

140: Matters of life and death – 5 – Contractualism

1 Contractualism is named after its governing conception:

Morality is pictured as arising out of an imaginary (note: hypothetical) contract – between rational agents to frame and govern their inter-actions with one another. (Not historical, no bargaining from strength.)

Morality is the set of rules we *would* agree to as governing our behavior *if* our selection of rules were governed by rational considerations only. Morality as *constructed* through *rational agreement*.

Rawls (*A Theory of Justice*) models this with the idea of ***the veil of ignorance*** – *knowledge of all general truths* of psychology, economics, etc.; *ignorance of all particulars* (own goals, strength, intelligence, position in society, etc.); *knowledge of desires for primary goods* of freedom, power, happiness, and self-respect (what all will want whatever they want); *no moral beliefs to be presupposed*.

Is the veil supposed to be a *metaphysical possibility*? Is the idea that *I might have been* a woman, a Bengali, etc., or that *I might have been* in ignorance of such basic facts about myself?

No. The veil is a *device* to bracket unwanted knowledge, to rule out special pleading. Since the initial position is *fair*, the rules chosen must also be fair.

The restrictions are to bracket things we intuitively feel to be morally irrelevant. But no explanation is given of *why* they are irrelevant.

Scanlon ('Contractualism and Utilitarianism' in A.Sen & B.Williams, eds., *Utilitarianism and Beyond*, 1982) suggests that the moral perspective is that of people who want to be able to *justify* their actions to others in terms that the others can *freely and rationally accept*.

Does this go deeper? Scanlon proposes –

X is wrong = X is forbidden by rules that no one could reasonably reject who shared the aim of reaching free and unforced general agreement.

This is much less idealized. These are real agents, with knowledge of their particular situation. But all have the overriding aim of reaching free agreement, and to choose rationally.

Scanlon can *explain* the moral irrelevance of sex, age, numbers, position in society, etc. Given the aim of reaching free agreement, there is *no point* in proposing rules couched in such terms, since these will be vetoed by some, and since others could *equally well* propose rules that I would veto. So Scanlon's characterization of Contractualism goes deeper.

2 Protection for Persons

The basic normative principle is ***respect for autonomy***. We would agree to leave each other as free as possible, consistent with the freedom of others. No interference in the lives or freedom of others unless necessary to prevent like interference in your own.

Morality here emerges as a set of *constraints* on individual action, within which we are free to act and live our lives as we see fit.

Also, individuals cannot be sacrificed for the general good. Persons as individuals, with their own life-plans and projects, are at the heart of the system, with a *veto* over proposed rules.

(This contrasts with the Utilitarian conception of persons as mere *vessels of utility*.)

What about promise-breaking and punishment of the innocent?

Rules need not be exceptionless. So we might agree that promises can be broken for good reason.

So why should we not agree that people can be framed for good reason?

The Contractualist *ideal of publicity* – moral rules should be freely and openly negotiated, and known to all. (A contrast here with Utilitarianism, where there can be one set of rules for the masses and another for the Utilitarian theorist.)

It would be self-defeating to have a public rule allowing the punishment of the innocent.

3 Distinctions Retained

The basic picture of morality as a *set of constraints* – defining unjustified interference (what you *may not*

do to others); and specifying the circumstances in which duties are owed to others as of right (what you *must do* for others, what they can *justifiably demand* of you).

This leaves room for actions that are neither forbidden nor required – so the common-sense three-way classification of actions into *duty* / *wrong* / *neither* is retained.

Within the category of actions that are neither wrong nor claimable by others as a right, there are classes of actions which are *above and beyond* what is required, in two senses.

4 Justice versus Charity

Is Contractualism too cold, too formal, too negative? telling you not to hurt others, but not enjoining you to help them? Singer's example of the child drowning in the pond – surely you *ought* to help?

Contractualism *can* find a place for positive attachment to the welfare of others. Rational agents should agree to more than minimal rules of non-interference, since otherwise they will often lack the support that they need. They should agree to develop a disposition *to help others, wherever this can be done at no great cost to oneself*.

Could the duty to help others be codified into a system of strict rules, similar to the rules of justice?

Arguably not. For how could we identify *which* individual owes any particular duty of charity? (In the case of justice, *all* have the duty not to murder me or steal from me; and *the promisor* has a duty to keep a promise to a *promisee*.)

Rational contractors should agree to develop a *general willingness to help*, rather than agree on a set of rules.

Two aspects of morality under Contractualism – strict rules of *justice* (what can be demanded as of right); and general attachment of *charity* or beneficence.

There are things you *ought to do* out of charity (rescue the child) but which cannot be demanded as a right; so these are obligations that are "above and beyond" strict duties of justice. (But they are still duties.)

How much can charity require? You should develop an attachment to others' welfare sufficient to constitute your *fair share* of what it needed.

So it is possible to develop an attachment "above and beyond" what charity requires (martyrdom, self-sacrifice, etc.).

5 The Moral Motivation Problem

The main problem for Contractualism is: why should we *care*? Why should I follow rules which people *would have* agreed to from a position of ignorance?

Rawls suggests: the only way to avoid conflict in conditions of modernity (where no set of traditional beliefs can be relied upon) is to *seek free agreement*.

We cannot hope to settle our disputes by appeal to tradition or any other generally accepted body of belief, e.g. theological authority.

So we have a powerful *self-interested* reason for wanting to reach free agreement.

Scanlon suggests: we must postulate a basic desire to justify our actions to others in terms which they can freely accept.

This desire is induced by *moral training*, as Scanlon suggests? Maybe.

Or it may be **innate**. This would be part of a general nativist stance (language, folk-psychology, etc.). And there is evidence that reciprocal altruism (of the sort which can give rise to free agreements and to co-operation) can be selected for in evolution.

But if innate, it should also be universal? Then how to explain moral diversity? What is freely acceptable may depend upon background beliefs (e.g. people who have said "women are like children, incapable of rational decision").

Note that Utilitarianism postulates an innate basis too, in the impulse of sympathy. An innate desire to justify oneself is equally plausible? E.g. children will start trying to justify themselves before they show much sign of sympathy!