

## BIAS, SAFEGUARDS, AND THE LIMITS OF INDIVIDUALS

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A COMMENTARY ON Hasko von Kriegstein (2022), “The Radical Behavioral Challenge and Wide-Scope Obligations in Business,” *J Bus Ethics* 177(3): 507–517,

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### ABSTRACT

The *Radical Behavioral Challenge* (RBC) contends that due to normal human cognitive biases, many standard prescriptions of business ethics run afoul of the principle that ‘ought implies can.’ Von Kriegstein responds to this challenge by arguing that those prescriptions are wide-scope obligations that can be fulfilled by recusing oneself or by establishing appropriate safeguards. I argue that this solution falls short of fully resolving the RBC because individuals will often be incapable of recognizing when they are biased and incapable of establishing appropriate safeguards.

**RESEARCH IN BEHAVIORAL** ethics suggests that it is “psychologically impossible” for accountants to remain objective while auditing their clients’ books (Bazerman and Tenbrunsel 2002: 137). Even honest accountants will tend to produce audits that are systematically skewed in their clients’ favor because of an array of normal human cognitive biases. This is an example of bounded ethicality: people who consciously aim to abide by ethical principles often fail to do so because unconscious biases lead them astray in ways that are difficult, if not impossible, to consciously notice and avoid.

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Bounded ethicality creates a potential problem for business ethics because of the dictum that ‘ought implies can’ (OIC): people cannot be morally obligated to do things that they cannot do. If bounded ethicality renders individuals incapable of doing much of what mainstream business ethics requires them to do, then OIC implies that people cannot actually be morally required to do those things. For example, if it is psychologically impossible for accountants to audit their clients objectively, then accountants cannot be morally obligated to audit their clients objectively. Kim et al. (2015) call this the *Radical Behavioral Challenge* (RBC) to business ethics.

Von Kriegstein (2022) aims to avert the RBC by arguing that obligations in business ethics are wide-scope obligations that can be fulfilled in multiple ways. To do this, von Kriegstein points out that obligations in business ethics are typically hypothetical imperatives of the form:

If you take on role *r*, then you are obligated to *x*.

Any such obligation can be fulfilled in two ways: either by doing *x*, or by refusing to take on role *r*. For example, the obligation to perform an objective audit, properly formulated, says: if you take on the role of auditor, then you are obligated to perform an objective audit. That obligation can be fulfilled in two ways: by performing an objective audit, or by refusing to take on the role of auditor. The upshot, says von Kriegstein (2022: 513), is that “wide-scope obligations can be fulfilled by ethically bounded agents—all they need to do is recuse themselves.” In other words, even if bounded ethicality will inevitably thwart attempts to do *x*, individuals can still fulfill the relevant wide-scope obligation by refusing to take on role *r*. Such obligations are thereby consistent with OIC, and the RBC is thereby averted; people just need to “avoid situations where [their] biases cause problems” (von Kriegstein 2022: 513).

### **The Excessive Recusal Problem**

Von Kriegstein’s solution to the RBC is theoretically elegant, but it faces a practical difficulty—one that von Kriegstein (2022: 513) himself identifies:

The suggestion that ethically bounded agents should simply recuse themselves from situations in which this is the only way to fulfill their wide-scope obligations would be problematic, if bounded ethicality af-

fected everyone, always, and without remedy. For if this was true, nobody could ethically take on roles that clearly need to be filled in society.

For example, if bounded ethicality makes it psychologically impossible for anyone to perform an objective audit, then von Kriegstein's account implies that it is impossible to be an ethical auditor; the only way to be ethical is to avoid being an auditor. I will call this the *Excessive Recusal Problem*.

To avoid the Excessive Recusal Problem, von Kriegstein points to two ways that individuals can ethically take on the kinds of roles that bounded ethicality makes fraught. First, some individuals may be less susceptible to bias and know that they are capable of fulfilling such roles ethically. Second, safeguards can be put in place to protect against bias and enable people to perform their roles ethically. My aim in the remainder of this commentary is to show that neither is a satisfactory solution to the Excessive Recusal Problem under present conditions.

### **Our Bias Blind Spot**

Returning to the example of auditing, von Kriegstein (2022: 514) suggests that people fall into one of three groups:

1. People that are “lucky enough to be able to do an unbiased audit” under the prevailing conditions; they can ethically perform audits.
2. People that are able to do an unbiased audit by taking appropriate precautions, such as establishing institutional safeguards; they can ethically perform audits provided they “make sure to take the required precautions.”
3. People that are “incapable of producing an unbiased report” even with appropriate precautions; they should “stay out of the accounting profession.”

