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The Power of Speech Acts: Reflections on a Performative Concept of Ethical Oaths in Economics and Business

Vincent Blok [a]

[a] Social Sciences Group , Wageningen University, P.O.
Box 8130, 6700 EW, Wageningen , The Netherlands
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The Power of Speech Acts: Reflections on a Performative Concept of Ethical Oaths in Economics and Business

Vincent Blok

Social Sciences Group, Wageningen University, P.O. Box 8130, 6700 EW, Wageningen, The Netherlands

Abstract   Ethical oaths for bankers, economists and managers are increasingly seen as successful instruments to ensure more responsible behaviour. In this article, we reflect on the nature of ethical oaths. Based on John Austin's speech act theory and the work of Emmanuel Levinas, we introduce a performative concept of ethical oaths that is characterised by (1) the existential self-performative of the one I want to be, which is (2) demanded by the public context. Because ethical oaths are (3) structurally threatened by the possibility of infelicity or failure, we stress (4) the behavioural aspect of ethical oaths in economics and business. We conclude that a performative concept of ethical oaths can contribute to more ethical behaviour in economics and business, because the performative involves action and behaviour. At the same time, it becomes clear that a radical new perspective on the nature, function and limitation of oaths is needed.

Keywords: professional oath, ethical oath, performative, speech act, Levinas

1.   INTRODUCTION

The current economic crisis has revealed that 'respected' business models such as the provision of subprime mortgages to less creditworthy borrowers are not as ethical as we thought. We are currently aware of the disastrous consequences of mortgage-backed securities and collaterised debt obligations, and we are well informed

> that the crisis was not a natural disaster, but the result of high risk, complex financial products; undisclosed conflicts of interest; and the failure of regulators, the credit rating agencies, and the market itself to rein in the excesses of Wall Street. (Levin and Coburn 2011)

Most thoughtful people acknowledge nowadays that we are in need of more ethical behaviour in economics and business.

Although it is acknowledged that various causes of the economic crisis could be identified—not only 'greedy' bankers but also economic mechanisms and such a thing as bad luck—especially this unethical behaviour of bankers has caused social unrest in our society. First of all, a lot of banking managers tried to dodge their responsibility and accountability for the crisis. Second, the supposed financial reforms after the crisis, for instance the Dodd–Frank Wall Street reform and consumer protection act in the USA, seem to have brought about no improvements at all; there are still just as many or even more derivatives exposures than before the crisis, just as many or more risky loans, equally lofty payouts for bank managers as before, etc. It is this apparent continuation of unethical behaviour of bankers that can be seen as an important driver for the growing call for more ethical behaviour of bankers, economists and managers in our society.

Various explanations for this unethical behaviour of bankers can be found in the literature. From the perspective of modern neurobiological research, for instance, risky and even greedy behaviour of bankers could be explained by the higher production of the pleasure neurotransmitter dopamine in situations where high rewards are expected but uncertain (Sapolsky 2005, cited in Glasser 2011). And from a philosophical perspective, we could refer to the work of Thomas Hobbes (1588–1679): greedy behaviour, according to Hobbes, is explained by the 'right of nature' that allows people to do and obtain virtually anything one judges necessary for one's preservation. The unbounded right of nature can only be limited by rational 'laws of nature'; people will not behave ethically without fear of punishment or retribution by the law. Seen from a Hobbesian perspective, ethical behaviour can only be enforced by laws or rules that are based on the rational consent of all people, that is, practical imperatives, which for instance forbid iniquity and cruel behaviour.

Codes of conduct can be seen as such laws of nature, which are based on the (rational) consent of the participating parties. A code of conduct is a set of principles and rules providing a formal framework of responsibilities and proper actions for an individual or a corporation. They prescribe or proscribe employee or professional behaviour. Ethical oaths prescribe and proscribe professional behaviour too, although in a different way. Hobbes, for instance, defined the oath as 'a form of speech, added to a promise, by which he that promises signifies that unless he perform he renounces the mercy of his God, or calls to him for vengeance on himself' (Hobbes [1651] 2008: 97). The oath is a self-prescription that is validated by something that transcends the one who swears (cf. Sulmasy 1999; see Section 3 for further details). Although there are many differences

between codes of conduct, codes of ethics and professional oaths, they all try to improve responsible and accountable behaviour of professionals and corporations through self-regulation. Nowadays, codes of conduct are increasingly seen as successful instruments to increase ethical behaviour in economics and business, in general, and responsible behaviour of professionals, in particular (cf. Andersen and Skjoett-Larsen 2009; Mamic 2005). Recently, calls to introduce professional oaths for bankers, economists and managers as an instrument to secure more ethical behaviour have also increased significantly (cf. Anderson and Escher 2010; DeMartino 2011).

An example of such developments is the recent introduction of a Bankers' oath in the Netherlands. All employees of Dutch financial institutions have to swear or promise that they will (1) act with integrity and conscientiously, (2) carefully consider the interests of stakeholders (clients, shareholders, employees, society, etc.), (3) prioritise the interests of clients, (4) operate in compliance with the laws, regulations and codes of conduct and (5) make a sincere effort to preserve and promote trust in the banking sector (Ministry of Finance 2012).

Does the adoption of ethical oaths or codes of conduct in fact enable us to enforce more ethical behaviour? Just as formal codes of ethics accepted by over 80% of the publicly traded companies in the USA could not *prevent* the financial crisis (DesJardins 2011), so neither does the adoption of an economists' or bankers' oath automatically accomplish more responsible or accountable behaviour. Various researchers have shown that there is only a weak link between codes of conduct and corporate behaviour (Cassell *et al.* 1997; Mathews 1988; Schwartz 2002; Stevens 1994).

