Kantian Ethics in Competitive Contexts

Rob Hughes *hughesrc@wharton.upenn.edu*
Draft for Big Ten and Friends Workshop – please do not quote or cite this version

Some ethicists, among them both proponents and opponents of Kantian ethics, have argued that Kantianism has radical implications for the conduct of business. For example, Norman Bowie has argued on Kantian grounds that business managers have a duty to provide meaningful work to employees, and indeed that providing meaningful work (rather than profit, competitive success, or serving customers) is the primary purpose of business.[1] Others have criticized this view as too distant from the practices of contemporary managers to provide useful guidance.[2] Perhaps more problematically, some readings of a central claim of Kantian ethics, the formula of universal law, imply that competitive behavior is itself ethically objectionable.[3]

The aim of this paper is to set the record straight. Kantian ethics does indeed have radical implications for the *motives* that people engaged in competition ought to have. It is irrational to have relative social status, of any form, as one's final end. But Kantianism permits, and indeed praises, competitive activities when they are done for good motives, e.g., athletic competition for the sake of cultivating talent, or economic competition for the sake of collective prosperity. Kantian ethics also provides clear and helpful ethical guidance on a crucial question about the ethics

1 Norman Bowie, "Challenging the Egoistic Paradigm," *Business Ethics Quarterly* 1 (1991): 1–21.

2 Andrew Stark, "What's the Matter with Business Ethics?" *Harvard Business Review* (May-June 1993).

3 A recent argument for a limited Kantian prohibition on competition is David Jensen's "A Kantian Argument Against Comparatively Advantageous Genetic Modification," *Journal of Medical Ethics* 37 (2011): 479-482. Jensen argues that it violates the formula of universal law to modify the genes of one's future children to help them get ahead. Jensen tries to distinguish other forms of aid to one's children, such as hiring a tennis coach for a child who wants to join a tennis team, on the ground that these forms of aid do not give one's children an *overall* advantage over other children. In a society in which opportunities depend heavily on success at one competition (such as college admissions in the contemporary United States), it is doubtful that this move can distinguish genetic enhancement from other forms of aid intended to help one's children's prospects in that crucial competition.

of competition. When competitors break "the rules of the game" with impunity, when, if ever, is it ethical to defend one's competitive position by following suit?

Of course, if Kantian ethics did have radical implications for business practice, that would not be an objection to it.[4] There are moral beliefs that were widely taken as common sense a hundred or two hundred years ago that are now widely rejected. It is likely that some moral beliefs that are widely held today will be widely rejected in the future—and should be rejected now. One of the tasks of moral theory is to subject moral beliefs to scrutiny. A sound moral theory would enable us to identify which beliefs about morality have rational foundations and which are objectively incorrect despite being widely and stubbornly held. Thus, a moral theory should not be judged for how well it fits the conventional moral beliefs in a particular culture. Rather, a moral theory stands or falls on the strength of the arguments for it. Compared with other moral theories, Kantian ethics is especially well-equipped to avoid the charge of reliance on parochial intuitions, since Kantian arguments avoid reliance on intuitive judgments about what is good or right and draw instead on premises about what is rational.[5]

That said, radical implications can present a barrier to the adoption of an ethical theory, however sound the arguments for it. It would be unfortunate if business ethicists or businesspeople rejected the Kantian approach in the mistaken belief that Kantian ethics is incompatible with business competition. It would be especially unfortunate if Kantianism were rejected in favor of act utilitarianism for this reason. Act utilitarianism *does* have radical implications for the practice of business. It implies, for instance, that a wealth manager who can embezzle money from a billionaire without being detected should do this and give the stolen money to an efficient charity.[6] Businesspeople who think utilitarianism more business-friendly than Kantianism are mistaken. The opposite is true, as respect for rights—including property rights—is central to Kantian ethics.

4 Some ethicists draw distinctions between "ethics" and "morality." I use the terms interchangeably.

5 Other moral theories aim to distance themselves from moral intuition, but the distancing is partial. For example, the various forms of act utilitarianism all rely on intuitive judgments about what constitutes human welfare. So does Hobbesian rational egoism.

