I live to be

⁵⁴ *Id.* Imagine a scenario where your spouse spends hours getting dressed up for a night on the town. You see the final result and do not like the ensemble. When asked, "How do I look?" you would be crazy to answer, "Terrible. I am not impressed." Is a lie here really unethical? Kant would say so because people have a categorical or perfect duty to always tell the truth in situations where it would be in their self-interest to lie.

⁵⁵ See, e.g. *Deontological Ethics*, *supra* note 40 ("There are situations - unfortunately not all of them thought experiments - where compliance with deontological norms will bring about disastrous consequences.").

⁵⁶ See *id.* ("It is crucial for deontologists to deal with the conflicts that seem to exist between certain duties").

⁵⁷ See generally R. E. FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH* (1984) (discussing Kant's idea that people should not be treated as a means to an end in the context of business), Norman Bowie, *A Kantian Theory of Meaningful Work*, *JOURNAL OF BUSINESS ETHICS*, 17 (9/10), 1083-1092 (1988), Norman Bowie, *BUSINESS ETHICS: A KANTIAN PERSPECTIVE* (BLACKWELL PUBLISHERS 1999), Norman Bowie, *A Kantian Theory of Leadership*, *LEADERSHIP AND ORGANIZATION DEVELOPMENT JOURNAL*, 21 (4), 185-193 (2000) and A. Buchanan, *Perfecting Imperfect Duties: Collective Action to Create Moral Obligations*, *BUSINESS ETHICS QUARTERLY*, 6(1), 27-42 (1996).

⁵⁸ QUOTATIONSBOOK.COM, <http://tinyurl.com/lecvfx3> (last visited May 31, 2013).

⁵⁹ See e.g., *Eudaimonia Definition*, *ENCYCLOPEDIA BRITANNICA*, <http://tinyurl.com/o2sg9d4> (last visited May 30, 2013) (defining the term as literally meaning "the state of having a good indwelling spirit, a good genius"). Another translation would be to possess a "good demon." See *Origin of Eudemonia*, *MERRIAM-WEBSTER DICTIONARY*, available at <http://tinyurl.com/mup2hwx> (last visited June 1, 2013).

⁶⁰ See, e.g., *Notes on Deontology*, *supra* note 43 ("Happiness is not at all an adequate translation of this word.").

⁶¹ See, e.g., *Aristotle: Ethics & The Virtues*, *PHILOSOPHY PAGES*, <http://tinyurl.com/y9zq5hf> (last visited May 30, 2013).

⁶² There are very interesting works on Virtue Ethics; the most powerful are from the 1970s. See generally Philippa Foot, *Virtues and Vices* and *Other Essays in Moral Philosophy* (1978), Peter T. Geach, *The Virtues* (1977) and James D. Wallace, *Virtues and Vices* (1978).

a good person? The idea is that someone seeking eudaimonia will have the disposition to make ethical decisions for the right reasons without the need for rules or action-guiding frameworks.⁶³

The key to Virtue Ethics is the development of this disposition – i.e., a good character. No one is born with a good character. Once developed, it must be exercised or it will fade sort of like a well-chiseled physique fades in the absence of exercise. To develop a good character, a person must habitually strive to acquire virtues and then act as a virtuous person would act in any given situation.⁶⁴ A virtue can be defined as: (1) an acquired character trait, (2) which makes society better and (3) which people admire and consider moral.⁶⁵ To determine whether a trait is a virtue, employ the simplistic *Airport Test*⁶⁶: imagine you walk around any airport in the world and ask a random, rational person whether it is good to be honest or compassionate. The answer will almost always come back, “Of course.” The same thing would occur if you asked about benevolence, courage and fairness. However, you are likely to receive many different answers if you asked random people at an airport if it is generally good to be wealthy. This indicates that benevolence, compassion, courage, fairness and honesty are virtues because everyone agrees that they make society better and are admirable and moral character traits. Wealth does not engender the same reaction. This response does not indicate that wealth is immoral; rather, it merely indicates that wealth is not a virtue. Virtue Ethics posits that virtues can be learned by practice and by associations. If you practice compassion, you will become more compassionate over time. If you are dishonest over time, you will become a liar. If you associate with people who lie, cheat and steal, you will be more likely to lie, cheat and steal over time. However, if you associate with people who are honest, kind and compassionate, you are more likely to act that way. Habituating virtues over time will help develop a stable character, which provides the best chance of attaining eudaimonia.

