

3. Contractual rights and duties depend on a publicly accepted system of rules that define the transactions that give rise to those rights and duties.⁶⁰ Contracts, for example, create special rights and duties between people only if these people recognize and accept a system of conventions that specifies that, by doing certain things (such as signing a paper), a person undertakes an obligation to do what the person has agreed to do. When a person goes through the appropriate actions, other people know that person is taking on an obligation because the publicly recognized system of rules specifies that such actions count as a contractual agreement. Because the publicly recognized system obligates or requires the person to do what is agreed to, or suffer the appropriate penalties, everyone understands that the person can be relied on to keep the contract and that others can act in accordance with this understanding.

Without the institution of contract and the rights and duties it can create, modern business societies could not operate. Virtually every business transaction at some point requires one of the parties to rely on the word of the other party to the effect that the other party will pay later, will deliver certain services later, or will transfer goods of a certain quality and quantity. Without the social institution of contract, individuals in such situations would be unwilling to rely on the word of the other party, and the transactions would never take place. The institution of contracts provides a way of ensuring that individuals keep their word, and this, in turn, makes it possible for business society to operate. Employers, for example, acquire contractual rights to the services of their employees in virtue of the work contract that employees enter, and sellers acquire contractual rights to the future cash that credit buyers agree to give them.

Contractual rights and duties also provide a basis for the special duties or obligations that people acquire when they accept a position or role within a legitimate social institution or an organization. For example, married parents have a special duty to care for the upbringing of their children, doctors have a special duty to care for the health of their patients, and managers have a special duty to care for the organization they administer. In each of these cases, there is a publicly accepted institution (such as a familial, medical, or corporate institution) that defines a certain position or role (such as parent, doctor, or manager) on which the welfare of certain vulnerable persons (such as the parents' children, the doctor's patients, or the manager's corporate stakeholders) depends. Society attaches to these institutional roles special duties of caring for these vulnerable dependents and protecting them from injury—duties that the people who enter the role know they are expected to fulfill. When a person freely enters the role knowing

what duties society attaches to the acceptance of the role, that person in effect enters an agreement to fulfill those duties. The existence of a system of contractual obligations ensures that individuals fulfill these agreements by laying on them the public obligations that all agreements carry. As a result, these familial, medical, and corporate institutions can continue to exist, and their vulnerable members are protected against harm. We should recall here that a person's institutional duties are not unlimited. In Chapter 1, we noted that as a "loyal agent," the manager's duties to care for the corporation are limited by the ethical principles that govern any person. Similarly, a doctor cannot kill some patients to obtain vital organs for other patients whom he or she has a duty to care for.

What kind of ethical rules govern contracts? The system of rules that underlies contractual rights and duties has been traditionally interpreted as including several moral constraints:⁶¹

1. Both of the parties to a contract must have full knowledge of the nature of the agreement they are entering into.
2. Neither party to a contract must intentionally misrepresent the facts of the contractual situation to the other party.
3. Neither party to the contract must be forced to enter the contract under duress or coercion.
4. The contract must not bind the parties to an immoral act.

Contracts that violate one or more of these four conditions have traditionally been considered void.⁶² The basis of these sorts of conditions is discussed next.

Quick Review 2.10

Contractual Rights and Duties . . .

- Are created by specific agreements and conferred only on the parties involved
- Require publicly accepted rules on what constitutes agreements and what obligations agreements impose
- Underlie the special rights and duties imposed by accepting a position or role in an institution or organization
- Require (1) the parties know what they are agreeing to, (2) no misrepresentation, (3) no duress or coercion, (4) no agreement to an immoral act

2.3.3: A Basis for Moral Rights: Immanuel Kant

How do we know that people have rights? This question can be answered in a fairly straightforward way when it is asked about legal rights: a person has legal rights because the person lives within a legal system that guarantees those rights. However, what is the basis of moral rights?

