

## A DISCOURSE ON WHY ETHICS TRAINING FOR INSURANCE PRODUCERS IS OFF COURSE

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My concern about whether the approved curriculum on ethics training for insurance agents qualifies as ethics grows unabated. Examples on point: In the first ethics course I attended, the instructor devoted considerable time discussing her new vacation home. This could have been an opportunity to discuss ethics and social class or an introduction to Tolstoy's 1886 essay on "How Much Land Does a Man Need?"<sup>1</sup> After three hours of lecturing, however, the instructor concluded that we should just follow the Golden Rule. It is not uncommon to hear an instructor, a student or both suggest that the Golden Rule is a one size fits all.

Another course left the impression that a principal function of ethical standards is to present a formula agents can follow when faced with a dilemma in which two ethical standards are in conflict. Certainly one can face such conflicting situations, but that is only a minor feature of ethics. Besides, some ethical systems, virtue ethics for example, don't follow a set of rules.

Another course dealt primarily with an agent's obligation to her principal, an insurance company, and highlighted the importance of just following company orders while ignoring the issue of what one should do if the company's orders conflict with an agent's personal moral standards or the law. A reasonable interpretation of the course was that following orders was an essential part of job security. Attendees were never asked whether any agent had ever fired an insurance company because the company engaged in ethically questionable sales or claims practices, nor was there mention of Hannah Arendt's writings about the Nuremberg trials which demonstrated the "banality of evil" flowing from just following orders.<sup>2</sup> Moreover, the life insurance agents who sold vanishing premium life insurance policies were following company directions.

Most courses, however, focus on compliance with agent licensing laws, unfair trade practices and similar regulations – all important matters but they may conflate what is legal with what is ethical. The bottom line is that we can label continuing education requirements anything we wish, but we are deluding ourselves if we attach an "Ethics" label to compliance training.

Ethics is a branch of philosophy. To this day, however, I have encountered no mention of Aristotle's *Nicomachean Ethics* or the names of leading figures in ethics such as John Stuart Mill, John Dewey, Immanuel Kant, or John Rawls, and I have not seen any substantive mention of

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<sup>1</sup> James Joyce said Tolstoy's short story is "The greatest story that the literature of the world knows." See "How Much Land Does a Man Need: A Parable of Greed" in Christina Hoff Sommers and Fred Sommers (Eds.), **Vice and Virtue in Everyday Life**, 9<sup>th</sup> Edition (Boston: Wadsworth Publishing, 2013), Pp. 360-371.

<sup>2</sup> Hannah Arendt, **Eichmann in Jerusalem** (New York: Viking, 1964). See also Joel E. Dimsdale, **Anatomy of Malice** (New Haven: Yale University Press, 2016 and Stanley Milgram, **Obedience to Authority: An Experimental View** (New York: Harper Collins, 1974).

utilitarianism, moral relativism, virtue ethics, ethical egoism, natural law theory or even Divine Command theory under which the Golden Rule principle falls. I expect to encounter these luminaries because my own discipline, Political Science, includes ethics writings of Plato, Aristotle, Immanuel Kant, John Stuart Mill, and most other authorities in the field.<sup>3</sup> These are sources one expects to find in any discussion of ethics.

### **Insurance Is in the Ethics and Morality Business**

There are compelling reasons why everyone involved in the insurance business should study ethics because insurance is in the morality business. As a risk bearer, insurance rewards good moral conduct and punishes bad. As one source affirms, insurance “systematically grafts morality onto economics and thereby perpetuates questions about moral citizenship and responsibility.”<sup>4</sup> Francois Ewald asserts, “insurance is a moral technology.”<sup>5</sup>

We teach about these matters in pre-licensing literature by distinguishing conduct that is either a moral hazard or morale hazard. Unfortunately, too often that is where our ethical discussion ends. There is much more. Whether abortion procedures or experimental drugs are covered in health insurance are decisions affecting hot button moral issues; charging smokers higher rates than non-smokers conflicts with personal freedom of choice while rewarding non-smokers; indeed, Virginia recently passed legislation prohibiting health insurers from adding surcharges to insurance policies.<sup>6</sup> Also, limiting the number of families in a private home in homeowners policies may favor wealthier insureds over the less wealthy and some ethnic groups over others; and use of credit reports in underwriting that may result in discrimination against minority groups while mandatory automobile insurance is a universal requirement, but actuarial fairness in pricing cannot persuade a single mom that having to pay for car insurance instead of providing child care is a fair bargain. Workers Compensation insurance makes moral judgments not only about the value of a whole person but also about various body parts.