6 Peter Unger, *Living High and Letting Die: Our Illusion of Innocence* (Oxford: Oxford University Press, 1996), p. 64.

1. The formula of universal law and its operation

The central principle of Kantian ethics is the categorical imperative, which Kant presents in several different "formulas." This paper will focus on the first of these, the formula of universal law, because it is this formula that most acutely raises concerns about whether Kantian ethics is compatible with competitive activities.[7] The formula of universal law reads, "Act only in accordance with that maxim through which you can at the same time will that it become a universal law."[8] Though I will not defend the formula of universal law in detail, I want to offer a sketch of an argument for it. The reasons for believing the formula of universal law will affect how we interpret it. The argument I sketch, which draws on Sections 2 and 3 of the *Groundwork*, defends another claim alongside the formula of universal law as stated by Kant: to wit, that there is an affirmative rational requirement to exercise rational agency, and to value its exercise.[9] The overall conclusion of the argument could be summarized as a revision of the formula of universal law: act on a maxim through which you can at the same time will that it become a universal law. This revised formula incorporates the original formula alongside the demand to value rational agency. (The key change is the omission of the word "only.")

The argument for the revised formula of universal law starts from the premise that reason has something to say about how people should decide what to do, including what ends people should pursue.[10] It is fairly uncontroversial that reason has something to say about what means people should take to their ends. It is more controversial that reason has something to say about what ends people should pursue.[11] To see whether you believe this, consider someone who does not

7 The others are the formula of the universal law of nature, the formula of humanity, the formula of autonomy, and the formula of the kingdom of ends. Kant maintained that all of these formulas are logically equivalent; some interpreters disagree.

8 *Groundwork of the Metaphysics of Morals*, Ak. 4:421, trans. Mary J. Gregor.

9 I take Kant to endorse this claim, though it is not incorporated into Kant's statement of the formula of universal law.

10 This is the central claim of section 3 of the *Groundwork*. I will not attempt to present Kant's arguments for that claim here.

11 David Hume thought otherwise: "'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger."

currently care about retirement, at all. Call her Profligate. Profligate has a high income, and she could easily invest some money each month in a retirement account without seriously depriving herself of anything she really wants. She knows this, and she knows what investment opportunities are available. But she values her current high level of spending—indeed, she wants to maximize her current spending—and she does not care whether she experiences financial hardship later in life. Does Profligate act irrationally when she chooses to prioritize her current pleasures at the expense of her future well-being?[12] If so, the problem is not a failure of means-ends reasoning. Her behavior is perfectly tailored to her ends; her future well-being is not among her ends. If you think Profligate's imprudence is irrational, you think reason has something to say about what ends we should pursue.

If there are rational requirements about what we should do, including requirements about our ends, what could those requirements be? Whatever rational requirements there are, they must be requirements that are potentially motivating to all rational beings, in the following sense: any rational being can (perhaps with difficulty) recognize these requirements' force. There are no rational requirements that are in principle unknowable to people who have not grown up in a particular culture or who have not received a special revelation. Whatever rational requirements there are, they apply to us whatever inclinations or desires we happen to have. (For instance, Profligate has reason to care for her future whether or not she presently does care for her future or wants to care for her future.) What possible requirement on action could be knowable by and potentially motivating for all rational beings? There is only one possibility: an affirmative requirement to engage in rational action.[13]

An affirmative requirement to engage in rational action has three components. First, it requires that one act. To be entirely passive, to approach the world as if nothing was worth doing, is irrational.[14] Second, it requires that one act using

12 Her income status is relevant to the rationality her failure to save. For someone with low income and pressing needs, it may be eminently rational not to save for retirement.

13 Kant defends this claim or a close equivalent in Section 2 of the *Groundwork*.

14 This is not to say that passivity or inaction is morally blameworthy. Clearly, passivity is not blameworthy when it results from mental illness.

reason in one's choice of ends. This is what it means to say that one ought to act on a maxim.[15] One should not act on the basis of mere desires one sees no reason to fulfill. Rather, one should act with a view about what ends one has reason to pursue. Such a view might include a view that an end is only conditionally valuable (e.g., the view that fame is worth pursuing but only if one can achieve it without betraying a friend). Third, only ends that *could* be rationally required can constitute ends one has reason to pursue. Any rational requirement is a universal rational requirement that could be recognized as such. Any rational requirement is consistent with other rational requirements. So the view one takes about what ends one has reason to pursue, under what conditions, must be a view that could be universally shared. Moreover, it must be possible to endorse the universal, public acceptance of this view, consistent with other rational requirements (notably including the requirement to value one's own agency). In other words, one should act on a maxim which one could will to become a universal law.