Some utilitarians have suggested that utilitarian principles can provide a basis for moral rights. They have argued that people have moral rights because having moral rights maximizes utility. It is doubtful, however, that utilitarianism provides an adequate basis for moral rights. To say that someone has a moral right to do something is to say that person is entitled to do it, regardless of the utilitarian benefits it provides for others. Utilitarianism cannot easily support such a nonutilitarian concept.

A more satisfactory foundation for moral rights is provided by the ethical theory developed by Immanuel Kant (1724–1804).⁶³ Kant, in fact, attempted to show that there are certain moral rights and duties that all human beings possess, regardless of any utilitarian benefits that the exercise of those rights and duties may provide for others.

Kant's theory is based on a moral principle that he called the *categorical imperative* and that requires that everyone should be treated as a free person equal to everyone else. That is, everyone has a moral right to such treatment, and everyone has the correlative duty to treat others in this way. Kant provided more than one way of formulating this basic moral principle; each formulation serves as an explanation of the meaning of this basic moral right and correlative duty.

THE FIRST FORMULATION OF KANT'S CATEGORICAL IMPERATIVE Kant's first formulation of the categorical imperative is as follows: "I ought never to act except in such a way that I can also will that my maxim should become a universal law."⁶⁴

A *maxim* for Kant is the reason a person in a certain situation has for doing what he or she plans to do.

A maxim would "become a universal law" if every person in a similar situation chose to do the same thing for the same reason. Kant's first formulation of the categorical imperative, then, comes down to the following principle:

An action is morally right for a person in a certain situation if, and only if, the person's reason for carrying out the action is a reason that he or she would be willing to have every person act on, in any similar situation.

An example may help clarify what Kant's principle of the categorical imperative means. Suppose that I am trying to decide whether to fire an employee because I do not like the employee's race. According to Kant's principle, I must ask myself whether I would be willing to have any employer fire any employee whenever the employer does not like the race of the employee. In particular, I must ask myself whether I would be willing to be fired myself should my employer not like my race. If I am not willing to have everyone act in this way, even toward me, then it is morally wrong for me to act in this way toward others. A person's reasons for acting, then, must be "reversible"; one must be willing to have all others use those reasons even against oneself. There is an obvious

similarity, then, between Kant's categorical imperative and the so-called *golden rule*: do unto others as you would have them do unto you.

Kant noted that sometimes it is not even possible to *conceive* of having everyone act on a certain reason, much less be *willing* to have everyone act on that reason.⁶⁵ To understand this point, consider a second example. Suppose that I am thinking of breaking a contract because it has committed me to do something I do not want to do. Then, I must ask whether I would be willing to allow everyone to break any contract that they did not want to keep. However, it is impossible to even conceive of everyone making contracts they do not have to keep. Why? Because if everyone knew that they were allowed to break any contract they did not want to keep, then people would not bother to make contracts. Why would anyone make a contract that no one had to keep? Consequently, because it is impossible to conceive of a world in which people make contracts they do not have to keep, it is also impossible for me to be willing to have everyone make contracts they do not have to keep. How can I will something I cannot even conceive? It would be wrong, therefore, for me to break a contract simply because I do not want to keep it. A person's reasons for acting, then, must also be *universalizable*: it must be possible, at least in principle, for everyone to act on those reasons.

The first formulation of the categorical imperative, then, incorporates two criteria for determining moral right and wrong—universalizability and reversibility. These concepts can be defined as follows:

- *Universalizability*: The person's reasons for acting must be reasons that everyone could act on at least in principle.
- *Reversibility*: The person's reasons for acting must be reasons that the person would be willing to have all others use, even as a basis of how they treat him or her.

This formulation of Kant's categorical imperative is attractive for a number of reasons. One important reason is that it captures some of the ways we ordinarily determine moral right and wrong. Frequently, for example, we say to a person who has wrongly injured someone or who is about to wrongly injure someone: "How would you like it if he did that to you?" or "How would you like it if you were in her place?" When we say this, we are appealing to something like reversibility. We are saying that an action cannot be right if it does not pass the test of reversibility, which is the basis of Kant's categorical imperative. On the other hand, we may say to the person who is considering doing something wrong: "What if everybody did that?" When we ask this question, we are appealing to universalizability. We are, in effect, saying that it is wrong to do something if it does not pass the test of universalizability, which again, is what Kant's categorical imperative requires.

