

Papers from the 2003 meeting of the Canadian Association for Reductionist Philosophy
“Is Contract a Model for Morality?” by Joseph Ellin, Western Michigan University

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by

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Abstract of “Is Contract a Model for Morality?” by Joseph Ellin
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This paper raises questions about how well contractarianism does at providing an analysis of obligation, explaining the grounds of obligation, and explicating the motivation people have for honoring their obligations.

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“[E]thical standards,” Christine Korsgaard tells us at the beginning of *The Sources of Normativity*,¹ “are normative. They do not merely *describe* a way in which we in fact regulate our conduct. They make claims on us; they command, regulate, obligate, or guide.” How they do this is what she calls ‘the normative question,’ the question she regards as central to ethical theory.

Unfortunately Korsgaard is fairly obscure about just what the normative question asks. But we know that morality contains obligations, so we can say that any theory that is supposed to be a theory about morality should tell us something about obligations. And we can distinguish at least three issues to be investigated:

1. The analysis of obligation, i.e., what it is to be under or to have an obligation;
2. The grounds of obligation, i.e., what it is that gives you obligations, or why you have the ones you do;
3. The motivation of obligations, or what it is that makes us want to honor the obligations we have.

So a theory about ethics should address these issues. Here I raise some questions about how well contractarianism addresses them. In what follows, I take seriously the idea that contractarianism is a theory that bases morality on contract. (I have subsequently learned that some contractarians do not themselves take this idea seriously.)

It may seem that little need be said with regard to the first issue. To have an obligation to do X is to be in a condition such that it would be wrong of you not to do X, and, should you fail to do X, it would be legitimate that you be criticized, blamed, held up to obloquy and so on. But these are largely uninformative locutions, suggesting that ‘obligation’ may be an intuitive idea or moral primitive.

However there are certain interesting consequences of being under an obligation. One is that you cannot free yourself from the obligation at will. Another is that if the obligation is to another person, that other person typically can free you at his will. This is why there is something puzzling about obligations to one’s self. They seem to generate the contradiction that you both can and cannot be free of them at will. It also shows why hypothetical imperatives (“if you want people to trust you, you’d better tell the truth”) do not generate obligations: one can avoid the force of the imperative simply by altering one’s objectives. This is an important point even if there are some objectives that we cannot alter. It is sometimes said that there are some things we necessarily desire, for example, freedom: to seek freedom is allegedly a necessary objective of every creature with a rational will. So suppose this is true. And suppose also that we accept the hypothetical imperative, “if you want freedom, you must seek peace.” It follows from this that we must seek peace, but not that we are obligated to seek peace; for it would be true that if we could choose not to want freedom, we would not (on those grounds) be obligated to seek peace. We could avoid the necessity to seek peace if we chose to do so, even though (as hypothesized) we cannot choose to do so; hence no obligation to seek peace has been established.

So moral obligations must be categorical, not hypothetical. How does contractarianism explain categorical imperatives? Contracts have the feature that their provisions can be categorical if the contractors so elect. Presumably this is the election the social contractors would make; at least, it had better be, if the social contract is to generate morality. There is of course no obligation to enter any contract; one enters the original social contract in particular through necessity, or rational concern for one’s well-being. But the contract can be made to impose categorical obligations, so that the parties cannot negate its terms at will. These obligations may be conditional, in that there are

¹ Christine Korsgaard, *The Sources of Normativity* (Cambridge, 1996), pg.7.

Papers from the 2003 meeting of the Canadian Association for Reductionist Philosophy
“Is Contract a Model for Morality?” by Joseph Ellin, Western Michigan University

grounds on which the obligation is negated (you agree to obey on condition that others also obey), but they are not hypothetical. It would be a mistake to think that the contract's provisions state hypothetical imperatives. If you want security you will enter the contract, but once you are in the contract, you must obey its provisions, regardless of what you want.

So part of what it is to be under an obligation is to be under something that you cannot change at will, that is, something categorical. And with regard to this point, contractarianism seems able to explain the relevant feature of morality.

Let us for a moment pass by the question of reasons for being under obligations and turn to the third question, namely, motivation. Can contractarianism explain moral motivation? Morality says we ought to be motivated to obey the moral rules, if everyone else obeys; and contractarianism says so too. So far so good. But as Chris Tucker has pointed out,² rational maximizers would chose a different motivation: they would choose to be motivated to obey, except where they can get away with disobeying. It is not obvious that this prisoner's dilemma problem has a solution; the 'cooperate; then imitate' solution of iterated PD does not work, because by hypothesis (and unlike games of PD), the defectors are not detected (the victim knows he's been victimized, but not by whom). One could argue that it would be irrational for anyone to actually choose such a motivation, since the odds of escaping detection are small, but again as Chris has shown, how small the odds are depends on how much resources everyone puts into detection, and at some point the cost of detection is higher than the value of preventing defection. So initially every contractor knows that his best motivation is to want to develop a very prudent cheating strategy, and to aim to want to cheat just in those cases where the investment in detection would be higher than anyone might reasonably undertake. Rational contractors would want to be motivated to roll a drunk on a dark and empty street.