From a management perspective, we can also point to the drawbacks of most codes of conduct; they are often vaguely defined, incomplete, not implemented, not independently monitored and/or subject to personal bias of senior managers (Bondy *et al.* 2007; Dunphy *et al.* 2007). We can also point to difficulties with the alignment of different codes of conduct within networks or supply chains, especially in fields with conflicting interests (Boatright, 2008; Nijhof *et al.* 2008). Finally, we can point to the minor role of codes of conduct compared with the organisational context and culture within which (un)ethical behaviour takes place (Cassell *et al.* 1997). It is assumed that similar drawbacks hold for ethical oaths as well. Can these drawbacks of codes and oaths explain the continuation of unethical behaviour of bankers after the crisis?

In order to answer the question whether and how ethical oaths can contribute to the development of more ethical behaviour in economics and business, in this article we will reflect on the nature of ethical oaths. Elaborating on the work of Sulmasy (1999), we claim that oaths have to be understood as performative speech acts, that is, as sentences that do not primarily *describe* a state of affairs but *do* or

perform something. A well-known example is the performative sentence: 'I name this ship the *Queen Elisabeth*'. This sentence does not describe a state of affairs—the name of the ship—but uttered in an appropriate context, this sentence *performs* the naming of the ship. In this article, the performative nature of oaths is not merely taken as an occasion to determine the nature of ethical oaths in comparison with promises (Sulmasy 1999). Instead, the characteristics of the performative will be applied to the concept of the oath in order to develop a model for performative ethical oaths in economics and business. Our hypothesis is that a performative concept of ethical oaths can contribute to the development of more ethical behaviour in economics and business, because the performative essentially involves action and behaviour. With our discussion of a performative concept of ethical oaths, however, it will become clear that a radical new perspective on the nature, function and limitations of oaths in economics and business is needed.

In Section 2, we start our analysis with an introduction of Austin's concept of the performative. We distinguish four main characteristics of the performative, which will be applied to the concept of ethical oaths in Section 3. With this, it will become clear how a performative concept of ethical oaths has to be understood. In Section 4, we apply our performative concept of ethical oaths in the domain of economics and business. In Section 5, we draw some conclusions.

2. JOHN AUSTIN AND THE SPEECH ACT THEORY

The philosopher and founding father of the general theory of speech acts, John Austin, introduced a distinction between two types of sentences, namely, constative and performative sentences. His speech act theory explains the ability of language to do other things with words than providing a mere description of reality.

In a constative sentence, a state of affairs is described, asserting that something is the case. The constative sentence—for example, 'John and Mary are married'—asserts *that* John and Marry actually are married. While the primary function of the constative sentence is *to say something* and describe a state of affairs, the performative sentence is primarily a vehicle to *do something* and create something new (Austin 1961). If someone utters the sentence 'I pronounce you man and wife', he definitely does not want to *describe* the marriage ceremony. With this sentence, he actually *performs* the marriage. And when John says 'I do', he is not describing his marriage but he is *indulging* in it.

Originally, Austin thought that the descriptive and performative functions of sentences were mutually exclusive (Austin 1962). In order to distinguish accordingly between constative and performative sentences, he first of all claimed that constative sentences primarily *say* something, while performative sentences

do something; the uttering of a performative is, or is part of, the performance of a certain kind of action (Austin 1962). Austin's second claim was that contrary to constative sentences, performatives cannot claim to be true or false. Constative sentences assert that something is the case and we can test the correctness of this sentence by assessing whether what is said corresponds with what the world is like. This is impossible in case of performative sentences such as 'I name this ship the *Queen Elisabeth*' and 'I do'. These sentences do not primarily *say* something but create something new; the ship *as* Queen Elisabeth, John *as* married man. If this last sentence is uttered alone at home or in a context where no registrar is present, the sentence 'I do' is not *false* but disabled, unsatisfactory or inappropriate. Such infelicities, as they are called by Austin, arise if simple rules are broken. For instance, the sentence 'I do' only makes sense if the very procedure for marrying actually exists and is accepted by both partners. An infelicity occurs too, if the circumstances in which the sentence 'I do' is uttered are inappropriate. Uttered alone at home or in a context where not the registrar but the cleaner is present, the act of marrying would not come off. There are also other ways in which infelicities can arise. Performatives such as 'I do' presuppose certain feelings or intentions with regard to my future wife. If I say 'I do' without these feelings and intentions, I am insincere. In this case, we cannot say that I did not actually marry my wife, but that I married her in an insincere way (Austin 1961). Although this list of infelicities is not complete and in fact endless according to Austin (see Section 3 for further details), it becomes clear that performatives are not truth-evaluable but may be infelicitous.

A third distinction between constatives and performatives is that the latter are normally stated in the first person singular present indicative active: 'I do … ', 'I name … ', 'I bet … '. For Austin, the first person verb differs importantly from the use of other persons and other tenses in constative sentences: 'For when we say "I promise that … " we do perform an act of promising—we give a promise. What we do *not* do is to report on somebody's performing an act of promising' (Austin 1961: 242). The third characteristic of the performative is that it is stated in the first person singular and, therefore, that I am involved in the performative.

Because Austin already saw in an early stage that a strict distinction between constative and performative sentences is not possible, he later on developed a new doctrine about the speech act of all types of utterances: the locutionary, illocutionary and perlocutionary force of sentences.