Essentially, insurance functions as an instrument of social control and a Great Decider on issues at the heart of contemporary culture wars over what is right or wrong.

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<sup>3</sup> A good introduction to philosophy is Russ Shafer Landau, **The Fundamentals of Ethics**, 5<sup>th</sup> Edition (New York: Oxford University Press, 2021) and the same author’s book, **The Ethical Life: Fundamental Readings in Moral Problems** (New York: Oxford University Press, 2018). Some courses tiptoe around the periphery of these philosophical systems but lack follow through. See AHI Insurance Services, **Ethical Responsibilities** (Franklin Park, IL, 2005), Chapter 4.

<sup>4</sup> Richard Erickson, Aaron Doyle and Dean Barry, **Insurance as Governance** (Toronto: University of Toronto Press, 2003), p.6.

<sup>5</sup> Graham Burchell, Colin Gordon, and Peter Miller, **The Foucault Effect: Studies in Governmentality** (Chicago: University of Chicago Press, 1991), p.207.

<sup>6</sup> See “Youngkin Says He Will Sign Legislation Ending Higher Insurance Premiums for Tobacco Users,” [virginiamercury.com](http://virginiamercury.com), accessed March 21, 2023.

## The Golden Rule as a Guide: An Ancient Principle Under Scrutiny

The Golden Rule is the opposite of the notion that “I give so that you will give in return”; instead, it embraces unilateral action on behalf of other persons without expectation of anything in return. Since it is one of the most frequently referenced ethical standards, I offer a critique of the Golden Rule and suggest how the works of Immanuel Kant may complement the subject. My apology to Kantians if I oversimplify his thoughts to make my points.

The Golden Rule concept as recorded in the Book of Matthew 7:14, “All things whatsoever ye would that men should do to you, do ye even so to them,” is the oft cited version, but the concept predates the New Testament. For example, an ancient Egyptian papyrus from the period 664 BC – 323 BC says, “That which you wish not be done to you, do not do to another.” And Thales (Greek), considered by many to be the first philosopher, said “Avoid doing what you would blame others for doing.”<sup>7</sup>

Charles Darwin who had exposure to several cultures and best known for his theory of evolution opined, “To do good unto others – to do unto others as ye would they should do unto you – is the foundation stone of morality.”<sup>8</sup>

Pope Francis in his 2015 Address to the U.S. Congress, further embraced the continuing relevance of the Golden Rule:

*The rule points us in a clear direction. Let us treat others with the same passion and compassion with which we want to be treated. Let us seek for others the same possibilities which we seek for ourselves. Let us help others to grow, as we would like to be helped ourselves. In a word, if we want security, let us give security; if we want life, let us give life; if we want opportunities, let us provide opportunities. The yardstick we use for others will in time be the yardstick which time will use for us.*<sup>9</sup>

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<sup>7</sup> These examples are from “The Golden Rule Across the World’s Religions Thirteen Sacred Texts” at [Static/.square space.com](https://static.square.space.com), accessed March 5, 2023. For a more thorough and supportive discussion of the rule, see **Harry G. Gensler, Ethics and the Golden Rule** (Oxfordshire, Eng.: Routledge, 2013)

<sup>8</sup> Cited in Lynn Stout, **Cultivating Conscience: How Good Laws Make Good People** (Princeton: Princeton University Press, 2011,) p. 57.

<sup>9</sup> Transcript: Pope Francis’s Speech to the U.S. Congress Sept. 14, 2015 at <https://www.washingtonpost.com>. Last accessed March 04, 2023.

## Critics of the Golden Rule

In the world of philosophy, nothing escapes criticism. To demonstrate the point, I offer the following examples that instructors using the Golden Rule as instructional material may wish to incorporate.