To see how the formula of universal law works, consider a young man with a rich, childless uncle for whom he has no affection.[16] This young man would prefer to get the inheritance sooner rather than later, since he has expensive tastes he cannot otherwise satisfy. He has skills that would enable him to kill his uncle and make the killing look like a natural death, thus avoiding punishment for the killing. Is it rational for the young man to kill his uncle? If he did, he would be acting on the following maxim: the satisfaction of one's own preferences is worth pursuing, even if one must kill someone else to do it. Could the young man will that this maxim become a universal law? In other words, could he endorse everyone adopting this view about what there is reason to do without contradicting other rational requirements? If the young man endorsed everyone adopting his maxim, he might thereby endorse someone killing *him* as a means to satisfying their own preferences. But he is rationally committed to valuing his own agency. He cannot consistently value the continuation of his own agency while

15 David Velleman argues that the central claim of Kantian ethics is that one should act for reasons. "A Brief Introduction to Kantian Ethics," in *Self to Self: Selected Essays* (Cambridge: Cambridge University Press, 2006).

16 My analysis of the example roughly tracks the analysis of the ethics of murder in Barbara Herman's "Murder and Mayhem," in *The Practice of Moral Judgment* (Cambridge, MA: Harvard University Press, 1996)

endorsing someone else intentionally destroying it. So this young man does not, in fact, have reason to value the satisfaction of his preferences even at the cost of killing. Murdering his uncle would be irrational. Some readers may demur at this claim, preferring to call the murderous nephew unreasonable and immoral but not irrational. After all, the nephew gets what he wants. This way of thinking about rationality is mistaken. The efficient satisfaction of one's preferences is not always rational; it can be the utmost folly.

A parallel form of reasoning can be used to provide a rational basis for many widely-recognized moral requirements. Effective rational agency has many prerequisites. For example, effective rational agency requires beliefs that aim at the truth: hence the widely recognized moral prohibition on deception.[17] Effective rational agency requires publicly recognized rights to use things free from interference: hence the widely recognized moral prohibitions on theft and other interferences with property rights (including the rights of the public). If one values rational agency, as the first component of the formula of universal law demands, one rationally must value the prerequisites for effective agency. One rationally must value having beliefs that track the truth, even if having false beliefs would feel better or help oneself or others advance their preference-satisfaction. One rationally must value having rights to resources that others do not take even when it would satisfy their preferences to do so. It would be inconsistent with one's commitment to these values to endorse others acting contrary to them. One thus could not endorse as sound reasoning the maxim that people have reason to pursue the satisfaction of their desires by undermining others' agency (through deception, through theft, and so forth).[18] The formula of universal law thus implies that it is irrational to pursue preference-satisfaction by

17 This ethical prohibition applies to all acts intended to give someone a false belief, including lies, accurate but intentionally deceptive statements, and non-verbal forms of deception such as planting evidence. Deception interferes with rational agency even when it concerns minor matters. See Charles Fried, *Right and Wrong*, pp. 54-78. Lying involves a distinct, further wrong, which Kant characterizes as a violation of a self-regarding duty. See Immanuel Kant, *Metaphysics of Morals*, Ak. 6:429.

18 The formula of universal law also implies that there are exploitative transactions and relationships it is both wrong and irrational to engage in, even though these transactions and relationships are mutually beneficial and consensual. Defending this rational prohibition requires a more extended explanation.

deceiving others, by stealing from them, or by otherwise undermining the effectiveness of their agency. The value of satisfying one's preferences is conditional; preference-satisfaction is valuable only if one does not achieve it by undermining others' agency.

