Business Ethics: Oxymoron or Null Set?

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Let's begin with a bit of orientation to the topic. My choice of title is in the grand tradition of this esteemed group. It is provocative, and promises a vigorously argued, definitive resolution of the topic. However, such an undertaking is well beyond my ability to create cogent commentary, and would, more importantly, significantly exceed your patience and physical endurance. So my first task tonight is to rescale the scope of my talk to a consideration of the role of truth and true statements in the context of business dealings. I undertake this subject both because it lies (pun unintended) at an intersection of two of my life's passions – one being commerce and the other being ethics; and because I believe that much of the cynicism that plagues our society today is the result of a societal disregard for plainly stated truth in everyday life.

I'll illustrate the importance of true statements in business with two quick anecdotes. The first occurred this summer as I was beginning to finalize the topic for this talk. I discovered a book review in the Wall Street Journal for Stuart P Green's recent work *Lying, Cheating, and Stealing: A Moral Theory of White Collar Crime*. The review indicated that Green's work would be a philosophically rigorous review of the topic I was planning, so I went to "favorites" on my internet browser, toggled Amazon, and in less than 5 minutes received a confirming email that my selected book would be shipped in 7 days. What a wonderful world we live in! Seven days later, I received an email notice that my order had not shipped on time, but, not to worry; it was scheduled for shipping in another 7 days. I was pleased with the follow-up. Seven days went by, and I received a second email, stating the same message as before, but now with the additional question: "Did I want to cancel my order?" Not at all, I thought, I want to read the book, and with such good service, why would I need to cancel? Well, the next week, I got the 3rd version of the “did not ship” email. And, all of a sudden, I realized that what appeared to be a very customer focused tracking system was, in fact, saying: “This is not a book that we stock. We have placed an order with Oxford University Press. However, due to the arrogance and inefficiencies of English publishers we have no idea when we’ll have your book”. At this point I pushed the button to cancel my order. But I was left with the question: “Why didn’t you just say “back ordered” to begin with?”

The second anecdote occurred during the time I was waiting for my book. A client of mine came in and said “I curious about my credit score. Do you have a way to check that?” I remembered that I had seen an offer on TV regarding a “free credit score”. I mentioned it to my client, and he said that he had tried to go to the offered web site, but couldn’t make it work. As a value added service to a good friend and client, I swung over to my computer, googled “Free Credit Score” and was immediately directed to the website in question. We began to follow the instructions, filing in screen after screen of increasingly personal information. Ultimately we get to a screen that requests an approval to join a “credit watch” service for an annual fee of $7.50/year. At this point, I’m confused. The name of the site is “FreeCreditReport.com”. So where’s our free credit report? In frustration, I scroll through the fine print at the bottom of screen. There, as plain as italic 6 point ariel can be is the disclosure that the offer of a free credit score is only available to members of the credit watch service. I logged off highly frustrated. In what perversion of the English language can the requirement of an annual $7.50 fee be considered “Free”? And so it’s with this sense of shared aggravation that we begin our consideration of truth and true statements in the context of business dealings.

We will discuss this topic in four sections. First, a brief review of general moral theory. Second, an exploration of the range of business behaviors. Third, a proposed synthesis. Fourth, and finally, come closing observations regarding the difficulty of applying ethical categories universally to business activities.

I. Moral Theory

Using the general rule that there are “two kinds of people in this world, and you’re one of them”. Consider that early moral theory derived either from Platonist or Aristotelian traditions. Both traditions held “truth” as an absolute. There was no consideration of a comparative advantage type of analysis. And, while there were significant epistemological differences regarding how one learned and/or demonstrated the “truth”, there was one standard, to be truthful in all things. Empiricist/Utilitarian moral philosophers based their understanding of morality on observed behavior, and introduce the possibility that falsehood could be a reasonable option. And, because many of the “moral philosophers” of this school extended their thinking into the emerging commercial relationships of the day, many wrote commentaries on “political economy” that became the beginnings of economic theory as a separate discipline. Crude Utilitarian theory, you will remember from past papers (Padnos on Rawls) holds that morally justified action is the one that creates the greatest utility for the greatest number of individuals. In that context, a false statement that creates good outcomes could, in fact be morally justified. And, the general rule against false statements is, at it’s core, supported by the likely negative consequences of becoming widely known as liar. This certainly isn’t a moral theory on which to hang a strong endorsement of fundamental truthfulness.