**Sigmund Freud** (1856-1939) considered himself to be a scientist, but others also remember him as physiologist, medical doctor, psychologist, influential thinker, and the father of psychoanalysis. His writings covered many topics, including reflections on sources of human morality and ethics. Freud was happily married and fathered six children. Daughter **Anna Freud** became a highly regarded psychologist in her own right. Sigmund Freud's views on ethics appear in **Civilization and Its Discontents**,<sup>10</sup> see especially Chapter V, and his main points regarding the Golden rule are easily summarized.

1. It is psychologically unrealistic. By requiring a severe repression of the instinctive basis of love, which is sexual, it is discriminatory and egoistic.
2. It devalues love by failing to discriminate between those whom I (Freud) actually have affection for and those I don't – makes me throw away my love by giving it to everyone with my eyes closed.
3. It is unjust. For the most part, people are wolves who do not deserve my love.
4. It is utterly impractical since it puts us at a disadvantage with respect to those who do not reciprocate (most people).

George Bernard Shaw (1856- 1950) was a playwright, a Fabian Socialist, and co-founder of the London School of Economics. He wrote over 60 plays, including **Pygmalion** which I suspect many Americans have read. Millions have seen the play or movie based upon it, "My Fair Lady." In 1903 he wrote, as what he probably meant to be humor, "Do not do unto others as you would have them do unto you [for] their tastes may not be the same."

Immanuel Kant saw the Golden Rule as "banal" because it cannot serve as a guide or principle. To Kant, the Golden Rule "contains the ground neither of duties to one's self nor of the benevolent duties of others."<sup>11</sup>

Kant said the Golden Rule based morality on a person's desires, not reason as he preferred. From Kant's perspective, to use an example, Will Smith should slap Chris Rock if Mr. Rock is a

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<sup>10</sup> Sigmund Freud, **Civilization and Its Discontents**, originally published in 1929, is available from Penguin Classics, London, England (2014).

<sup>11</sup> In addition to Kant's original writings, see Mark Timmons, **Moral Theory: An Introduction** (New York: Rowman and Littlefield 2013) Chapters 8 and 9. Timmons also describes and critiques several additional moral theories.

masochist who gains pleasure from a good slapping. Further, if Mr. Rock is a masochist who enjoys being slapped, does that authorize him to engage in widespread battery of others?

How do we deal with a fanatic under the rule? Some people are willing to endure great pain and suffering on behalf of an idea or cause, may even view it as a badge of honor, or in more extreme situations, fanatics may seek martyrdom. The Golden Rule basically grants a license to their abuse of others.

The rule also fails to address self-regarding actions, those duties we might owe ourselves to make use of and not waste our talents.

### **Using Kant to Modify the Golden Rule**

The Golden Rule falls within the ethics category of Divine Command, the notion that we should obey rules set by a divine being, God. So, an act is morally required because God commanded it, immoral if prohibited by God. The Ten Commandments are additional examples of this theory. As suggested above, Immanuel Kant believed that the Golden Rule failed to provide the correct (right) answer in certain situations; therefore, he proposed broader rules one may view as gap fillers for pedagogical purposes. To elaborate, Kant suggests that people develop **maxims**, principles that establish what and why of an action persons are about to take. Once a maxim is determined, Kant says a person should ask, "What if everyone acted in this manner?" If the answer is good things happen (my terms) the maxim is a standard every rational person can consistently act upon; therefore, the maxim passes and satisfies Kant's Universalizability standard:

**One should act as if the maxim of her action is to become a universal law applicable to all rational humans.**

In applying the rule, Kant is not concerned with the consequences of an act, but with what a person intends to accomplish. So, intent is crucial to his thinking: We can't always control the consequences of our actions, he believes, but we can know what we intend.<sup>12</sup>

Intention is a crucial concept in insurance because insurance is based upon a contract in which intent of the parties is an important standard in determining how words in an insurance policy apply to concrete situations. Intentional acts are typically excluded from coverage, but intent may be inferred from circumstances. Moreover, some distinguish between an intentional act and an unintended effect. For example, Hunter 1 intended to shoot a deer but Hunter 2 stepped between the deer and Hunter 1 just as the gun fired. An insurer may argue that the

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<sup>12</sup> For a scholarly summary of literature on Intention, see Stanford Encyclopedia of Philosophy at [plato.stanford.edu](http://plato.stanford.edu), accessed March 21, 2023. Kant rejects the utilitarian moral view which focuses on the consequences of a particular action.

word “occurrence” is not intended to pay for poor workmanship claims while a court may decide otherwise.