Further rational requirements arise from arguments with a different structure. Sometimes the preservation and effectiveness of one's rational agency requires an action or an omission by someone other than one's present self. One's survival and health depend in many ways on one's past actions. One's physical safety depends on others refraining from negligence (e.g. negligent driving, failing to attend to hazards on their property). One could find oneself in a situation in which one's survival, one's health, or more broadly the continued effectiveness of one's agency requires help from another person. Everyone can fall, and everyone can fall on hard times. Since one is rationally committed to the effectiveness of one's own rational agency, one cannot rationally endorse people acting according to maxims that call for total indifference to the effectiveness of one's rational agency. One cannot endorse maxims that call for one's past self to be indifferent to the future. Imprudence is thus irrational. Likewise, one cannot endorse maxims that call for people to be indifferent to each others' safety or to each others' needs. Negligence and other forms of indifference to others are irrational. Due care is rationally required. So is beneficence: one must treat others needs as reasons for action (though one cannot help everyone, and there is no duty to maximize one's benefit to others by any particular metric).[19]

This way of understanding the formula of universal law should forestall two common misunderstandings. First, some readers of Kant mistakenly think that the universalization test represents the whole content of the formula of universal law. These readers mistakenly conclude that the formula allows conduct we know to be wrong. For example, suppose that someone who was born on a Monday applies the universalization test to the statement, "I have reason to kill people born on a Friday when doing so advances my interests." If this person endorsed

19 Kant defends the duty of beneficence in the *Groundwork*, Ak. 4:423 and 4:430, and in the *Metaphysics of Morals,* Ak. 6:453. My suggestion that prudence and beneficence are rationally required for parallel reasons is inspired by Thomas Nagel's *The Possibility of Altruism* (Princeton: Princeton University Press, 1970).

everyone following this rule, he would not thereby endorse anyone killing *him*, since he was not born on a Monday and not a Friday. The universalization test appears to condone the murder of people born on Fridays by people born on Mondays. But the formula of universal law has a prior component, the requirement to act only on a maxim, i.e. a candidate for a view about what ends one has reason to pursue under what conditions.[20] Some ways of describing proposed courses of action are not well-formed maxims; they are not real candidate views about what one has reason to do. "I have reason to kill people born on a Friday when doing so advances my interests" is not a well-formed maxim. Why on earth would there be a distinctive reason to kill people born on Fridays, in particular? One need not apply the universalization test to this transparently absurd claim about what one has reason to do.

Second, some readers mistakenly interpret the universalization test as asking what rules of action one would *like* everybody to follow. This reading of the universalization test takes the agent's inclinations, preferences, and values as given. It asks what rules of conduct would best satisfy these inclinations, preferences, and values. But the formula of universal law does not take the agent's inclinations, preferences, and values as given. Its point is to subject the agent's inclinations, preferences, and values to rational scrutiny.

The formula of universal law, as presented here, concerns the rationality of ways of deciding how to act. This leaves two large questions unanswered. First, what makes the formula of universal law an ethical principle? What is the relationship between the standard of rationality it sets out and the standards of ethics or morality? Second, much of ethics concerns the permissibility or impermissibility of actions, rather than the ethical or rational acceptability of the manner of making a choice. What is the relationship between the ethical or rational acceptability of a way of making choices and the ethical or rational permissibility of actions themselves? Taking the second question first, an act is rationally permissible if there is a rationally sound maxim that calls for the act. A permissible act can be motivated by unsound reasoning (a bad maxim) or by no reasoning at all (an

20 The affirmative requirement to act is not part of the formula of universal law as stated by Kant.

unreasoned whim, followed with indifference to rational requirements).[21] An act is impermissible if no rationally sound maxim supports it.

The question about the relationship between morality and rationality is more complex. The answer depends on what is at stake in asking whether an act is morally impermissible. Here is one possible definition: an act is morally impermissible if one should not do it, even if one really wants to do it. On that definition of moral impermissibility, everything rationally impermissible is morally impermissible. One should always act for good reasons, even if one really wants to do otherwise. One thus should not do what is rationally impermissible, even if one really wants to do something rationally impermissible.

2. The permissibility of competition

The formula of universal law has sometimes been taken to imply that competitive activities are morally problematic. This section will argue that the formula of universal law is in fact compatible with competitive activities, including athletic competition and competition on the market. The formula of universal law is not compatible with relative status as a final end. It is rational to participate in a competitive activity only when the activity is a means to an end that is not to be understood in competitive terms. This condition of the rationality of participation in competition has implications, but not radical implications, for business ethics and the ethics of competition more generally.