Add to that fundamental moral ambivalence business strategy books that equate business practices to the practice of war (where participants aren’t bound by much of any code of conduct, partly because the winners inevitably rewrite the code to fit their viewpoint) and you have the makings of a moral quagmire the size of, well, an Enron stock offering.

So if theory offers little guidance, what does the practice of business offer as guidance?

Business Behaviors Examined

The purpose of this discussion is to understand the range of business behaviors and situations and the potential ethical impact of those behaviors. From this discussion, I intend to derive a synthesis of two potential models of ethical business communication, which we will discuss in the next session.

To begin, consider a spectrum of behavior. Beginning at one end of the spectrum would be behaviors that would always be immoral. In the middle of the spectrum we find a "grey area", where the morality is unclear, and, at the other end of the spectrum we find behavior that is exemplary, and, in fact, may exceed necessary standards (and thereby violate another business imperative for efficiency). Let me illustrate the concept with examples.

In the "black zone" of the spectrum:

1. A statement where the speaker makes a contrary to fact claim knowingly and intentionally. For example, I once worked with an individual who, in talking to his customer from Florida, would claim that we were in the middle of a blizzard, when in fact, the sun was shining. I guessed he did it to make his pitch more dramatic, but why bother? Let's use my mother's label for this activity, "the bald faced lie". I believe that there is general consensus that this activity is wrong without qualification.

2. A statement where the speaker makes a claim that depends upon the listener having a technical, non-colloquial understanding of a key term. For example, the truth of the claim " I did not have sexual relations with that woman" depends upon a non-colloquial understanding of the term

sexual relations. Most listeners have a broader definition of sexual relations than the one chosen by the speaker. As a result, while having a case for "technical truth" the speaker is broadly reviled as deceitful.

Moving to the "grey area" consider:

3. Claims made by a speaker for which the speaker has no way to provide verification. For example: A salesman saying "this boat has an excellent maintenance record" when, in fact, the salesman has no specific knowledge of the maintenance record of the boat. Now, he could be right. And, he may even have circumstantial evidence for his assertion (a clean engine compartment, recently replaced battery, etc). But, he doesn't have specific evidence for his claim, and is engaging in, at best "puffery" or "sales speak".

4. Statements that make ridiculous claims and/or lack logical consistency. We have a car dealership in West Michigan that claims "I'll give you $10,000 if I can't beat your best deal". This statement appears to make an offer which, upon analysis, the speaker never intends to honor. At the end of the day, what will he do? Knock a dollar or two off the competing price (therefore "beating it") or say, "gee, I guess I owe you $10,000". Parenthetically, I've always wondered about what that dealership is actually communicating. I sometime think that the message is, "if you can figure out the logical flaw in our key slogan, you're too smart to buy a car here.."

While the statements above are clearly ethically impaired, some other examples are less clear:

5. What about a statement that withholds un-requested, but nevertheless material facts? While it seems that I'm picking on the car industry, my example here is a real one. "Mr. Gamache, I've taken the liberty of running a "Car Fax" repair report for this vehicle. You can see that it's had regular maintenance and no accidents or recurring issues." The statement is true, but it leaves out a critical piece of information that you would only learn if you personally visited the CarFax

website and carefully read their disclosure. CarFax is a central data-base that is, in part, driven by repair shop orders of replacement parts from the original manufacturer. When those parts are ordered, you vehicles VIN number is recorded. However, there are after-market sources for parts where the VIN numbers aren't required, and therefore repairs can be completed that evade the Car Fax reporting systems. Untruthful statement? Not technically. Deceitful effect? Highly likely.

6. What about a series of statements that are each individually truthful, but when presented have no qualification or way to determine what is comparative value of each statement? Recent investment prospectuses have this problem. The provide a laundry list of potential risks, but no context to assess which are more likely and which less. Because of this, effectively the "big risks" hide among the "little risks", and the investor is left with no understanding of what are, in fact, the key issues with respect to the investment.

