

Moral Contractualism

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1 Introduction

Over the last twenty years, moral contractualism has become an influential position within normative ethics. According to moral contractualism, whether an action is right or wrong depends on whether it could be agreed to by other people – that is, whether it could be the content of a possible contract. In this seminar, we will focus on two dominant strands of moral contractualism, which offer significantly different answers to the question why. Firstly, we will cover Thomas Scanlon’s Kantian contractualism, which is most thoroughly developed in his book *What We Owe To Each Other*. Secondly, we will discuss David Gauthier’s Hobbesian contractualism, which is also sometimes called “contractarianism”. In contrast to Kantian contractualists like Scanlon, Gauthier maintains that morality can be derived from rational self-interest, and not the moral duty to respect others as free and equal persons who are owed public justification for our conduct.

The goal of this seminar is (1) to help students to understand and critically reflect on how moral contractualism works in general; (2) to assess how it compares to other theories within normative ethics; and (3) to review how it works in applied moral cases, including potential marginal cases such as animals or future generations.

2 Requirements

As you will see from the timetable, this seminar works with a wide variety of methods. You will need to fulfil the following requirements to get credit points.

LITERATURE REVIEWS (EVERYONE)

In the Topic List, you will find a number of readings marked with two asterisks (**). We expect you to read *all* of them (care)fully, as they form the basis of the whole seminar.

Before the seminar starts, you need to send us a *literature review* of *all* (**)-marked readings. In your literature review, you should summarise the main claims of each of the papers. You should

also add some comments about or critique of the paper in question. From reading your reviews, we must get the impression that you have read the papers, grasped their central points, and given critical attention to them. There's not set word limit, but a good review of each paper is usually around 200 words.

Deadline: 7 January, please send per email to both of us. If you send your review earlier, we also have a chance to take them into account when preparing for the seminar: for example, if you have questions or critical remarks. *Literature reviews are graded on a pass/fail basis.*

PRESENTATIONS (SOME STUDENTS)

In some sessions, there will be slots for student presentations. Some of these take the standard form of engaging with some additional text(s), whereas other presentations come with more specific tasks which we will explain to you. Presentations should be short (around 10 mins.). Keep them easy and accessible. Your presentations should highlight one central point or argument to your fellow students. They should not be summaries of the literature: it's your job to extract the central point from the papers you read, and then not bore your students with the details.

Deadline: 2 January, please e-mail both of us. We expect your presentation by this date (slides plus brief notes on the slides). We will send you feedback on your presentation, and we expect you to change your presentation accordingly before the seminar. If you are not planning to use slides, please send us notes on your presentation, or your planned handout. *Presentations are graded on a pass/fail basis.*

ESSAYS (SOME STUDENTS)

Students who do not present will have to write an essay on a topic from the reading list, engaging with the literature for that topic. Essays should be 1,500-2,500 words long, and the deadline for them is **7 January**. Please send essays per email to both of us.

In your essay, we expect you to give an independent argument for a narrow claim. This excludes two kinds of papers from being acceptable: first, papers which do not defend any claim, but are primarily summaries of the literature, or a collection of unconnected observations. Second, a good philosophical essay makes an *argument*: it offers the reader *reasons* to believe what the author proposes. Thus, a good paper is not merely a retelling of one's opinion, or a rhetorical appeal to some authority. Rather, it progresses from clear premises through a number of transparent steps to a conclusion.

If you wish to have more essay guidance, please have a look at Jim Pryor's guide, which is available at

<http://www.jimpryor.net/teaching/guidelines/writing.html>

For a shorter version of similar advice, see also

<http://matthiasbrinkmann.de/slides/guide.pdf>

For all other question you have about writing a philosophical essay, talk to us directly. *Essays are graded on a pass/fail basis.*

HAUSARBEITEN (FOR 6/8 CREDIT POINTS)

If you want to write a *Hausarbeit*, we will decide together on a topic and the particular shape of the project you want to undertake. The topic must be roughly related to contractualism, but does not have to be from the topics on the seminar list. It is best that you have a rough idea of what you want before the seminar, so that we can talk about it while we're in Bayreuth. We'll also discuss formal requirements, deadlines etc. together.