It is easy to see why the formula of universal law prohibits taking relative success as a final end, i.e. to take the achievement of a better position than others in some competitive activity as good for its own sake (rather than as a means to a further end). Suppose one takes oneself to have reason to pursue some specific form of relative success as a final end. The formula of universal law says that this is good reasoning only if one could endorse others reasoning in the same way, i.e. to take

21 For example, a professor could choose to dress casually for a talk in another department because she thinks professors should dress casually, because she simply feels like dressing casually, or because graduate students on her campus dress more casually than professors and she wants to deceive people into thinking she is a graduate student. The intent to deceive would be a bad motive for dressing casually, but that does not make dressing casually impermissible.

themselves to have reason pursue the same form of relative success and to treat it as good (for its own sake and not only as a means to other ends). It is impossible for everyone to achieve relative success by a given metric.[22] To value one's own relative success as a final end while endorsing others' pursuit of relative success is inconsistent. One cannot consistently endorse others frustrating an end one values as a final end. So the formula of universal law implies that it is irrational to pursue relative success as a final end.

This conclusion implies that Kantian ethics condemns as irrational many goals that people hold dear. In modern societies, many people desire to have a higher status than others, by one measure or another.[23] The formula of universal law implies that it is irrational to pursue any of the following things as an unqualified final end: to win an athletic championship, to write a book that tops the best-seller list, to run the largest widget factory, to have a more expensive car than any of one's neighbors, or to give more to charity than any of one's neighbors. Kantianism is not alone in condemning as irrational the pursuit of relative success as a final end. Utilitarianism reaches the same conclusion. On the utilitarian view, a person's relative success at any activity is valuable only insofar as it contributes to the aggregate welfare of all persons (and other sentient beings). Though Kantianism does not share the utilitarian view that aggregate welfare is the good we should be pursuing, Kantianism and utilitarianism agree that relative success is not desirable as a final end.[24]

Though Kantian ethics implies that success in competition is not desirable for its own sake, Kantian ethics does not condemn competitive activities. It can be

22 It is possible for everyone to achieve relative success on *different* metrics, e.g. for one person to be the best 10k runner in the neighborhood, for another person to be the best apple pie baker in the neighborhood, for another person to be the best 10k runner in a different neighborhood, and so forth. One can endorse universal acceptance of this maxim: "I will try to excel locally at something, with the understanding that I may have to revise my specific goal in response to others' talents and choices."

23 See Jean-Jacques Rousseau's *Discourse on the Origin of Inequality* on the pervasiveness of pernicious forms of the desire for status, which Rousseau terms *amour propre*. The desire to have the *same* status as other people is not pernicious, on either Rousseau's view or Kant's.

24 Both theories share the position Thomas Nagel defends in *The Possibility of Altruism*, that all genuine reasons for actions are grounded in "objective reasons."

rational to engage in a competitive activity for the sake of an end that is not conceived in competitive terms. Consider athletics. It is consistent with the formula of universal law to value the development and expression of one's talents and abilities on an absolute (instead of a relative scale). Indeed, since a developed talent can be both an expression of one's agency and a means of achieving various ends one has reason to pursue, developing some of one's talents and abilities is rationally required.[25] Some talents and abilities can only be developed and expressed if one engages in competition. Among these are talents for competitive sports. If one values the development and expression of one's talent for a sport—on an absolute, not a relative, scale—one has reason to try to win athletic competitions. One can consistently endorse others reasoning in the same way. There is no contradiction between a commitment to trying to win a competition and endorsing others trying to win the same competition. Whoever wins, everyone involved can succeed in *trying* to win. Moreover, if some participants in the competition do not sincerely try to win, the competition will fail to develop and to express the talents of sincere competitors.[26]

A parallel analysis applies to various forms of competition in the market, including competition among firms (and their owners and managers) for market share, competition among workers and prospective workers for desirable jobs, and competition among consumers for scarce goods. Suppose that competition among firms for market share tends to promote economic prosperity in society, by some measure. It is consistent with the formula of universal law for everyone to promote shared economic prosperity. It may be that owners and managers of firms can best pursue shared economic prosperity by trying to maximize market share for their firms. As in the case of athletic competition, there is no contradiction in *trying* to have the greatest market share in the industry while endorsing one's competitors also *trying* to have the greatest market share. Indeed, one must endorse one's competitors' *trying* to maximize market share if one's final end in participating in the market is to contribute to shared prosperity. A similar

25 This is the third example of the application of the formula of universal law in the *Groundwork*. Though developing one's talents and abilities is rationally required, people often have discretion about which talents and abilities to pursue.

