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Morality and Advantages

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Morality and Advantages

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Introduction: Exposition of the Problem

Prior to modernity, ethics was paradigmatically Eudaimonism: morality and happiness, action and the success of action were closely linked. In the modern world this close association is dissolved: on account of competition, an entrenched division of labour, more complex circuits of production and anonymous exchange relations within the markets the yields of others' moral actions can be acquired by less moral participants. The *exploitability* of the moral participants becomes the rule: from morality's social usefulness even its individual usefulness in concrete actions does not (any longer) follow systematically. As a result, we confront the problem – ever stronger in the modern age – of why individuals in the normal running of society, with its division of labor and competition, should comply with moral norms. What I have in mind is the problem of implementation.

The model that elucidates this problem structure is the *prisoner's dilemma* of game theory; more generally, I am referring to dilemma structures that this prisoner's dilemma illustrates. These structures arise whenever common and conflicting interests are present at the same time and the latter interests, on the basis of their dubious incentive structures, threaten to prevent the realisation of the former. Within such structures it is rational for each individual to behave neither morally nor cooperatively, but deviantly, because or rather as long as he or she cannot be certain that the others will also behave morally, i.e., cooperatively. In dilemma structures everyone must heed his or her incentives. *Incentives are action-determining expectations of advantage*. Even morality must “somehow” be based on expectations of advantage; otherwise it cannot be put into practice in everyday life. How is this supposed to be possible in dilemma structures? This question leads me to the topic of contractualism.

I discuss the problem in five sections. The first section addresses the explanatory goal of contract theory. In the second section I treat the relationship between implementation and validity, whereby the role of sanctions is to be analysed. In the third section a differentiation of the concept of interest is at stake. In the fourth section I will argue that ethics today can be developed in terms no longer of a theory of action, but only in terms of a theory of interactions, i.e., institutions. Finally, in the fifth section I situate contractualism in relation to other conceptions of ethics.

1. The Explanatory Goal of Contract Theory

The multi-faceted criticism of contract theory clearly limits the scope of possible interpretations.

I follow Hume and Stemmer in their claim that contracts in the state of nature cannot have the character of obligation and that therefore the term “contract” is only a metaphor for a thought experiment.

Ever since Kant it has also become clear that contract theory cannot explain and even does not want to explain the genesis of morality and right, although in the first flourish of modernity (1600 – 1800) it usually was understood in such a way (see Gough).

Hegel’s criticism of contract theory is based on a reading according to which contract theory wants to explicate such a thing as the “essence” of the state and/or morality. Hegel’s reproach to Hobbes is that the latter to a certain extent mentally annuls the evolved, institutionally invested morality of human beings and thus cannot grasp the rich forms of morality in the modern state. The argument is convincing; however, in my opinion, it tells against neither contract theory nor Hobbes, because its assumption, namely that contract theory addresses the essence of morality, is not demonstrated.

But what is the explanatory goal of contract theory?

It concerns – and today one can obtain unanimity on this point – the “*legitimation*” of political rule and moral obligations. Obligations are grounded in the desire of those who are subject to the obligations. They are grounded in a certain “interest configuration”, they are to be understood as a “collective binding of oneself”. *Interests* are a substantial element. So far, so good.

But since Hobbes a second element has played a central role: *sanctions*. Why do we need sanctions if it is a matter of the legitimacy of obligations? After all, I can be obligated to perform certain actions simply because they promote my interests, without a system of sanctions being required. Is morality really “constituted” by sanctions?

More than 20 years ago I myself interpreted contract theory as a theory of legitimation. Today I consider this to be at least one-sided, for the very reason that in this interpretation sanctions systematically still play no role. But if I make sanctions the focus of attention, today I would say: The problem for which contract theory is tailored is the problem of implementation (here, in the course of all legitimation by interests, we meet additional problems, which retroact on the legitimation). In dilemma structures, which are Hobbes’s starting point, each individual’s moral necessity, regardless well justified, perhaps absolutely justified, is ineffectual in the long term, because moral = cooperative “advance payments” are systematically exploitable. This brings it about that rational agents decide against furnishing such moral advance payments at all. The grounding of morality in interests is thus insufficient: on account of the dilemma structures it faces not only a problem of implementation (independent of legitimation), but in the opinion of all protagonists it also faces at the same time, with the unresolved implementation problem, a problem of legitimation.

Now sanctions come into play. Their function consists in solving this problem: they change “artificially” the disbursements for individuals so that social advantages and the advantages of individual actions become congruent, more precisely: induce the same moral conduct.

Regarding the element of sanctions, contract theory thus does not answer primarily the legitimation question, but the *implementation question*. From this there follows the related question: In what connection do these two elements stand to each other? Are they bound together additively by a simple “and”, or can we, must we more closely determine the relationship between legitimation and implementation? Here I put forward a first suggestion for the strengthening of contractualism.

2. Implementation and Validity: Advantages instead of Sanctions

According to the classical model for defining the relationship between normative validity and implementation, if the latter is discussed at all, the two are as though independent of one another and the validity of norms is first established on “good

grounds” and then, in a second step, the systematically subordinate implementation problem is addressed; the solution of the latter often consists in the transformation of validity – the grounds, the reason – into the “motive” for action, which, if it remains without effect, can then be put down to “weakness of will”.