There will be **three strictly enforced deadlines**: 31 January for the decision to write a *Hausarbeit* and a one-page proposal (required), 28 February for handing in a draft (optional, strongly recommended), and 31 March for the finished version.

3 Overview

The following is a tentative timetable for the course. The scheduled times include shorter breaks. Note that we might spontaneously adjust the schedule during the seminar as needed. In general, we will take the full time required for everyone to understand each of the topics.

FRIDAY, 8 JANUARY

Introduction

1. Types of Moral Contractualism (2 hours)

Required Reading: Southwood

Interactive Lecture

Student Presentation (1)

Part I. Hobbesian Contractualism

2. Gauthier's Contractarianism (2.5 hours)

Required Reading: Gauthier

Student Presentation (1)

Group Work

3. Problems with Hobbesian Contractualism, part 1 (1 hour)

Student Presentations (2)

SATURDAY, 9 JANUARY

4. Problems with Hobbesian Contractualism, part 2 (1 hour)

Required Reading: Southwood

Brief Lecture

Group Work

Part II. Kantian Contractualism

5. Scanlon's Contractualism (2 hours)

Required Reading: Scanlon

Student Presentations (2)

6. Parfit's Critique of Scanlon (1 hour)

Required Reading: Parfit

Group Work

Student Presentation (1)

7. Aggregation (2 hours)

Brief lecture

Group Work

Student Presentations (2)

8. The Redundancy Objection (1 hour)

Required Reading: McGinn

Student Presentation (1)

SUNDAY, 10 JANUARY

Part III. Applied Issues

9. Including the Cognitively Impaired (1 hour)

Student Presentation (1)

10. Psychopaths and Unreasonable People (1 hour)

Student Presentation (1)

11. Race and Gender (1 hour)

Brief lecture

Required Reading: Okin

Student Presentation (1)

12. Migration (2.5 hours)

Role-Playing Exercise

Closing Debate (1 hour)

Feedback, Open Questions (30 minutes)

4 Details

4.1 Introduction: Types of Moral Contractualism

In this section, an interactive lecture will introduce various forms of contractualism in both moral and political philosophy. The lecture will be interspersed with various group exercises. We will also discuss what makes contractualism attractive.

Required Reading for Everyone

**Southwood, Nicholas. *Contractualism and the Foundations of Morality* (2010). Ch. 1.

Student Presentation

There will be one student presentation on the advantages of contractualism. The student will present on a paper by Pamela Hieronymi, "Of Metaethics and Motivation: The Appeal of Contractualism" (see Dropbox).

Additional Readings

Stark, Cynthia. "Hypothetical Consent and Justification." *Journal of Philosophy* 97 (2000): 313–34. sec. 1 and 2.
Southwood, Nicholas. "Moral Contractualism." *Philosophy Compass* 4, no. 6 (2009): 926–37.

4.2 Introduction: Hobbesian Contractualism

We will start by looking at Hobbesian contractualism, which bases morality on our self-interest. We will use David Gauthier's contractarian views as our kickoff point.

Required Reading for Everyone

**Gauthier, David. "Why Contractarianism?" In *Contractarianism and Rational Choice: Essays on David Gauthier's Morals by Agreement* (1991), edited by Peter Vallentyne..

Recommended Reading

The required reading gives an overview of the main motivation for Gauthier's position. For more detail, it is strongly recommended that you read an excerpt from Gauthier, *Morals by Agreement* (1986), as found in Stephen Darwall (ed.), *Contractualism/Contractarianism* (2002).

Student Presentation

There will be one student presentation on the recommended reading. Students wishing to give this presentation should be confident with technical stuff (game theory etc.). It will be your task to present David Gauthier's argument in an accessible form to your fellow students.

Additional Readings

Cudd, Ann. "Contractarianism". *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/contractarianism>
Watson, Gary. "Some Considerations in Favor of Contractualism" in Coleman, Jules, Christopher Morris, and Gregory Kavka (ed.) *Rational Commitment and Social Justice: Essays for Gregory Kavka* (1998).

4.3 Problems with Hobbesian Contractualism, part 1

We will look at internal problems with Hobbesian contractualism. Do Hobbesians like Gauthier actually succeed in showing that we should behave morally?