How did Kant argue for the categorical imperative? To begin with, consider that Kant's categorical imperative focuses on a person's interior motivations and not on the external consequences of his or her actions. Moral right and wrong, according to Kant, are distinguished not by what a person accomplishes, but by the reasons or motives the person has for doing what he or she does. Kant argued that an action "has no moral worth" if a person does the action *only* out of self-interest or *only* because it gives him or her pleasure. In other words, morality is neither about pursuing self-interest nor about doing what gives us pleasure; morality is about doing what is right whether or not it is in our self-interest and whether or not it makes us feel good. A person's action has "moral worth" then, only to the degree that it is *also* motivated by a sense of "duty," that is, a belief that it is the right way for all people to behave in similar circumstances. Therefore, Kant claimed, to be motivated by a sense of "duty" is to be motivated by reasons that a person believes everyone should act on when they are in similar circumstances. Consequently, Kant concluded, a person's action has "moral worth" (i.e., it is morally right) only to the extent that it is motivated by reasons that he or she would be willing to have every person act on when they are in similar circumstances. This consequence or conclusion is Kant's categorical imperative.

Quick Review 2.11

Kant's First Formulation of the Categorical Imperative

- We must act only on reasons we would be willing to have anyone in a similar situation act on.
- The categorical imperative requires universalizability and reversibility.
- Questions that test universalizability and reversibility are "What if everyone did that?" and "How would you like it if someone did that to you?"

THE SECOND FORMULATION OF KANT'S CATEGORICAL IMPERATIVE The second formulation Kant gave of the categorical imperative is this: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."⁶⁶ In other words, never treat people *only* as means, but always *also* as ends. What Kant implies by "treating humanity as an end" is that we should treat each human being as a free and rational person. This means two things:

1. Respect each person's freedom by treating that person *only* as she has freely and rationally consented to be treated.
2. Contribute to each person's ability to pursue those ends she has freely and rationally chosen to pursue.⁶⁷

The phrase "freely and rationally" here refers to the kind of choices a person makes when her choices are not forced and she both knows and chooses what is in her best interests. On the other hand, to treat a person *only* as a means is to use the person as an instrument for advancing one's own interests, while disregarding the person's choices and interests. Such treatment *neither* respects her freedom to choose for herself what she will do *nor* contributes to her ability to pursue what she has freely and rationally chosen to pursue. Kant's second formulation of the categorical imperative, then, can be expressed in the following principle:

An action is morally right for a person if, and only if, in performing the action, the person does not use others *only* as a means for advancing his or her own interests, but always (1) treats them as they have freely and rationally consented to be treated, and (2) contributes to their ability to pursue what they have freely and rationally chosen to pursue.

This version of the categorical imperative implies that human beings have a dignity that sets them apart from things such as tools or machines, and human dignity is incompatible with being manipulated, deceived, or otherwise unwillingly exploited to satisfy the self-interests of another. The principle in effect says that people should not be treated as objects incapable of free and rational choice. By this principle, an employee may legitimately be asked to perform the unpleasant (or even dangerous) tasks involved in a job if the employee freely and rationally consented to take the job knowing that it would involve these tasks. However, it would be wrong to subject an employee to health risks without the employee's knowledge. In general, deception, physical force, and secret manipulation fail to respect people's freedom to choose for themselves and are therefore unethical (unless, perhaps, a person first freely consented to have physical force used against him or herself).

Kant argued that making fraudulent contracts by deceiving others is wrong and that deliberately refraining from giving others help when they need it is also wrong. By deceiving a person into making a contract that the person would not knowingly choose to make, I am deliberately treating her in a way that she has not freely and rationally consented to be treated, and so I am only using her to advance my own interests. By intentionally refraining from helping another person when I see that person needs the help that I can provide, I fail to contribute to the person's ability to pursue the ends she has chosen to pursue.