There are modern formulations of Virtue Ethics⁶⁷ but none have gained the stature of the older, more Aristotelian approach. Aristotle, whose moral philosophy forms the foundation of all Virtue Ethics formulations, spent a great deal of time pondering and tweaking his ethical framework to determine what types of behavior would lead someone to achieve eudemonia, to live the good life.⁶⁸ To Aristotle, human beings have functions just as a knife has a function. A properly functioning, or good, knife is one that cuts well. A human being’s function is to reason -- this is what separates humans from other animals. Therefore, a properly functioning, or good, person is able to reason well. Aristotle believed that a person who reasons well will seek to live a character-filled life or the type of life that leads to

⁶³ See, e.g., *Virtue Ethics*, ETHICSANDMORALS.COM (Apr. 19, 2010), <http://tinyurl.com/7gkdpmb>.

⁶⁴ See, e.g., *Virtue Ethics*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, <http://tinyurl.com/pom4jw2> (last visited May 30, 2013) [hereinafter *Virtue Ethics: Internet Encyclopedia*].

⁶⁵ There are many similar definitions of the word *virtue*. See, e.g., ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 190-91 (2d ed. 1984) (defining a virtue as “an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods.”).

⁶⁶ This is my creation so you will search in vain for the Virtue Ethics “Airport Test.”

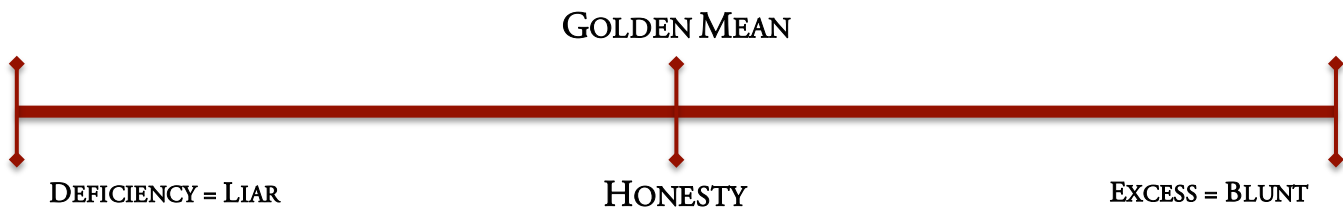
⁶⁷ The three most prominent today are the Eudaimonism, Agent-Based Virtue Ethics and the Ethics of Care Approaches. Eudaimonism claims that there may be many paths to human flourishing but each requires a person to hone a good character to act morally. See generally G.E.M. Anscombe, *Modern Moral Philosophy*, in THE COLLECTED PHILOSOPHICAL PAPERS OF G.E.M. ANSCOMBE: ETHICS, RELIGION AND POLITICS (1981). Agent-Based Virtue Ethics holds that all that matters to determine whether a person acts ethically is that person’s inner moral state at the time of the action; the state of affairs in the world surrounding that person (such as who may be hurt or which decision would produce the least harm) are not considered. See generally Michael Slote, *Agent-Based Virtue Ethics*, 20(1) MIDWEST STUDIES IN PHILOSOPHY 83-101 (Peter A. French et al. eds. 1996) and MICHAEL SLOTE, FROM MORALITY TO VIRTUE (2002). Finally, the Ethics of Care Approach stems from feminist philosophy and posits that morality must be understood in terms of relationships between people and can only be understood by people who care about the trials and travails of others. See generally CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982) and NEL NODDINGS, CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION (1984). There are also other, less popular, modern Virtue Ethics frameworks -- especially since the revival of this way of thinking in the twentieth century. See, e.g., *Virtue Ethics: Internet Encyclopedia*, *supra* note 73 (providing a good summary of modern Virtue Ethics theories).