The locutionary act of a sentence is the act of saying something in a meaningful and grammatically correct way (Austin 1962), the locutionary act of stating, 'I like economics', for instance. The illocutionary act of a sentence corresponds with the performative we discussed before. It concerns the *act* of asserting, questioning, promising, etc., in a linguistic utterance. But the performance of an illocutionary

act requires not only the act of a promise or warning by the speaker, but also the 'securing of uptake' (Austin 1962) by the one who perceives or hears the sentence; an illocutionary act such as the sentence 'shut the door' will result, if understood correctly, in someone closing the door. The perlocutionary act concerns this result of the speech act in the hearer as a result of the speech act.

With this, we encounter a fourth characteristic of the performative.[1] The performative or illocutionary force of a speech act requires that it is *understood* by the hearer; I have not sworn an oath in court unless I myself as well as the judges and the jury members are aware of and understand the oath, that is, the performative involves the securing of uptake. Furthermore, the performative calls for 'conventional consequences', that is, it involves rights, commitments or obligations related to it (Austin 1962).

In the following section, we apply the four characteristics of the performative we distinguished in this section—(1) the involvement of action and behaviour, including consequences of the performative such as rights and obligations, (2) the possibility of infelicity, (3) the self-involvement in the performative and (4) the securing of uptake—to the concept of ethical oaths.

3.   CHARACTERISTICS OF A PERFORMATIVE CONCEPT OF ETHICAL OATHS

If I swear an ethical oath, my utterance takes an ethical stance concerning a state of affairs—do no harm, for instance—and forces me to commit myself to future actions according to this oath. The oath has normally four elements: it starts with an opening formula like the sentence 'I swear to . . . ', followed by statements in which the content of the oath is stated. The oath ends normally with a closing formula, in which the warranty or binding power of the oath is stated. Also, gestures and institutional aspects are essential in oath-taking, that is, the actual wording of the oath, the rituals involved (raising your hand, for instance), the dignitaries (a registrar or representatives of the profession, for instance), places (in front of an altar), etc. Although the concept of oaths has unmistakably a religious background, this binding power can nowadays be embodied by anything that is important for the one who swears an oath (Rutgers 2013).

In what way does the concept of the performative enable us to characterise and understand the nature of ethical oaths? Following the work of Austin, Searle classified different types of performative speech acts such as assertives, directives,

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1 Although we acknowledge Austin's later rejection of a strict distinction between constative and performative sentences, we think that the concept of the performative is still useful to characterise the typical speech act of ethical oaths. For this reason, in this article we will continue the use of this concept in order to characterise the nature of ethical oaths (cf. Briggs 2001; Butler 1997; Sulmasy 1999).

commissives, expressives and declaratives. Commissives are performative utterances, in which the speaker commits himself to some future course of action, such as a promise, oath and pledge (Searle 1969). In a formal way, therefore, we can already conclude that ethical oaths can be understood as performative or commissive speech acts.

If we take the opening formula of ethical oaths into account—'I swear to . . . '—we recognise the self-involvement which is also characteristic of the performative; both ethical oaths and performatives are stated in the first person singular. The self-involvement in the performative can provide us with a first characteristic of our performative concept of ethical oaths.

The *self*-involvement in ethical oaths shows that my utterance of an oath not only involves my commitment towards a future course of action, but also primarily involves my self or identity as a person. If I, for instance, answer 'I do' as a response to the question 'do you take this woman to be your lawfully wedded wife', I *intend* not only not to betray my future wife, but also primarily to *be* the one who is committed to my lawfully wedded wife. In other words, the utterance of the oath is primarily a *self*-performative of the one I want to be, me *as* husband, for instance. This means that the self-performative primarily *produces* my self or identity as a person, which then has consequences for my lifestyle, attitude and behaviour towards others (cf. Gorospe 2007). As a married man, I intend, for instance, not to betray my wife and to take care of her in good and bad times. The self-performative character of ethical oaths therefore shows that the opening formula of ethical oaths entails an existential moment, in which it is decided what type of person I want to be; it concerns primarily my *identity* as a person and as a consequence *my* practical commitment, *my* attitudes and *my* feelings (Evens 1963). Therefore, our performative concept of ethical oaths involves the *intention* of a person not only to *do* something, but also to *be* the one who is committed to some future course of action.

This self or identity of the swearer is not only *involved* but also *transformed* in swearing an oath. If I, for instance, answer 'I do', I am transformed from a man *as* single person towards a man *as* husband. In the same way, does the professional oath transform a medical student into a medical professional, of whom specific lifestyles, attitudes or behaviour can be expected. As a self-performative utterance, the utterance of ethical oaths is an additional step that *makes* the medical student a medical professional (cf. Sulmasy 1999). The first characteristic of our performative concept of ethical oaths is, therefore, that it is an existential self-performative in which you become the one who you are. It is this self-performative that is entailed in opening formulas like 'I swear to . . . '.

The self-performative character of our concept of ethical oaths raises the question whether they have to be taken as subjective utterances. Although I am

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involved in the self-performative oath, the meaning of the performative is not, or at least not completely, dependent on my subjective intentions. Why? From a formal perspective, there is no subjective referent outside or preceding the performative; the subject of a medical oath, for instance, is not a physician because he *is* not a physician until he utters the oath. The subject of the oath is neither a layman, because the student already meets all requirements of being a physician at the moment just before uttering the oath. There is no subjective referent outside or preceding the performative, because it involves and transforms myself in becoming the one who I am (cf. Derrida 1982).