Another Kantian concept is the Humanity as the End in Itself maxim:

**“So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.”**

Note the adverb “merely” in this maxim. If you intend good results for another person, the means as an end test says it is okay; however, if the intent is to benefit one’s own ends, it is a prohibited practice by the rule.

In Kant’s world, promises are binding commitments. The relevance of this standard to insurance is that insurance is based upon a promise, failure to honor a promise is a lie and, in Kant’s opinion, it is never right to lie. There is a duty to speak the truth, no matter the cost. When you lie to others, you take away their autonomy, their freedom to choose, and a lie undermines human dignity. For example, if an agent places a policy with a company she knows will use a computer program to shave dollars off a claim and fails to reveal that fact, she restricts a buyer’s freedom to make an alternative choice and impugns that customer’s personal dignity.

This maxim also places Kantian philosophy at odds with our contemporary culture of consumerism in which advertising treats consumers merely as a means to gain greater market share and higher profits. Strict application of Kantian principles would most likely bring an end to the widespread and legal use of “puffery” - those “Best burger in town, “lowest insurance prices” claims in sales and advertising practices. Good neighbors and good hands people would need to provide proof of their promotional claims.

Sales incentive programs would be held to closer scrutiny under a Kantian regime, especially since an increasing body of literature demonstrates their tendencies to encourage deceptive business practices. As one authority concluded, “Incentive to perform is frequently indistinguishable from incentive to cheat.”<sup>13</sup>

Kant is especially concerned with fairness in all relationships, a concern which is at the core of insurance undertakings expressed sometimes as fair, sometimes as unfair. Examples include actuarial fairness in which the standard is affirmatively asserted, and is sometimes expressed in

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<sup>13</sup> Tim Askew, “Wells Fargo and the Dangers of Goals Gone Wild,” INC, 09/16/2016. The quote is from Professor Marc Kodak. Wells Fargo was fined \$185 million by the U.S. Consumer Protection Bureau and the bank terminated over 5,300 employees who engaged in fraudulent sales practices under the bank’s incentive sales program. See also Tae Young Park, Sanghee Park and Bruce Barry, “Incentive Effects on Ethics,” *Academy of Management Annals*, Vol. 16, No.1, (2022), Pp. 297-333; Stephen J. Sauer, Matthew S. Rodgers and William J. Becker, “The Effects of Goal and Pay Structure on Management Reporting Dishonesty,” *Journal of Accounting, Ethics and Public Policy* (2018), Pp. 377-418;

the negative, an example being Unfair Trade Practices wherein what is fair is a practice that is not unfair.

Recall that the Golden Rule, according to Kant, omits one's duty to self. In Kant's view, becoming a better person through character building is crucial. Vices of envy, ingratitude, malice, arrogance, defamation and ridicule are eschewed while cultivating the virtues of beneficence, gratitude, sympathy, and respect for others as an end in itself are essential. A person should also strive to improve body, mind, and spirit. In some ways, Kant's thoughts on character overlap with Aristotle's virtue ethics, an ethical category I will address later.

### **Concluding Observations**

I am not proposing that the Golden Rule be rejected, just that no ethical rule should be blindly followed and reliance upon the works of a leading philosopher can be useful if one chooses to introduce the Golden Rule as an ethical standard. Additionally, I am not suggesting that everyone who teaches current ethics courses have graduate training in philosophy. It is my contention, however, that we either change the focus of ethics education or rename it to reflect accurately what is happening in the classes across America. If we are teaching compliance, call it compliance but do not sugar coat it as ethics.<sup>14</sup>

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<sup>14</sup> Teaching ethics as compliance may be tempting to the instruction business. A course on compliance may be based on the same materials as courses on Insurance Law, Consumer Protections in Insurance Practices or even Introduction to Insurance, to cite a few of the multiple uses. Ethics courses do not offer that flexibility.