Pro—Con Presentations

There will be two student presentations. The first presentation will attack contractualism (on the basis of Holly Smith's article, but we also recommend looking at the additional readings), the second student will defend it. The two students need to work together when designing their presentations.

Holly Smith, "Deriving Morality from Rationality" In Peter Valentyne (ed.), *Contractarianism and Rational choice: Essays on David Gauthier's Morals by Agreement* (1991).

Additional Readings

Hampton, Jean. "Can We Agree on Morals?" *Canadian Journal of Philosophy* 18, no. 2 (1988): 331–55.

Sayre-McCord, Geoffrey. "Deception and Reasons to be Moral" *American Philosophical Quarterly* Vol. 26, No. 2 (1989), pp. 113-122.

4.4 Problems with Hobbesian Contractualism, part 2

But let's assume that the Hobbesian succeeds in showing that self-interest and morality often overlap. But is this an appealing way to ground morality? Here we will look at criticism of that idea.

Required Reading for Everyone

**Southwood, Nicholas. *Contractualism and the Foundations of Morality* (2010). Chapter 2.

Student Presentation

There will be one student presentation on Southwood's article. The presentation should also take into account the argument in Brian Barry's *Justice as Impartiality* (1995), chapter 2.

4.5 Introduction: Kantian Contractualism

We will discuss Kantian contractualism by focussing on one of its most prominent versions, Scanlon's contractualism. (Note that sometimes "contractualism" is used exclusively as a label for Kantian contract theories, while "contractarianism" is used for Hobbesian theories—so this can be confusing.)

Required Reading for Everyone

**Scanlon, Thomas. *What We Owe To Each Other* (1998). Chapter 5, sections 1-5. (Read everything if you're interested.)

Student Presentations

There will be two student presentations on additional material from chapter 5. One student should present on Scanlon's claims about aggregation, another student should present on Scanlon on reasonable rejection (see additional reading).

Additional Readings

Kumar, Rahul. "Reasonable Reasons in Contractualist Moral Argument." *Ethics* 114, no. 1 (2003): 6–37.

Scanlon, Thomas. *What We Owe To Each Other* (1998). Chapter 5, sections 6-9.

4.6 Parfit's Critique of Scanlon

Derek Parfit has analysed Scanlon's contractualism in-depth in his recent book, *On What Matters*. Parfit claims that the three major theories in ethics (consequentialism, deontology, contractualism) all converge on the same results. In this section, we will look at Parfit's claims about contractualism and how he modifies it. We will do some brief group work in order to understand Parfit's main arguments, and we will attempt to develop a contractualist response to his objections. In a subsequent student presentation, we will learn about how Scanlon himself responds to Parfit's critique.

Student Presentations

There will be one student presentations on Scanlon's reply to Parfit (see additional readings).

Required Reading for Everyone

Parfit, Derek. *On What Matters* (2011). Volume 1, sections 52-3. Volume 2, section 77.

Additional Readings

Scanlon, Thomas. "Replies." *Ratio* 16 (2003): 424–39, esp. section on Parfit (pp. 431 onwards).

Scanlon, Thomas. "Why I am not a Kantian", in *On What Matters*, vol. 2.

4.7 Aggregation

Many philosophers have thought that one of the most appealing features of Kantian contractualism is that it avoids consequentialist aggregation. At the same time, there have been doubts how trade-off cases in a contractualist framework can be resolved. Firstly, we will work out the problem and possible solutions in this section, and secondly, we will focus on two recent contractualist contributions to the aggregation debate (see student presentations). If you are unfamiliar with the debate on consequentialist aggregation, and what kinds of moral problems

are associated with it, consider reading the article by John Taurek.

Recommended Reading

Taurek, John. "Should the Numbers Count?" *Philosophy and Public Affairs* 6, no. 4 (1977): 293–316.

Student Presentations

There will be two student presentations, one on the article below by Frick, the other on the Scanlon/Stemplowska exchange. The presentations should introduce other students to additional problems with aggregation without presupposing any previous knowledge.

Additional Readings

Frick, Johann. "Contractualism and Social Risk," *Philosophy & Public Affairs* 43 (2015): 175–223.