Although it is counterintuitive that I am not the subject of ethical oaths, we have also two other reasons to question the sovereignty of the subject with regard to ethical oaths. First of all, Baker has shown that oaths and codes develop and grow in response to historical experiences within a profession. On the basis of historical material, he has shown that ethical codes evolve through three stages: initially conduct is regulated by traditions of practice, which are formalised and rationalised in the second stage by the development of oaths or codes of ethics. While adherence to these oaths is personal and voluntary in the second stage, they take on an authoritative status in the third stage, capable of enforcing certain behaviour (Baker 2005). In this respect, we can understand the current discussion about the desirability of a Dutch bankers' oath as a response to the historical experience of the current economic crisis.

This historical evolvement of oaths and codes shows clearly that they 'develop incrementally, out of disparate precursor documents that were formulated for a variety of purposes as a field grappled with various issues and decided, one-by-one, how best to deal with them' (Baker 2005: 34–35). When I utter an ethical oath, the meaning of this oath is not primarily dependent on my subjective intentions; it is rather embedded in broader ethical concerns that are historically determined. Indeed, my utterance of an oath even gets extra weight when it cites such historically determined concerns; by uttering the Declaration of Geneva as an expression of my commitment to the humanitarian goals of medicine, for instance, I place myself in a long and honourable tradition in which the profession of the physician is embedded. This historical embeddedness of ethical oaths shows that their meaning is not, or at least not completely, dependent on the subjective intentions of the one who swears.

A second reason to question the sovereignty of the subject comes up if we remember that the performative involves the securing of uptake (cf. Section 2). The self-performative oath operates in a public context, in which it has to be *understood* by the public. A self-performative oath that is not stated in a conceivable language is not an oath at all (Austin 1962). The meaning of the oath is therefore dependent on the securing of uptake by the public, and this prevents a subjective conception

of ethical oaths. I can never completely control the way the performative oath is perceived by others. Rather, the history of ethical oaths can be seen as an incremental development of performative oaths in response to the ever-changing environment (technological, cultural, geographical, etc.).

The securing of uptake provides a second characteristic of our performative concept of ethical oaths. The meaning of the self-performative oath (first characteristic of our performative concept of ethical oaths) is not dependent on my subjective intentions, but is determined by the public context (securing of uptake) and is articulated in the interaction with this public context. This public context is never completely determinable; incongruency between the oath and actual behaviour is always possible, since oaths are not univocal and unambiguous (the citation of an oath in this article is not an oath at all) and can always miss their mark. In this respect, we can say that the existential self-performative of the one I want to be is not only *determined* by the public context, but that this public context always *transcends* the one who swears.

The transcendence of the public context can also shed some light on the closing formula of ethical oaths, in which the warranty or binding power of the oath is stated. This binding power has to be found precisely in something that *transcends* the swearer, as we have seen. On the one hand, it is difficult to refer to one specific divine warranty for my ethical oath in our multicultural society, if not impossible in our postmodern age. On the other hand, the public context that determines and transcends the self-performative oath can be seen as such a highest warranty from a Levinasian perspective.[2]

Point of departure of Levinas' philosophy is the encounter with another person. The confrontation with another person is completely different from an encounter with any other object, organism or event in the world. I not only see that another person looks like me, acts like me and appears to have consciousness like me. For Levinas, the main difference is that I, in my encounter with another person, experience myself as the one who is *called upon to respond* to the other. For Levinas, the confrontation with the other compels us to perform ethical behaviour.

This calling of another person does not primarily concern my actual ethical behaviour with respect to other persons in the world. For Levinas, this call concerns my self, that is, my identity as a person: 'It involves a calling into question of oneself, a critical attitude which is itself produced in face of the other and under his authority' (Levinas 1969: 81). In my encounter with another person, I *become* the one who is responsive to the 'command' of the other. At the same time, the other person appears as the one I am responsive to in my encounter with

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2 It should be clear that Levinas himself did not discuss the concept of oaths in relation to ethical behaviour. Degnin (1997) has tried to connect the development of the Hippocratic Oath with Levinas' concept of moral life.

the other. In Levinas' philosophy, self and other appear as intrinsically interrelated and mutually co-constitutive; in my encounter with the other, I become the one who is responsive to the other and the other becomes the one I am responsive to (cf. Mackin 2011). Human existence is therefore primarily being responsive to the call of the other, and for Levinas, the most fundamental call is the other's demand 'do not kill me'. For Levinas, this fundamental responsiveness to the call of the other is the origin of language, that is, of our dialogical responsiveness to the other.

According to Levinas, our responsiveness is traditionally characterised by the reduction of this other to the same and similar. This not only means that we normally see another person simply like we see ourselves. In order to understand the other, we traditionally refrain from his singularity and conceive him in general terms—the other in his animality, in his rationality, etc. Because the singularity of the other is understood in general terms, it is precisely this otherness or singularity of another person that is violated according to Levinas. Contrary to this tradition, which is rooted in the history of western philosophy, Levinas conceives the other as irreducible and radically exterior (cf. Levinas 1969), that is, as that which always transcends our dialogical responsiveness to his call upon us. Contrary to the philosophical tradition, Levinas develops a way of thinking that is characterised by a desire for the other without reducing him.[3]

Just as the public context determines the self-performative oath on the one hand and transcends the one who swears on the other, does the Levinasian other determine my self or identity and transcend my responsiveness to him at the same time. From a Levinasian perspective, therefore, we can conceive the public context as that which demands the self-performative oath on the one hand and that which transcends our actual responsiveness to the public context on the other. In our multicultural or postmodern society, it is precisely this public context that transcends the one who swears, which can be seen as the binding power and highest warranty of the self-performative oath; the self-performative is not only *called for* by the public context, but also *responsive* to the public context, that is, under its command or authority.