26 Nagel offers a similar argument that competition is compatible with ethical theories according to which all genuine reasons for action are grounded in objective reasons.

analysis will apply to competition for desirable jobs and for scarce goods. It is not rational to value relative success in either sort of competition for its own sake. It is rational to value the availability of goods, services, and meaningful work. To the extent that competition for goods, services, and jobs promotes the general availability of these things, one can rationally engage in competition with this end in view.

For competition to be rational, on the Kantian view of rationality, must one have a non-competitive end consciously in mind while engaged in competition? The formula of universal law does not require that one always keep one's maxim of action consciously in view. Of course one needn't (and shouldn't) contemplatively reflect on the value of athletic skill while playing a match. Nor need business managers constantly reflect on the value of their activities for collective prosperity while managing the day-to-day activities of a competitive business. But the formula of universal law does require that one's conduct and one's manner of guiding one's conduct be consistent with the maxim one has chosen. (This is implicit in the requirement to act only on a maxim.) It may be in some contexts that adopting reasoning contrary to one's maxim will best achieve that maxim's goals. Suppose, for instance, that one has chosen to become a business manager with the end of contributing to shared prosperity while supporting oneself and one's family. It may be that one can pursue this end most effectively if one persuades oneself that competitive success in business is one's final end. It is irrational to adopt an irrational final end, such as the final end of relative success, even if by doing so one can produce good effects by the lights of a different maxim.[27]

Kantian ethical theory thus implies that the primary purpose business owners and managers (or other market participants) pursue should not be relative wealth. It is irrational to adopt the the end of being richer than others as a final end. But this in no way implies that competition in the business world or elsewhere is impermissible. It implies only that competition, in business and elsewhere, should be motivated by a final end that is not conceived in competitive terms, such as the end of shared prosperity.

27 Kantian ethics is unlike some forms of utilitarianism in that it rejects "self-effacing" moral reasoning.

3. The ethics of responding to competitive pressure

Having established that economic competition can be rational, on a Kantian conception of rationality, there is a further question what means of competing are either rational or ethical. There is a widespread perception that competitive business contexts justify conduct that would not be permissible in other contexts. Kantian ethics rejects the view that business is an "ethics-free zone." That said, business and other competitive contexts raise distinct ethical questions. Often, people engaged in competition must decide what to do in response to a competitor who violates the "rules of the game." When is one ethically required to follow the usual rules, and to accept that the rule-breaking competitor will have an unfair advantage? When, if ever, is one justified in responding to a competitor's rule-breaking by following suit, in defense of one's competitive position? Kantian ethics provides clear and helpful guidance on this question.[28] The Kantian framework indicates that there is a moral difference between the following cases.

> *Deceptive Advertising*: A firm has successfully increased its market share by engaging in deceptive advertising. A governmental response to this deceptive practice will not be forthcoming, whether because the practice is legal or because the applicable laws are poorly enforced. Competitors of the deceptive firm cannot expect to be able to stop the deceptive practice by naming and shaming the deceptive firm. The choice they face is between accepting a competitive disadvantage or defending their market position by engaging in deceptive advertising of their own.

> *Deceptive Counterintelligence*: A firm is widely suspected of hacking competitors' computers to gain access to trade secrets and other confidential information. Competitors of this firm may be able to defend themselves from future hacking attempts by placing fake documents where hackers would be likely to find them. Innocent people are not likely to come across the deceptive documents. Anyone

28 I discuss the specific question how competitors should respond to violations of positive law in "Breaking the Law Under Competitive Pressure," forthcoming in *Law and Philosophy*.

> who sees the documents will be able to tell that they were illicitly obtained. Competitors of the firm engaged in hacking face a choice whether to defend themselves using this form of deceptive counterintelligence.