7. What about statements that are complete and correct, but where the speaker knows that the listener lacks the experience or context necessary to understand qualifications of the statement. "Mr. Gamache these skis are very popular, particularly with our bump skiers, because they are quite stiff, and allow the skier to realize more energy out of each maneuver". Now, I'm a novice skier, have identified myself to the ski salesperson as such, and have said I'm looking for a good set of skis for my skill level. I don't know what bumps are, and may actually want my maneuvers to consume energy, not amplify it. The statement is correct, but the communication is flawed, and will likely lead to the listener's disappointment.

So what would be a "white" statement?

8. The perfect business statement would provide in a clear, colloquial manner all material information (requested or not) in an appropriate context, with appropriate qualifications.

The question remains, if this is the "gold standard" for business communication, why is it so rarely used in general commerce? We'll explore that question in the next section.

A Synthesis: Two Models for Business Communcation

As I thought about the range of behavior above, what occurred to me is that there are actually two different, equally acceptable models for business communication. And the real problem in business communication is when the listener is using one model, while the speaker is using another.

Let' call one model, "Caveat Emptor" (let the buyer beware). In this model of communication the listener is requires to listen critically, and be willing to ask for definition and further qualification where necessary. Stated another way, the burden of discerning complete truth lies with the listener. From the speaker's perspective, "bald faced lies" are not permissible. Using technical definitions without stating those definitions, is deceptive. (eg. is the price quoted FOB my door? Answer: Yes. Then I don't expect to see a "boxing fee" on the invoice). The speaker likewise should not make claims for which he has no objective evidence. (eg. I am not aware of the maintenance history of this boat, but looking at the cleanliness of the engine compartment, you could infer…). From the listener's perspective, any statements that are sales puffery should be eliminated by asking specific, closed-end questions. But beyond that point, it's up to the listener to make a decision regarding the context and importance of the facts being presented.

On the other hand, consider a model that we could call "Fiduciary". Using this model, the speaker assumes the responsibility for the listener not only hearing factual statements, but also that the listener has the proper context and qualifications to reach a complete and truthful understanding of the topic. Fiduciaries are required to adhere to the "gold standard" of business communication.

Where the fundamental problems in business communication occur is when the listener is operating with one model, and the speaker is operating with another. For example, a physician is recommending a particular procedure, and trying to provide full disclosure of the risks. The listener assumes that because the physician provides qualifications and context, he really isn't "sold" of the procedure himself, and therefore reaches a negative determination… exactly the opposite of the physician's recommendation. I believe that business communication would be significantly improved when the speaker and listener explicitly state the standard within which they are operating.

Closing Observations

While I believe that clarity of communication model can provide a significant improvement for business communication, this way of thinking does raise some additional, interesting questions.

1. There are business roles that place a single individual in both a "fiduciary" and a "Caveat Emptor" role simultaneously. For example a Realtor is simultaneously a fiduciary to the seller, and Caveat Emptor to the buyer. It takes a thoughtful, experienced person to know how to "change hats" appropriately throughout a sales process.

2. There are business roles where the speaker could be seen in either role. Is an employer a fiduciary or operating at the level of "carpe diem"? An argument could be made either way, and my experience is that both the employer and employee tend to assume whichever standard serves their purpose "in the moment".

3. Is there a correlation between compensation structure and standard of communication? To a certain extent, "Caveat Emptor" implies someone working on a commission (ie. results based) compensation system, whereas the "Fiduciary" tends to work on a fee-for-service basis. However, there can be significant cases where this may not be the case. A number of very

effective commissioned sales people have adopted the "Fiduciary" model, particularly in those areas where the sales process is complicated and/or involves a high level of repeat business. Finally, the basis for commerce is a language where both parties understand what is, and is not, being communicated. Without clarity, the pace of commerce declines and eventually stops, while people work to understand what is "the deal." Clearly stating the communication model, which defines to obligations of the speaker and listener will aid communication and increase the rate at which commerce is achieved.