Our Levinasian interpretation of the public context enables us to specify the second characteristic of our performative concept of ethical oaths. The existential self-performative of the one I want to be (first characteristic of our performative concept of ethical oaths) is not only *determined* by the public context (securing of uptake). The self-performative oath is also *demanded* by the public context and this public context is also the highest *warranty* for my self-performative oath.

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3 The further elaboration of Levinas' philosophy in general and the relation between his concept of dialogue and Austin's concept of the performative in particular is beyond the scope of this article.

In my utterance of the self-performative oath in front of the public context, I become the one who is responsive to the command of the public context and the public becomes that to which I am responsive in my self-performative oath.

This warranty, however, does not mean that the success of the oath is guaranteed. The performative is not truth-evaluable, as we have seen in the previous section. An example is a medical professional who swears a public oath but does not behave accordingly. According to Austin, such infelicities occur when any one of six general rules is broken. These general rules are as follows:

(1) The existence of an accepted procedure, such as the procedure at an education programme that makes the medical student a medical professional.
(2) The circumstances should be appropriate for the invocation of the procedures involved, for instance, the exact moment of graduation at a university, witnessed by representatives of the profession.
(3) The procedures must be executed correctly.
(4) The procedures must be executed completely, for instance, the correct and complete text of a medical oath.
(5) Congruency must exist between the intentions presupposed by the performative and my actual intentions, for instance, my intention to do no harm when I utter an oath.
(6) Congruency between the intentions presupposed by the performative and my actual behaviour, for instance, advising my patients in their best interest.

The possibility of the infelicity of the performative provides a third characteristic of our performative concept of ethical oaths. Gestures and institutional aspects such as procedures and rituals, circumstances and places are essential in oath-taking. President Obama, for instance, had to retake the oath of office in 2009, because he flubbed the exact wording of the public ceremony. The exact wording of the oath, the exact location—a public ceremony in front of the US Capitol and administered by the Supreme Court Chief Justice—the exact gestures—raising his right hand and laying his left hand on the bible—all together guarantee the validity of the oath. These gestures and institutional aspects can therefore be understood as rules that have to be followed in order to prevent the infelicity of the self-performative oath. Obama's oath of office is only appropriate if all requirements with regard to location, procedure, wording, etc., are met.

Are these rules conceivable as indispensable (although insufficient) conditions for the success of the performative in general and the performative concept of ethical oaths in particular? Conditions (1)–(4) can be understood as conditions of the public context of ethical oaths. Conditions (5) and (6) can guarantee ethical behaviour, because they enforce congruency between ethical intentions and ethical behaviour. If this is the case, we can claim that a self-performative and

publicly stated oath that meets these six conditions or rules is able to guarantee ethical behaviour. The self-performative oath then implies ethical action and the six conditions guarantee the congruency between our judgement and our ethical behaviour in general and the trustworthiness and integrity of our behaviour in particular.

Nevertheless, Austin is quite ambiguous in his assessment of these conditions, as Derrida (1982) pointed out. On the one hand, he seems to admit that the possibility of infelicity is a structural characteristic of the performative, which can never be avoided completely (Austin 1962). On the other hand, this structural risk of failure is not seen as an essential characteristic of the performative, but as 'an accidental, exterior one that teaches us nothing about the language phenomenon under consideration' (Derrida 1982: 323–324). Austin hopes to avoid the structural risk of failure of the performative by invoking the use of 'ordinary language' and 'ordinary circumstances' (1962). But if the possibility of infelicity is a structural possibility of a performative utterance, then the possibility of infelicity is *always* there. And if the possibility of infelicity is granted, the risk of failure is not an accident but a structural condition of any oath. The third characteristic of our performative concept of ethical oaths is, therefore, that the six rules are an indispensable condition for the self-performative oath—an oath should entail instructions with regard to procedures and institutional aspects— although they are insufficient to guarantee ethical behaviour; a performative concept of ethical oaths acknowledges that they are structurally threatened by the possibility of failure.

Is it necessary to draw such a negative conclusion about the fallibility of ethical oaths? Austin himself already stated that ethical speech acts are exposed to infelicity (1962), and various authors after him have also pointed to these fundamental risks of failure of ethical oaths (Dienhart 1995). This infelicity is obvious in the case of a banker who claims to act in the best interest of his customers but treats them like 'Muppets' or manipulates interest rates; he is faking or cheating and therefore performs an infelicity. But we do not have to conceive this faking merely at an individual level of bankers, economists or top managers, although this kind of behaviour caused the greater part of the social unrest during the economic crisis.

DeMartino has pointed to our epistemic insufficiency with regard to complex fields of study such as medicine and economics. Not only is our *knowledge* of economic interventions in order to improve economic development limited, but also it is acknowledged that all economic theories are insufficient (cf. Hofmann 2001). The economic crisis made clear that economics is a highly complex field of study and that the consequences of economic policies are unpredictable. In other words, our knowledge is principally insufficient to predict the future and there will

always be unintended consequences of our economic interventions, which can be harmful (DeMartino 2013). In an ever-changing environment, we could say that the possibility of the infelicity is *structural*.

Negatively speaking, this leads to a relativistic position that suggests that we can question the trustworthiness and integrity of all ethical oaths because of their structural infelicity. We can, however, also take this infelicity in a positive way: the history of ethical oaths can be seen as a history of their infelicity, which inspired the incremental development of these oaths in response to the ever-changing environment. In this respect, there is no difference between the adjustments of medical oaths because of new legislation with regard to abortion, for instance, and the introduction of a bankers' oath in response to the economic crisis.

