

THE EMBEZZLEMENT PROBLEM

Is a person morally required to commit a crime in order to prevent further instances of that crime from being committed? More specifically, is a person morally required to embezzle from her company and commit fraud in order to prevent widespread fraud and loss of pensions? I will use the embezzlement example to examine answers with respect to act-utilitarianism, rule-utilitarianism, and Kantian ethics. Then, I will argue from a rights-based view that one should refrain from embezzling and committing fraud.

Let me begin by stating the example. An employee of a small company, call her Eleanor, is worried that high levels of fraud in current business are leading to the loss of employee pensions. She discovers a way to embezzle from her employer, cover her tracks with fraudulent accounting, and give the money to an organization for the prevention of embezzlement and accounting fraud. The scheme risks leaving employees of her company without pensions; however, it will prevent widespread fraud and widespread loss of pensions. The question is whether or not Eleanor should embezzle and commit fraud in order to prevent widespread fraud and pension loss.

Let us examine an act-utilitarian's response to the problem. Act-utilitarianism stipulates that we ought to perform acts which produce the greatest utility. So, if Eleanor's embezzlement and fraud will produce the greatest utility—that is, the greatest happiness—then she ought to do it. Now, it is dubious that her donation to the organization would actually prevent widespread fraud and widespread loss of pensions, but let us assume for the sake of argument that it will. I take it that, since she works for a small company, its employees do not number very many.

Even if all these employees lost their pensions (and they may not, for there is only a *risk* that they will), the number of people with lost pensions will be less than the number of people whose pensions will be saved by the donation, since the donation will prevent widespread loss of pensions. Assuming that Eleanor's deed does not undermine the principles of fair business practice (and it will not, for it does not seem that she will be caught), then she ought to embezzle and commit fraud, for it will result in the most happiness: more people's pensions will be saved, and less fraud will be committed than had she not acted as she did.

Turning now to rule-utilitarianism, we get a different answer. According to this form of utilitarianism, "an act is right if it conforms to a valid rule within a system or rules that, if followed, will result in the best possible [or least bad] state of affairs."¹ It seems that a rule against embezzling and engaging in fraud would be one of the rules in a system like this; it is difficult to see how a rule allowing embezzlement and fraud would contribute to the best possible state of affairs. Even if we were to make the rule more specific, say, to allow embezzlement and fraud in cases where it has the potential to do much good, it seems difficult to accept. It seems that then many people would embezzle from their workplaces, in order to give money to famine relief or other charities. Companies would be unable to operate, and the economy would collapse. People would be unable to support themselves, and everyone would be in need of famine relief. This rule does not seem to result in the best possible state of affairs, or even a better state of affairs than the first rule brings about. Since Eleanor's act of embezzlement

¹ Pojman, Louis P., ed. Ethical Theory: Classic and Contemporary Readings, 4th Ed. Australia: Wadsworth-Thomson, 2001. 153.

and fraud would not conform to the first rule, a rule against embezzlement, it would not be right. Therefore, on rule-utilitarianism she should refrain from engaging in embezzlement and fraud.

The third ethical theory I would like to consider is Kant's. In order to see whether Eleanor should commit the crime, we must formulate a maxim to describe her action and motivations and evaluate that maxim with regard to its consistency as a universal law. Perhaps Eleanor's maxim would go something like this: 'Whenever I become concerned with the effects of an unjust act, I commit that act in order to prevent or lessen the negative effects of the unjust act.' I assume that embezzlement and fraud are unjust on the Kantian view. Presumably, this maxim is not consistent, because it would mean that it is both right and not right to commit any given unjust act. It would be right for those like Eleanor, but not right for those who are causing the negative effects in the first place. I take the consistency requirement to mean, in part, that actions are either right or wrong for everyone, and the rightness or wrongness does not depend on the person committing the action. Therefore, Eleanor should not embezzle and commit fraud.

I, too, think that Eleanor should not commit the crime, based on the view that people have certain rights that must be respected, rights that place constraints on other moral considerations, such as the promotion of happiness. One of these rights is the right a person has not to have his rights violated without consent (either explicit or implicit). I would go so far as to say that it is our moral duty not to violate the rights of others without their consent, and that this duty is

one of the most binding, if not *the* most binding, of the duties. Honoring this duty should come before honoring the duty to promote happiness, to develop one's talents, etc. If Eleanor embezzles and commits fraud, she is violating the rights of the employees of her company, by putting their pensions at risk without their consent. These employees have a right to what they have earned (namely, their pensions), and Eleanor would be violating this right if she were to put their pensions at risk.

In addition to violating the rights of the company's employees, she may also be violating the rights of those who own and operate the company. Perhaps this company is a very good company, one which does good work and is very upright in its business practices. The company's owners have the right not to be exploited and a right to their earnings as well. Clearly, Eleanor would be violating these rights without their consent were she to embezzle from the company. The fact that the company is an upright company matters, because it is possible that the owners would not be entitled to the same rights if they engaged in illegal or unjust business practices. However, even in this scenario the employees are still entitled to their rights, which Eleanor would be violating. Now, if everyone involved in the company were for some reason not entitled to the rights that would be violated if Eleanor were to commit the crime, then it is conceivable that she would be justified in embezzling. Of course, it seems rather far-fetched that everyone involved would not be entitled to the relevant rights.

The objection could be made that the rights of those who are currently losing their pensions because of high levels of fraud in business are being violated as

well. Is it not Eleanor's duty to promote the rights of those people, as well as those who stand to lose their pensions if current practice remains unchanged? It does seem that one of our duties is to promote the rights of others, but should this duty be performed at the cost of violating (different) others' rights? I do not believe that it should. The duty to promote the rights of others seems to be a lesser duty than the duty not to violate the rights of others without their consent.

One might also object to the rights that I have granted to people. Do the employees in the example *really* have the right not to have their pensions put at risk? Yes, I believe they do. A pension provides financial security for an employee's family for many years; without it he will be forced to work even when he is too frail to be able to do so. He certainly has the right to this pension, to the financial security he has earned by many years of work, and it is his right for it not to be put at risk by Eleanor.

On most views examined above we arrive at the conclusion that Eleanor should not commit fraud and embezzlement in order to prevent widespread fraud and widespread loss of pensions. If we take this example to be indicative of the response to the general question of committing a crime to prevent further instances of that crime, then it seems that most of these theories would not support the committing of such a crime. I have argued from a rights-based view that Eleanor should not commit embezzlement and fraud, except in the implausible case that all involved with her company were not entitled to the relevant rights. In the general case, as in the specific case, crimes should not be committed if they violate the rights of others without consent.