To see why Kantian ethics treats these two cases differently, consider again the ethics of killing. The ethics of deception will be parallel. Earlier, I explained why the formula of universal law prohibits killing as a means of satisfying one's preferences (e.g., one's preference for receiving an inheritance sooner). The argument as stated left open the question whether it is rationally or morally permissible to kill for the sake of more important ends than preference satisfaction. For example, is it rationally permissible to kill someone to save one's own life or other people's lives? Consider first a case in which killing an *innocent* person would save lives (more than one). Killing a person destroys that person's rational agency; saving someone's life preserves that person's rational agency. Does a commitment to the value of rational agency require, permit, or prohibit killing one innocent person to save more than one? The formula of universal law implies that killing one innocent person to save a greater number is both irrational and immoral. If I endorse others acting on a maxim that calls for killing innocent people to save others, I may thereby endorse someone killing me. Endorsing someone killing me would be inconsistent with my rational commitment to the value of my own agency. If I endorse others acting on maxims that prohibit killing innocents, even to save others, I do not thereby endorse anyone killing me. Nor indeed do I endorse my own untimely death. The formula of universal law thus supports a blanket prohibition on the intentional killing of innocent people, even when the aim of the killing is to save a greater number.[29]

29 A different analysis would apply to non-lethal injury. Clearly one can endorse others injuring one in a way that saves one's own life, e.g., amputating a dangerously infected limb that cannot be treated. Can one rationally endorse others injuring one non-lethally to save a different person's life?

Defensive violence is another matter.[30] Of course non-injurious defensive violence presents no ethical difficulties; blocking a punch or harmlessly disarming an aggressor is clearly justified, if one has the skill and the opportunity. What of scenarios in which an aggressor can only be stopped by injurious violence, e.g., when an attempted murder can be stopped only by killing the attacker? Can one rationally endorse universal adoption of a maxim that calls for proportional violence in defense of oneself or others? One might think the question has a simple answer: if one intends never to kill anyone aggressively, one knows that by endorsing universal acceptance of a maxim of defensive violence, one will not be endorsing one's own killing. But this is too quick. Human beings are fallible. There are sad stories of people of apparently good and even saintly character changing over time or being driven by circumstances to commit despicable acts of violence. One can know that one is extremely unlikely to commit wrongful violence, but one cannot justifiably believe oneself completely incapable of it.

A proper Kantian justification of defensive violence must take into account the fact that any person can be either a victim of wrongful violence or a perpetrator of it. If someone initiates a wrongful attack that can only be stopped by injurious defensive force, their initiation of the attack makes it inevitable that someone will be injured (or killed). Proportional defensive force shifts the burden of a wrongful attack from the would-be victim onto the attacker. The attacker has no legitimate complaint about this. To be sure, the attacker is rationally committed to the value of his or her own agency. But the attacker is also rationally committed to the value of the would-be victim's agency, even though the attacker has irrationally chosen to act contrary to that value. The attacker has no rational justification for thinking his or her own life and agency more valuable than the agency of the victim. So people who know that they may one day become perpetrators of wrongful violence can rationally endorse the universal acceptance of a maxim that calls for defensive violence that is necessary to the prevention of a wrongful injury to innocents and proportional to the gravity of an attack.

30 The discussion here roughly tracks the discussion in my "Imprisonment and the Right to Freedom of Movement," in Chris W. Surprenant, ed., *Rethinking Punishment in the Era of Mass Incarceration* (Routledge 2018). It is inspired by, but distinct from, Barbara Herman's analysis of self-defense in "Murder and Mayhem," in *The Practice of Moral Judgment.*

The ethical reasoning applicable to aggressive and defensive violence also applies to the aggressive and defensive use of deception. Intentional deception is like intentional violence in that it attacks a person's agency. The formula of universal law implies that it is wrong to intentionally destroy or undermine someone' agency as a means to an end, even if one could get good effects by doing so. Thus, it is wrong to respond to deception by a competitor by engaging in deceptive advertising that targets innocent people. It is wrong even if one can achieve something good by doing so, namely the avoidance of an unfair disadvantage on the market. By contrast, the formula of universal law implies that it is not wrong to interfere with or to damage someone's rational agency if doing so is necessary to stop that person from engaging in a wrongful attack on one's own agency or another person's. The defensive interference must be proportional to the gravity of the threat. Thus, it is not wrong to use deception to resist an attempted theft of intellectual property, so long as the deception is targeted at the perpetrators (the hackers and the higher-ups who ordered the hacking), necessary to stop the attack, and proportional to the gravity of the attack.[31]

A parallel analysis applies to the ethics of defensive lawbreaking.[32] According to Kantian legal theory, it is important for each individual to have a sphere in which he or she can make decisions independently, free from others' interference.[33] Though universal rational principles make clear that it is important for everyone to have such a sphere of external freedom, universal rational principles do not say where each person's sphere begins and ends. We need positive law to define the sphere in which each person is entitled to act free from interference. One crucial aspect of law's task is to determine how property rights may be acquired and transferred and to spell out what specific rights are associated with different property interests (e.g. what rights are associated with a residential lease). Respect for the effectiveness of others' rational agency requires respect for

31 (To be added: discussion of contemporary Kantians who reject Kant's own analysis of the murderer at the door.)