But still, does such a positive assessment of the infelicity of ethical oaths not lead to a relativistic position with regard to ethical issues? How can we ever distinguish between ethical and unethical behaviour, if all performatives are characterised by this structural possibility of infelicity? Although we cannot and will not deny the structural possibility of the infelicity of ethical oaths (third characteristic of our performative concept of ethical oaths), we still think that the performative provides a way to distinguish between ethical and unethical behaviour. To see this, we return to the three characteristics of our performative concept of ethical oaths we have discussed till now.

Our performative concept of ethical oaths is first of all characterised by the self-performative of my identity or the one I want to be, as we have seen. This self-performative oath is demanded by the public context and is the highest warranty of our ethical oath (second characteristic of our performative concept of ethical oaths). The structural possibility of the infelicity of ethical oaths (third characteristic of our performative concept of ethical oaths) made clear that the infelicity primarily concerns my *self* or *identity*. Austin distinguished between two specific types of infelicity with regard to my identity. The self-performative oath is infelicitous, if there is incongruency between my performative utterance and my actual intentions, that is, the one I want to be, or between the one I want to be and my actual behaviour.

My actual behaviour is, however, not the *result* of the ethical oath I have uttered, because the self-performative of my identity already *implies* and *is* some kind of action and has already behavioural consequences such as rights and obligations (cf. Section 2); to swear an oath is to *declare* something about my future actions and behaviour, but my actual commitment to the oath only shows itself in my actual behaviour in accordance with the oath in general and with the rights and obligations involved in particular. Because the performative already *involves* some kind of action, the production of my 'self' by the self-performative

oath is already accompanied by a second production of myself *as* acting and living in the light of the oath.

With regard to my actual behaviour, there are two possibilities. Either I am able to live up to the self-performative oath, or I fail because I am not *able* or even not *willing* to live up to it. The only touchstone I have for the performative oath is the question whether the oath is really able to determine and mark my identity and my behaviour accordingly. This either/or shows that the second production cannot be seen as an accident or mere result of the first production—the self-performative of my identity—but is essential for our performative concept of ethical oaths. Why? Because of the structural risk of infelicity or failure, I only live up to the oath by my actual acting in the light of the oath; only by living and acting in the light of the oath does my self-performative of the oath become *real*. This means that our actual behaviour enables us to *test* whether the one who swears actually lives up to the standard to which he has sworn.

The ethical testability of my actual ethical behaviour, which is implied in the self-performative oath, can shed some light on the content of the oath. The content of the ethical oath has to be understood as the behavioural consequences—rights and obligations—of the self-performative of my identity. The fourth characteristic of our performative concept of ethical oaths is, therefore, that the self-performative is not restricted to my *intention* to commit myself to some future action—as most traditional conceptions of ethical oaths seem to claim (cf. Sulmasy 1999)—but involves my actual behaviour according to the rights and obligations that are stated in the content of the oath. My actual ethical behaviour according to the rights and obligations is the only touchstone I have to distinguish between ethical and unethical behaviour.

Can we claim, then, that the one who is able to live up to the oath by his acting in the light of the oath in fact performs ethical behaviour? Because of the *structural* infelicity of every oath, my living up to the oath consists not only in my actual acting in the light of the oath, but also in the incessant appropriation and re-appropriation of the oath in my struggle against its possible infelicity.

We can understand the necessity of the incessant appropriation from the Levinasian perspective we developed earlier in this section. We have seen that the confrontation with the other primarily concerns my self or my identity as a person. This involves 'a calling into question of my self'—that is, of my current living and acting according to the content of the oath (cf. Levinas 1969)—under the authority of the public context. According to Levinas, the ultimate meaning of knowledge is precisely to put oneself into question in the presence of the other: 'The essence of reason consists not in securing for man a foundation and powers, but in calling him in question and in inviting him to justice' (Levinas 1969: 88). From a Levinasian perspective, therefore, my responsibility consists not only in my actual

living and acting according to the content of the oath I have sworn, but also in putting my actual behaviour into question. My appropriation and re-appropriation of the ethical oath does not want to avoid the possibility of infelicity, as Austin does, but sees the possibility of infelicity precisely as a *driver* to produce my actual living and acting in the light of the oath, that is, to produce ethical behaviour.

In the following section, we apply our performative concept of ethical oaths in the domain of economics and business.

4. TOWARDS A PERFORMATIVE CONCEPT OF ETHICAL OATHS IN ECONOMICS AND BUSINESS

In Section 3, we distinguished four characteristics of our performative concept of ethical oaths. What are the consequences of this concept for professional oaths in economics and business?

We have seen that the oath normally starts with an opening formula, which is stated in the first person singular. An example is the opening formula of the Dutch Bankers Oath: 'I declare that I will act as banker with integrity and conscientiously'. Our performative concept of ethical oaths made clear that the oath primarily concerns the identity or personhood of the one who swears; the performative oath involves not only the intentions of a person to commit himself to some future course of action, but also the self or identity of the one who is committed to ethical behaviour. This existential moment of the ethical oath, in which a new employee of a bank or another corporation *becomes* a member of a professional community of bankers, economists or managers, should be stressed in an economist's or manager's oath. As a consequence, the introduction of professional oaths in economics and business should be accompanied by policies that enable reflection on what it means to be an economist or a manager, what are the causes of unethical behaviour and how to establish ethical behaviour in economics and business (cf. Anderson and Escher 2010). These opportunities for reflection could be provided by education programmes, but also by professional associations and companies, for instance.