Von Kriegstein seems to think the Excessive Recusal Problem does not actually arise because the first two groups are large enough to provide a sufficient number of auditors for society.

The problem is that people must know which of the three groups they belong to. Von Kriegstein (2022: 514) thinks people can and should acquire that knowledge; but I doubt that people can—at least not with sufficient reliability. That is because even when people take the time to learn about cognitive biases, they still tend to be very bad

at assessing their own susceptibility to bias. Indeed, people who learn about cognitive biases tend to end up wrongly believing that they are less biased than other people. This is what is known as our bias blind spot: we usually fail to perceive our own biases even when we are fully aware of potential biases, can readily detect bias in others, and consciously look for bias in our own reasoning (Pronin et al. 2002). Research has shown that one of the best means of overcoming this blind spot is to recognize that we cannot reliably discern when we are biased through any amount of introspection, and to assume that we are probably biased in any situation where it would be normal to be biased (Pronin and Kugler 2007).

Returning to the auditing example, the bias blind spot provides reason to doubt that people can reliably determine whether they belong in group 1—the group capable of performing objective audits without safeguards. Indeed, anyone who comes to a situation thinking “other people are liable to be biased in this situation, but not me,” is probably fooling themselves. So even if group 1 is not empty, most auditors who believe that they belong in that group are probably wrong. For that reason, no auditor should act as if they belong in group 1. At best, auditors should generally assume, and therefore act as if, they belong in group 2—the group capable of performing objective audits with appropriate safeguards. That leaves a would-be auditor two ways to fulfill the wide-scope obligation to perform objective audits: erect appropriate safeguards against bias, or recuse themselves from the auditing profession. The Excessive Recusal Problem arises if too many people have only the second option. So the possibility of avoiding the RBC in a way that also avoids the Excessive Recusal Problem depends on the viability of the first option—it depends on auditors being able to establish effective safeguards against bias.

### **Safeguards and Collective Action**

Sometimes safeguards can be established by a single individual. For example, I can (and do) reduce the probability of bias in my grading by using a system that hides the author of an assignment while I am grading it. But, as von Kriegstein (2022: 514) recognizes, “we cannot expect individuals to shoulder the entire burden of designing and implementing systems that insulate decision making from their bounded ethicality.” Indeed, it is often impossible for individuals acting on

their own to create the safeguards needed to protect against their own biases because erecting such safeguards frequently requires collective action. In such cases, the RBC and the Excessive Recusal Problem can re-emerge.

Consider auditing again. Behavioral ethicists have suggested that ensuring impartiality in auditing requires eliminating incentives to perform biased audits by: (a) legally forbidding audit firms from providing any non-audit services (such as consulting or tax accounting) to their audit clients; (b) legally requiring fixed-length auditing contracts that cannot be renewed; and (c) legally prohibiting firms from hiring accountants that have audited them in the past (Bazerman et al. 2002). No individual auditor is capable of making such regulatory changes; they require large scale collective action to enact and enforce. That is not a problem when everyone is willing and able to play their part to make the collective action happen. But what about when they are not?

Suppose you are an auditor at a major audit firm. And suppose you know that safeguarding yourself – and every other auditor – against bias requires significant institutional and legislative changes of the kind described above. And suppose you know that, due to political gridlock and widespread apathy about the issue, such changes are unlikely to occur within the foreseeable future, no matter how much you advocate for them. So you know that if you remain in your job, you will be required to perform audits without adequate safeguards against bias, and that you are therefore likely to produce biased audits—not because you are particularly prone to bias, but simply because you are a human being operating in a context that is liable to trigger normal human biases. Under such conditions, is it possible to fulfill the wide-scope obligation to perform objective audits without quitting your job? It appears not. You are incapable of establishing the safeguards needed for you to perform objective audits. You can advocate for the creation of those safeguards, which might contribute to them being enacted in the long-term; but such advocacy does nothing to change the fact that, in the short-term, you will be performing audits without those safeguards and thus liable to perform biased audits. So it seems that, at least in the short-term, the only way to fulfill the wide-scope obligation to perform objective audits is to not be an auditor.

The forgoing example is not merely hypothetical; it depicts, in rough outline, the situation of contemporary auditors working for

major American audit firms—or at least those auditors who are aware of the problem of bounded ethicality. For the foreseeable future, those auditors have little hope of gaining the significant institutional changes needed to safeguard against bias. They thus seem to have no way of reliably fulfilling the wide-scope obligation to perform objective audits except to quit the auditing profession. As such, von Kriegstein’s attempt to rescue auditors from the RBC seems subject to the Excessive Recusal Problem; it retains the obligation to perform objective audits only at the cost of implying that most contemporary American auditors are morally obligated to quit their jobs.

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