Here it is not my intention to call attention to the difficulty of solving PD. Rather, I am calling attention to an incongruence between contractarianism and morality. For what it is to be a moral person, at least by conventional lights, is to want to develop the motivation not to cheat, even, or perhaps especially, under perfectly safe circumstances. Contractarianism seems to make such a desire irrational. One could of course say that to this extent it is conventional morality that is irrational, and so much the worse for conventional morality; one could say this, but perhaps one should say it only with reluctance. It counts against the theory that it is driven to say so.

So there seems to be some part of moral motivation that contractarianism does not explain, namely, the fact that the moral person is motivated to comply even when he can get away with defection.

Next let us turn now to the grounds there might be for obedience to the moral rules. Why do we have obligations? Why ought we obey certain rules? Presumably contractarianism holds that what puts you under obligations is contract. And it is certainly true that contracts create obligations. If I agree to meet you for lunch, I am under an obligation to meet you for lunch. If I contract to paint your house for a certain price, I am under an obligation to paint your house and you are under an obligation to pay me the agreed sum. What puts you and me under the obligation is simply our prior agreement; the only reason that needs be given for why we ought to do what we've promised is, that we've promised it.

Now it is also true that obligations can be created apart from contract. If I give you travel directions when you are lost in an unfamiliar city, you are under an obligation to express your gratitude. If you lose your wallet and I find it, I am under an obligation to return it. So a moral system that appeared to make all obligations rest on contract, would be incongruous: a moral theory must make room for extra-contractual obligations. Contractarianism passes this test. For there is no doubt that most, if

² In his CARP paper for 2002.

Papers from the 2003 meeting of the Canadian Association for Reductionist Philosophy
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not all, of our extra-contractual obligations could be understood as originating in some prior contract (let us call it the ‘Original Understanding,’ or OU), according to which, for example, we agree to be under an obligation to gratitude, and under other non-contractual obligations, in appropriate circumstances.

But there is a difficulty with the OU itself. For contrary to the impression created by examples such as I have given, it is false to say that contract alone can create obligation. Background conditions of morality must be met. If you and I contract to rob a bank, no obligation has been created that I should rob the bank. If I agree to help you murder Sally, no obligation has been created that I should help you murder Sally. Contractual obligations are constrained by a test of morality: agreements that violate prior moral principles create no obligation.

There are three categories of agreement relevant to moral assessment. There are contracts where the parties agree to do what is already morally obligatory; contracts where they agree to do what is immoral; and contracts where they agree to do something that is in itself morally neutral. Examples such as making a lunch date or agreeing to work for a wage fall into this category. Since the first actions are already obligatory and the second prohibited, only this third kind of contract creates moral obligation.

But this seems to raise a difficulty if one takes the view that moral obligation arises from an initial understanding. For at that point there are no background conditions of morality. It would then seem that there are no moral constraints that limit the original understanding. Thus any agreement whatever must fall into the third category. And this suggests both that any original agreement produces obligation, even if it contains provisions that (by our lights) are immoral; and, that the failure of the contractors to provide for some moral requirement leaves that action morally neutral, even if it is (again by our lights) obligatory. Let us focus on the first consequence, that the contractors can create immoral moral obligations. Does this make sense?

Clearly not from our point of view. If the contractors agree to something we consider immoral, they might think they have an obligation to do that thing, but we would say they do not have such an obligation. So there could be relativistic-seeming disagreement about whether obligations have been created. They think they are under an obligation, but we do not. So who is right? Or -relativism- must we say that both are right?

Suppose the contractarian bites the relativistic bullet and takes the line that where there is no prior morality there can be no moral constraints, so any original agreement does produce obligation, whatever others may think about it. This leads him into a second incongruity. For he thus accepts the possibility of an agreement that produces an obligation just in virtue of being an agreement, a possibility that departs from our ordinary understanding of contract. The contractarian has defended his relativism by endorsing a counterintuitive understanding of contract.³ This necessary *ad hoc*-ism is the second incongruity. Why, other than to meet the needs of theory, would anyone imagine an agreement that produces obligation just in virtue of the agreement? That such a concept needs to be imagined ought to be regarded as unfortunate, even if, concededly, the concept of an obligation-creating contract not constrained by moral principle is not incoherent.