The emphasis on this existential moment is particularly important if we take the criticism of universal ethical principles and norms into account. According to this criticism, there are no universally accepted principles or norms that I can commit myself to; the universal principles I commit myself to are in fact relative to cultural or social differences. But if we stress the existential moment of the self-performative in our concept of ethical oaths, we stress precisely the relativity of the oath to my identity or personhood; it concerns *my* lifestyle, *my* attitudes and *my* behaviour. Not the universal validity of the content of the oath is embraced in the

performative oath —the history of ethical oaths can be seen as an incremental development of oaths in response to the ever-changing environment in general and the infelicity of the oath in particular—but the existential decision to live and act in the light of the oath, here and now.

There is also another advantage of stressing the existential moment in the self-performative oath in economics and business. Based on the work of Hopwood, Cassell *et al.* (1997) have shown that the *internalisation* of corporate codes of ethics by individual recipients of these codes will have a positive impact on their individual behaviour. In order to have a positive impact on individual behaviour, these principles or norms should be 'either directly or indirectly... internalised by the members of the enterprise and operate as personal controls over attitudes and behaviour' (Hopwood 1974: 31). We may assume that the internalisation of ethical oaths—which is stressed in our performative concept of ethical oaths—will have a similar positive impact on our individual ethical behaviour in the light of the oath.

The opening formula of the oath is normally followed by statements in which the content of the oath is stated. An example is the content of the Dutch Bankers Oath:

> When considering these interests [of all stakeholders of the bank], I will prioritise the interests of clients and will inform them to my best ability. I will operate in compliance with the laws, regulations and codes of conduct that are applicable to me as a banker. I will keep confidential what is entrusted to me. I will not abuse my knowledge as banker (Netherlands Banking Association 2010).

Normally, it is argued that these statements should be characterised by clarity, comprehensiveness and enforceability in order to be effective (Raiborn and Payne 1990). On the one hand, a *claire et distincte* (clear and distinct) formulation of the content of a bankers' oath could indeed prevent the ambiguity of its content and provide guidelines on how to proceed in cases of conflicts of interest. On the other hand, the improvement of the clarity and comprehensiveness of its content does not prevent the possible infelicity of ethical oaths (third characteristic of our performative concept of ethical oaths). Contrary to legalistic or instrumental approaches of the content of ethical oaths, in which the content is stated in terms of moral do's and don'ts, we have stressed the importance of *actual behaviour* in the light of the oath and in accordance with the rights and obligations involved. The possible infelicity of all performatives, however, has made clear that the self-performative of swearing is a necessary but insufficient condition for our performance of ethical behaviour. Only by living and acting in the light of the oath is our self-performative of the oath *real*.

At the same time, our living and acting in the light of the oath is insufficient to perform ethical behaviour. We have to acknowledge our epistemic insufficiency with regard to complex fields of study such as economics and business. The fundamental uncertainty and high risk in business planning and policy-making and the potential harm these businesses can cause for others—customers, employees, civil society, future generations, etc. (DeMartino 2011)—compel us to be *prudent* with regard to the (universal) validity of the content of ethical oaths. Our ethical behaviour in economics and business consists not only in our living and acting in the light of the oath, but also in the incessant recapturing of its content in our struggle against its possible infelicity as well.

How can we operationalise our epistemic insufficiency with regard to economics and business? Ethical oaths in economics and business should embrace a prudential principle. Because of the complexity, uncertainty and high risk in fields such as economics and business, individual professionals and corporations should take these uncertainties into account in their business planning and policy-making, resulting in more moderate and safer business strategies. Furthermore, the acknowledgement of our epistemic insufficiency should lead to more caution in our business activities in high-risk markets. This modesty will not solve the problem of uncertainty and high risk, but enables economics and business to 'manage ethically but imperfectly a problem that cannot be eradicated' (DeMartino 2011: 187–188).

When we stress the possibility of infelicity, failure or even insufficiency in our performative concept of ethical oaths, three things become clear. First of all, the infelicity shows that it is insufficient to utter an oath once and for all at the moment of graduation or appointment. In one way or another, we have to *repeat* and *re-appropriate* the self-performative oath again and again by dedicating ourselves continuously to its content. Policies that enable the reflection on ethical issues we mentioned before could help to appropriate and re-appropriate the ethical oath within the context of companies and professional associations. The re-appropriation of the oath is, however, not only an individual affair. The meaning of the self-performative oath is not dependent on my subjective intentions but is articulated in the interaction between the one who swears and the public context (cf. Section 3). As a consequence, the re-appropriation of the performative oath cannot be seen as the repetition of the statement of one's personal belief, but as a dynamic product of an ongoing conversation (and negotiation) with the public context. Professional associations in economics and business should therefore communicate with the public context on a structural basis, in order to assess the applicability of the content of the oath in an ever-changing environment and to re-appropriate its content. If the conversations and

negotiations lead to the reformulation of the content of the oath, then professionals can in principle be asked to repeat the re-appropriated oath in front of the public.

Second, our epistemic insufficiency with regard to economics and business shows that the incessant re-appropriation of the performative oath in front of the public is insufficient and should include our embracement of a prudential principle. In order to embrace this prudency principle, economists and managers should develop specific competencies with regard to critical reflection, the ability of learning and the management of the so-called 'wicked' problems. One of the main characteristics of wicked problems is that multiple stakeholders are involved with different interests and values (Batie 2008; Rittel and Webber 1973). Both in education programmes and in professional life, knowledge, attitudes and skills with regard to learning, reflection and dealing with the interest of multiple stakeholders should be stimulated and facilitated by policies, governance structures, etc.