Stemplowska, Zofia. "Harmful Choices: Scanlon and Voorhoeve on Substantive Responsibility", *Journal of Moral Philosophy* 10 (2013).

Scanlon, Thomas. "Reply to Stemplowska", *Journal of Moral Philosophy* 10 (2013): 508–514.

4.8 The Redundancy Objection

Some philosophers have thought that Kantian contractualism is redundant: it adds nothing to a moral theory, and is just a "spare wheel". For a very angry version of this objection, you will read Colin McGinn's article. We will discuss whether this objection succeeds, and how the Kantian contractualist might be able to answer it.

Required Reading for Everyone

**McGinn, Colin. "Reasons and Unreasons." *The New Republic* May 24 (1999): 34–38.

Student Presentation

There will be one student presentation, on either or both of the following two articles (student's choice):

Frei, Tamra. "The Redundancy Objection, and Why Scanlon Is Not a Contractualist." *Journal of Political Philosophy* 17, no. 1 (2009): 47–65. and

Suikkanen, Jussi. "Contractualist Replies to the Redundancy Objections." *Theoria* 71, no. 1 (2005): 38–58.

Additional Readings

Blackburn, Simon. "Am I Right?" *New York Times* February 21 (1999): 24.

Southwood, Nicholas. *Contractualism and the Foundations of Morality*. Chapter 3.

4.9 Including The Cognitively Impaired

In this section and the following, we will look at a couple of applied issues in contractualism. Contractualism focusses on the ability of people to reason and cooperate with others. But what about people who do not have this ability, or to a lesser degree, or who in some other way do not comply with the standard picture of people that contractualism paints?

Recommended Readings

Hartley, Christie, "An Inclusive Contractualism: Obligations to the Mentally Disabled," in Kimberley Brownlee and Adam Cureton (eds.), *Disability and Disadvantage* (2009).

Stark, Cynthia, "How to Include the Severely Disabled in a Contractarian Theory of Justice," *Journal of Political Philosophy* 17 (2007).

Student Presentation

There will be a student presentation on the recommended readings.

Additional Reading

Wolff, Jonathan. "Disability among Equals," in Kimberley Brownlee and Adam Cureton (eds.), *Disability and Disadvantage* (2009).

4.10 Psychopaths and Unreasonable People

There will be a student presentation on the recommended reading.

Recommended Reading

Watson, Gary. "The Trouble with Psychopaths," in R. Jay Wallace, Rahul Kumar, and Samuel Freeman (eds.), *Reasons and Recognition: Essays on the Philosophy of T.M. Scanlon* (2011).

Additional Reading

Matravers, Matt. "Responsibility and Choice," in Ibid. (ed.), *Scanlon and Contractualism* (2004).

4.11 Race and Gender

In the last two sections we saw that contractualism has problems with accounting for people with unusual mental and psychological faculties. In addition, some theorists have suspected that there is also a darker prejudice hidden in contractualist metaphors: that it is based on a historical picture on which only the powerful—the white and male—have the ability to enter contracts. We will discuss whether this should make us question

contractualism, and whether contractualists can respond to this challenge in a satisfactory way. After a brief introductory lecture, we will listen to a student presentation and develop the topic further in a group discussion.

Student Presentation

There will be a student presentation on the recommended readings.

Required Reading for Everyone

Okin, Susan Moller, "Justice as Fairness: For Whom?" in *Justice, Gender, and the Family* (1989).

Recommended Reading

Mills, Charles, "The Domination Contract," in *The Contract and Domination*, Charles Mills and Carole Pateman (eds.), Oxford: Wiley (2013).

Williams, Patricia. 1991, "On Being the Object of Property," in *The Alchemy of Race and Rights*, Cambridge, MA: Harvard University Press.

Additional Readings

Mills, Charles. *The Racial Contract* (1999).

Okin, Susan Moller, "Justice from Sphere to Sphere," in *Justice, Gender, and the Family* (1989).

Pateman, Carole, *The Sexual Contract* (1988).

4.12 Migration

Much of the seminar so far has operated on a quite theoretical level. In this session, we will focus on how contractualist arguments can help us evaluate the moral implications of real-world problems by engaging in a role-playing game.

We will contact you about a week before the seminar with some small tasks for preparing the game, but doing so should only take an hour or two.