It is true that the contractarian does not have to claim that no constraints exist on the original understanding. There is the constraint of reason, and the constraint of maximizing everyone’s welfare. Unreasonable, or non-maximizing, agreements, he might say, create no obligations. But here

³ It is tempting here to accuse the contractarian of the fallacy of Divine Command theory, namely, that Divine Commands cannot create morality because we would not accept immoral commands as truly Divine. My point is different from this. I am arguing that if the contractarian holds that the original agreement creates obligation, he is employing a concept of contract that so departs from the ordinary concept that it may seem counterintuitive and so *ad hoc*.

Papers from the 2003 meeting of the Canadian Association for Reductionist Philosophy
“Is Contract a Model for Morality?” by Joseph Ellin, Western Michigan University

again he can be taxed with the complaint of departure from the ordinary concept, for we do not normally regard these as constraints on obligations: if I agree to meet you for dinner at 11 PM, I am under an obligation to do so, however unreasonable and non-maximizing the agreement may be. Only you can free me from my obligation. I can offer its unreasonableness as reason why you ought to free me, but your volition is necessary to dissolve the obligation. To be freed from an obligation is not the same as the obligation being void from the beginning.

Now contractarians will defend against my accusation of relativism by arguing that all rational contractors will agree to the same rules. Maybe they will, though I doubt it (unless you force the notion of rational). But that response seems to throw out the contractarian baby with the relativism bath water, since morality is thus understood as the principles recommended by reason; that everyone agrees to these principles no longer seems to be the decisive step in turning them into moral obligations. The rational principles seem to be morally obligatory, independently of whether or not anyone contracts to these principles.

The question of the grounds of obligation could also be regarded as the question of what reasons we have to accept the obligations of morality. Morality has the feature that everyone who accepts and abides by the rules wants everyone else to do so as well. Everyone has reason to want everyone to obey. Contractarians try to mirror this feature in the OU. Since, according to them, the contract contains rules that all would agree to, provided all others agree as well, everyone has reason to want everyone to obey. In my own case, even if I prefer not to obey, given the choice between entering a contract where everyone is pledged to obey on condition that everyone else do so as well, or entering no contract at all, I prefer the former. So I enter, forgoing disobedience in situations favorable to me, and having reason to want all others to do the same.

But it's not true that contracts are a model for the principle that each wants the others to obey. For it's easy to imagine situations where this condition does not hold. Suppose A, B, and C (countries, say) sign a non-aggression pact. A has no intention of aggressing on B or C, and hopes the pact will deter B and C from aggressing on him. But A would be delighted if B and C aggressed against each other: he, A, would pick up the pieces. So he does not wish everyone to obey; what he wishes is that everyone obey, unless it is in his interest otherwise. Or suppose the same parties sign a pact of neutrality, each pledging that in case of hostilities between the other two, he will remain neutral. But should A and B commence hostilities, neither would want C to honor its pledge; on the contrary, each would want C to violate neutrality and support him (and will only invoke the neutrality treaty if C supports the other party).

The difficulty here is that contracts are governed by interest, and interest determines what counts as a reason for obedience or violation. But in our moral universe, morality itself is the reason why we want others to obey. The moral person is the person who has an allegiance to morality, independent of self-interest. If it is difficult to see this mirrored in a contract model, it is difficult to see contract as the model of morality.

Further, though contractarianism seems to assume that contracts will be multilateral (involving many parties), the same result as far as the parties are concerned can sometimes be achieved by a series of bilateral pacts. Suppose there are four players who wish to assure non-aggression. This can be achieved by six separate treaties. A signs separate pacts with B, C, and D, pledging non-aggression to each. B signs with A, and signs additional pacts with C and D; and C signs with D. Together these six pacts have the same effect as a single treaty signed by all four parties. But what is the interest of A should B and C commence hostilities? Nothing (absent complicating factors). A's interest is in maintaining its treaty with its partners, but it has no (contractual) interest in nor obligation towards the others. Based on its contract alone, it has no reason to want the other parties to honor their contractual obligations. Yet the six pacts have exactly the same effect as one multilateral pact would

Papers from the 2003 meeting of the Canadian Association for Reductionist Philosophy
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have; the two methods are effectively equivalent. Therefore if A has no contractual reason to want the other parties to honor their contractual obligations in the bilateral situation, it should have no reason in the multilateral situation either.

So by this simple point of logic we reach the same conclusion as we reached by examining the question of interest: in general, a contract model does not have the consequence that parties have reason to want other parties to honor their obligations. But in morality they do. So contract is not a winning model as far as morality is concerned: hence we conclude that morality is not based on contract.