The development of these abilities cannot remove the criticism that the interests of multiple stakeholders can conflict with each other. On the one hand, these possible conflicts are acknowledged and mitigated by the embracement of the prudency principle and by the ability of economists and managers to deal with multiple stakeholders. On the other hand, we have to accept the fundamental possibility of the infelicity of ethical oaths in economics and business.

Third, the fundamental possibility of the infelicity of ethical oaths makes it clear that the sole introduction of ethical oaths in economics and business is not sufficient. It should be accompanied by the introduction of formal and informal control systems. These control mechanisms enable the monitoring and evaluation of ethical behaviour in accordance with the oath within organisations and/or professional communities. In addition to the personal self-control, which is at stake in the self-performative oath, we can think of formal controls such as rules and procedures and informal controls such as common customs and values in professional life (cf. Cassell *et al.* 1997). The introduction of formal and informal controls at company level enhances ethical behaviour not only of individual employees, but also at corporate level.

Are the gestures and the institutional aspects, which are essential in oath-taking also helpful in reducing this possibility of infelicity? Boatright has pointed to the importance of institutional design to ensure ethical behaviour (2011). Institutional design concerns the governance structure, the separation of functions, etc., in which professional behaviour of economists and managers is normally embedded; professionals have specific roles and responsibilities and decision-making follows certain procedures, for instance. We can conceive these institutional aspects as the gestures involved in the performative oath; the existence of accepted procedures, circumstances for the invocation of the procedures, the correct execution of the procedures, etc. (Section 3), are an integral part of the performative oath, which

ensures ethical behaviour. As a consequence, the introduction of the performative oath should be embedded in the institutional design of financial institutions and corporations. The embeddedness of individual behaviour of economists and managers in the institutional design ensures more responsible behaviour not only at the individual level, but also at the corporate level of institutions.

The emphasis on the importance of institutional design as an integral part of the self-performative oath has an important advantage. It is argued that unethical behaviour of managers is not due to individual moral deficiencies. Jackall (1988), for instance, argues that the bureaucratic structures of modern organisations encourage unethical behaviour of managers. Although we stressed the existential moment in the self-performative oath, the performance of ethical behaviour should be facilitated by these gestures embedded in the organisation design.

Ethical oaths normally end with a closing formula, in which the warranty or binding power of the oath is stated: 'So help me God almighty' or 'this I affirm and promise'. In our multicultural or postmodern society, it is difficult, if not impossible, to refer to one divine warranty for our ethical oaths. Our Levinasian interpretation of the public context has enabled us to conceive the performative oath as *demanded* by the public context and under its authority. This *demand* character of the public context—customers, civil society, future generations, etc.—should be stressed if we introduce the performative oath in economics and business. On the one hand, it is precisely this public context that is the highest warranty for our self-performative oath in our postmodern society. On the other hand, it has become clear that the utterance of the closing formula of ethical oaths is in itself insufficient to guarantee ethical behaviour.

5.   CONCLUSIONS

We started this article with the current economic crisis and the societal concerns about the ethical behaviour of economists and managers in our society. Although we acknowledged that there are various causes of the economic crisis, we raised the question whether and how ethical oaths can contribute to the development of more ethical behaviour in economics and business.

Although we admit that there are various means to ensure ethical behaviour of individuals, we conclude that a performative concept of ethical oaths can contribute to the development of more ethical behaviour because performative oaths essentially involve action and behaviour. At the same time, we have seen that our perspective on the nature, function and limitation of ethical oaths has to change. Our performative concept of ethical oaths consists precisely (1) in the self-performative of the one I want to be, (2) which is demanded by the public context as the highest warranty for the self-performative oath. (3) Because of the

structural possibility of infelicity of ethical oaths does my (4) living up to my oath consist not only in my actual living and acting in the light of the oath, but also in the incessant recapturing of the oath in my struggle against its possible infelicity.

The introduction of ethical oaths in economics and business requires much more than an intentional statement about future actions and behaviour. (1) The *self*-performative character of ethical oaths requires policies that enable the reflection of professionals on ethical issues in education programmes, companies and professional associations. These policies will increase the self-involvement and internalisation of ethical oaths. (2) Because ethical oaths are the product of an ongoing conversation with the public context, employees, companies and professional associations should engage in communication with the public context on a structural basis; these conversations help to assess the clarity of the content of ethical oaths and its applicability in an ever-changing environment, and to enable the re-appropriation of its content if necessary. Furthermore, because of the complexity of fields of study such as economics and business, in which multiple stakeholders with different interests and value frames are involved, professionals in economics and business should be trained in learning, reflection and dealing with multiple stakeholders. (3) Because of the structural possibility of infelicity, the introduction of ethical oaths in economics and business should be accompanied by formal and informal control systems, which enable the monitoring and evaluation of ethical behaviour in accordance with the oath. (4) The self-performative oath should therefore be embedded within the organisational design of corporations.

Just as ethical oaths cannot be seen as a panacea for solving the economic crisis, these additional requirements cannot entirely prevent unethical behaviour of professionals. Nevertheless, the introduction of a performative concept of ethical oaths as described in this article can contribute to more ethical behaviour by individual professionals and corporate institutions in particular.

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NOTES ON CONTRIBUTOR

Vincent Blok is an assistant professor at the social sciences group, Wageningen University (the Netherlands), and research fellow at the Faculty of Philosophy, theology & religious Studies, Radboud University Nijmegen (the Netherlands). His research interests include Business Ethics, Responsible Innovation and Business & Society. He has published various articles on philosophy and management.