32 I develop a Kantian account of defensive lawbreaking in "Breaking the Law Under Competitive Pressure," forthcoming in *Law and Philosophy*, https://doi.org/10.1007/s10982-019-09345-7.

33 For discussion of the Kantian conception of external freedom, see Arthur Ripstein, *Force and Freedom* (Cambridge, MA: Harvard University Press, 2009).

property rights, and more generally for laws that specify who is entitled to use what resources in what ways.[34]

Many laws, including many laws concerning resource allocation, are incompletely enforced. Some people break the law with impunity; others break the law and treat fines or damages as costs of doing businesses. Suppose a business has a competitor that attempts to gain a competitive advantage by flouting an incompletely enforced resource-allocation law that is costly to obey. Is it ethical to protect one's own competitive business by breaking the same law one's competitor breaks? The Kantian account of defensive force implies that there is a moral difference between these two cases:

> *Trespass by Competitor:* A rancher attempts to lower the costs of raising cattle by allowing his cattle to graze on a neighbor's land. The neighbor is also a rancher and protects her competitive position by intentionally allowing *her* cattle to graze on the offending neighbor's land.
>
> *Wage Theft by Competitor:* A retailer attempts to lower its costs by refusing to pay workers overtime to which they are legally entitled. Another retailer in the same market learns of this practice and stops paying legally required overtime to protect its competitive position.

The rancher who defends herself against trespass through self-help uses proportional defensive force against a wrongful attack on her property (and thereby on her competitive position in ranching business). This is ethically permissible, on the Kantian account. By contrast, it is wrong on the Kantian account to deprive one's employees of wages they are legally owed to protect one's competitive position against a competitor engaged in wage theft.

I will close by mentioning a complication. In *Deceptive Counterintelligence*, the only people who will be deceived by the counterintelligence plan are people who

34 Such laws include tax laws, minimum wage and overtime laws, and other laws requiring a transfer of resources from one person or organization to another. The rational interest in property rights is not limited to an interest in the private property rights of individuals. People's spheres of external freedom can include rights to use public resources and rights to use resources belonging to private organizations, such as corporations.

believe they are receiving information from an illegal computer intrusion. These individuals may not all be directly involved in the attack, but they arguably are knowingly complicit. Suppose, however, that the people who authorize hacking of a competitor's computers plan to provide the information they obtain to others in their company who are unaware of its illicit source. The documents will be scrubbed or manipulated in such a way that the source of the information will be concealed. If a competing firm defends itself from hacking by creating honeypots with fake documents, this defensive tactic will deceive people who are neither engaged in a wrongful attack (hacking) nor aware that their firm is engaged in wrongful attacks. Is it rational or ethical to create deceptive documents for hackers to discover knowing that if a hack takes place, the documents will deceive individuals who did not participate in the hack or even know about it?

A full account of the ethics of deception in business must take into account the ethics of targeting defensive deception at a wrongfully aggressive firm rather than at a wrongfully aggressive human individual. Likewise, a full account of the ethics of defensive lawbreaking would need to consider whether there are any problems associated with defensively violating the legal rights of an aggressive organization, rather than an aggressive individual. Kantian ethics attributes moral responsibility to individuals, not to corporations or other organizations.[35] The permissibility of defensive deception or law-breaking against an aggressive organization would thus depend on how it affects individuals in that organization and whether those individuals can be properly considered complicit in their firm's aggressive behavior. A full Kantian account of business ethics thus needs a full account of complicity—not because we need to distribute blame, but because we need to know what managers and other workers may do to defend their firms' competitive positions without wrongfully injuring innocent people.[36]

35 On this point, see Tobey Scharding, "Individual Actions and Corporate Moral Responsibility: A (Reconstituted) Kantian Approach," *Journal of Business Ethics* 154 (2019): 929-942.

36 I am grateful to Tobey Scharding, Amy Sepinwall, and an audience at the Zicklin Center Normative Business Ethics Workshop for helpful comments on a previous draft.