The second formulation of the categorical imperative, according to Kant, is really equivalent to the first.⁶⁸ The first formulation says that what is morally right for me must be morally right for others: everyone is of equal

value. Based on this idea, then, no person's freedom should be subordinated to that of others so that a person is used merely to advance the interests of others. Because everyone is of equal value, no one's freedom to choose can be sacrificed for the sake of the interests of others. Accepting this, of course, is what the second formulation of the categorical imperative requires. Both formulations come down to the same thing: people are to treat each other as beings who should be equally free to pursue what they themselves choose to pursue.

Quick Review 2.12

Kant's Second Formulation of the Categorical Imperative

- We must never use people only as a means to our ends, but always treat them as they freely and rationally consent to be treated and help them pursue their freely and rationally chosen ends.
- The categorical imperative is based on the idea that humans have a dignity that makes them different from mere objects.
- According to Kant, this formulation is equivalent to the first formulation.

KANTIAN RIGHTS A large number of authors have held that the categorical imperative (in one or the other of its formulations) explains why people have moral rights.⁶⁹ As we have seen, moral rights identify interests that all humans must be left free to pursue as they choose (or must be helped to pursue as they choose) and whose free pursuit must not be subordinated to the interests of others. That is precisely what both formulations of Kant's categorical imperative require in holding that people must be respected as free and rational in the pursuit of their interests. In short, *moral rights* identify the specific major areas in which we must deal with each other as free and rational persons, and Kant's *categorical imperative* implies that persons generally should deal with each other in precisely this way.

The categorical imperative, however, cannot by itself tell us what particular moral rights we have. To know what particular moral rights we have, the following two things are necessary:

1. We must determine what specific interests human beings have simply in virtue of being human beings.
2. We must determine which particular interests are so important that they merit being given the status of a right.

In light of Kant's two formulations of the categorical imperative, an interest would be considered important if

1. We would not be willing to have everyone (including ourselves) deprived of the freedom to pursue that interest.

2. The freedom to pursue that interest is necessary to live as free and rational beings.

For example, to establish that we have a right to free speech, we have to show that we have an interest in freedom of speech and that it is so important to us that we are not willing for everyone to be deprived of it and, moreover, it is needed if we are to live as free and rational persons. Many people have argued that freedom of speech is indeed critically important for several reasons:

- It protects us against government and other powerful parties.
- It lets wrongdoing and injustice be known.
- It enables us to govern ourselves.
- It allows us to determine the truth through discussion.
- It lets us express our true feelings and convictions.⁷⁰

For these reasons, free speech seems to be so important that we would not be willing to have everyone (including ourselves) deprived of freedom of speech, and freedom of speech seems necessary if we are to live as free and rational beings. If this is true, then our interest in free speech is one that should be elevated to the status of a right and we can, therefore, conclude that humans have a moral right to freedom of speech. However, insofar as free speech conflicts with other human interests that are of equal or greater importance (such as our interest in not being harmed or libeled), the right to freedom of speech must be limited.

We have only sketched in the barest outline some of the rights that Kant's moral principles can support. A full justification of each of these rights requires a lot more in the way of qualifications, adjustments with other (conflicting) interests, and full supporting arguments. Crude as it is, however, this brief sketch provides some idea of how Kant's categorical imperative can explain and justify positive, negative, and contractual rights.

Quick Review 2.13

Kant and Moral Rights

- Kant's theory implies that individuals generally must be left equally free (or helped) to pursue their interests, while moral rights identify the specific interests individuals should be entitled to freely pursue (or be helped to pursue).
- An interest is important enough to become a right if (1) we would not be willing to have everyone deprived of the freedom to pursue that interest, and (2) the freedom to pursue that interest is needed to live as free and rational beings.