⁶⁸ See generally ARISTOTLE, NICOMACHEAN ETHICS (Robert C. Bartlett and Susan D. Collins trans. University of Chicago Press 2011) [hereinafter ARISTOTLE]. See also NIGEL Warburton, A LITTLE HISTORY OF PHILOSOPHY 9-14 (2011).

eudaimonia. As with all formulations of Virtue Ethics, Aristotle's framework revolves around inculcating virtues into everyday actions.

This leads into Aristotle's concept of the Golden Mean⁶⁹ -- the tool utilized to implement the Virtue Ethics analysis throughout this article. The Golden Mean is the middle ground between the excess and deficiency of any given virtue. The essence of every virtue lies at its mean. Take honesty for example. A person who is consistently not honest enough is a liar whereas a person who is consistently too honest is blunt. True honesty lies at the mean of these extremes. A person whose character exhibits this deficiency or excess of honesty will struggle to find eudaimonia whereas a person habitually seeking the mean will become more honest over time. All virtues (including their deficiencies and excesses) can be plotted on the following spectrum:

FIGURE 1 – VIRTUE ETHICS SPECTRUM: HONESTY



There are hundreds of virtues available for analysis under this framework.⁷⁰ However, the universe of virtues most appropriate for business decision-making are: accountability, ambition, benevolence, confidence, courage, discernment, fairness, helpfulness, honesty, honor, integrity, loyalty, mercy, sincerity, respect, tact and trust.⁷¹ The business takeaways from Virtue Ethics revolve around the idea that managers (and all employees really) who fail to act virtuously and habitually seek the Golden Mean in their decisions will find themselves personally unfulfilled and will struggle to make ethical decisions at home and in the workplace.

There are a few key objections to Virtue Ethics. First, the theory is not action guiding. Encouraging someone to act like a virtuous person is not as immediately helpful as telling someone to seek the greatest good or to run the decision through a categorical imperative to determine if a duty exists. People may be winging their decisions under Virtue Ethics and assuming they are acting ethically. Second, the theory does not tell people what to do when virtues conflict. Much like Deontology when duties conflict, tough ethical choices occur when someone desires to be honest as well as kind to a friend who asks how an expensive but terribly mismatched outfit looks. Finally, Virtue Ethics is subject to the criticism of Moral Luck or the question as to whether "an agent can be correctly treated as an object of moral judgment despite the fact that a significant aspect of what she is assessed for depends on factors beyond her control."⁷² Virtue Ethics posits that habituating virtues depends somewhat on luck and being surrounded by virtuous people -- especially throughout childhood. What about people who are surrounded by all the wrong influences (family, friends and colleagues who do not act virtuously)? Does a person with such an upbringing have the opportunity to become virtuous and, if not, is that equitable?

⁶⁹ See ARISTOTLE, *supra* note 77, at 90-114.

⁷⁰ See, e.g., *List of Virtues*, VIRTUESCIENCE.COM, <http://tinyurl.com/lpx6au4> (last visited May 30, 2013) (listing over one hundred virtues).

⁷¹ The fact that others might pick different virtues for this list demonstrates the flexibility of the Virtue Ethics framework.

⁷² *Moral Luck*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Apr. 10, 2013), <http://tinyurl.com/3mecsah> (last visited June 1, 2013). The theory is relatively recent with the seminal articles on the topic written just over thirty years ago. See generally Bernard Williams, *Moral Luck*, in MORAL LUCK: PHILOSOPHICAL PAPERS 1973-1980, at 20, 20-39 (1981) and Thomas Nagel, *Moral Luck*, in MORTAL QUESTIONS 24, 24-38 (1979).