Thomas Hobbes thinks the relationship in a completely different way. In the first two “natural laws” a social order is imagined and strongly desired; it holds, but it holds, to begin with, only “*in foro interno*”, which means: it instils an obligation to the frank and persistent *search* for the establishment of an order whose universal observance lies in everyone’s self-interest. This end is obtained via “sanctions”, among other things. Only if this order is found and established in practice, with the sanction mechanism thus functioning with (adequate) dependability, does it also hold “*in foro externo*”, i.e., with respect to action. It is “sanctions” that guarantee that others likewise act morally = cooperatively in a dependable fashion, namely out of self-interest. The danger of the exploitation of individuals’ moral conduct is thereby eliminated: only now may the individual give up his or her original “right to everything”.

The *incentive-compatible implementability is the condition for normative validity “in foro externo”*: implementation has an effect on validity. This is nothing more than to spell out the old principle: *Ultra posse nemo obligatur*, under the modern conditions of pervasive and intensified dilemma structures. In the contract theory of Hobbes it is an issue not of moral obligation or necessity, but rather of “desire” and “capacity”.

It is thus correct that “sanctions” play an important role in law and morality. But the meaning of “sanctions” in Hobbes escapes Stemmer and his critics if, in the style of today’s analytic philosophy, they derive the meaning from the use of the word (in everyday language) and not from the problem context.

This approach has consequences for theory formation. To begin with, one consequence is that interest and sanctions are bound together by a bare “and”. My suggestion would be to see interest as the *basis*, arché, of morality, which sanctions, in this sense, are surely not. Rather sanctions represent an indispensable condition, implicated in the problem structure, for the realisation of interests.

A second consequence of the bare “and” is that the “sanctions” are interpreted in terms of a life-world and, that is to say, in terms of a theory of action – in this respect it recalls the “power” that someone must have if he wants to threaten me, whereby he or she can become the party to a contract. Here, by contrast, the *func-*

tion of sanctions is played down, namely in dilemma structures, where, through incentive formation, they bring it about that it becomes in the individual's interest to act cooperatively. This way of proceeding makes it possible to see that this task can be carried out by other instruments besides the sanctions artificially and intentionally set to work by individuals. There are *functional equivalents* of sanctions, and for the sake of a solution to the implementation problem everything urges consulting these as well.

I therefore replace the concept of sanctions with the concepts "advantages" and "disadvantages". Thus the way becomes free to incorporate systematically in contract theory important structures of the modern globalised world society which so far have not turned up in the contractualism that takes its cue from action theory and personalism. This strengthening of the theory is indebted to considerations from modern economics, which for some decades has likewise been concerned with the problem of the social order from the viewpoint of dilemma structures. In detail the most important steps.

First, modern economics employs an *explicit concept of advantage*. By "advantage" everything is meant that individuals themselves regard as advantages: income and assets as much as health, leisure and a "good life" in community with others. Economics is, in this general sense, an advantage/disadvantage grammar; it has – systematically – nothing to do with "money". All these advantages – and disadvantages – steer action, corresponding expectations determine action also in dilemma structures, particularly if one has had bad experiences with moral advance payments. If cooperative behaviour in the view of the participants promises to be recompensed – in whatever fashion –, the prisoner's dilemma is overcome, so that individuals behave morally from self-interest.

Such advantages can also consist in rewards – e.g. in the form of monetary profits on the market, of social recognition, of reputation, but also in the form of temporally shifted yields from investments. The same function can take on also physiologically generated rewards, such as the restoration of health through gymnastics or through the renunciation of tobacco consumption because of the health consequences in later life.

Much more important than social ostracism and exclusion from the community by deliberate, artificial sanctions that remain binding for everyone with respect to the malefactors, are the advantages and disadvantages that accrue via non-deliberate, but predictable, scientifically recognisable *systematic processes*. By way of example

I take the underdevelopment in many parts of the world. In terms of theories of action and power, human beings in the Third World do not have the potential to threaten people in the industrial nations and therefore cannot compel them to observe shared norms. However, if I argue on the basis of disadvantages, advantages and, in particular, *potential advantages*, matters look completely different.

Let me first enumerate direct disadvantages: migration to escape poverty, environmental degradation, regional wars, terrorism, epidemics such as AIDS, organised crime, drug cultivation, population explosion, etc. If in Iraq terror prevails and if there are running strikes in the Nigerian or Venezuelan oil industry, then each one of us pays higher petrol and heating oil prices. 11 September 2001 “cost” the industrial nations in the area of several billions – by way of a reinforcement of the world economic crisis.

Now to the disadvantages that result from neglecting to seize the possible advantages: (foreign) markets, pacification, stability of the world financial system, reduction of environmental pollution and population explosion, etc. The greatest disadvantages = costs consist for the economist in the fact that potential advantages cannot be realised because of unsatisfactory or missing social orders. The economist takes his or her cue from the possibilities: whoever stays behind pays dearly. Even the industrialised countries remain to the rear of their possible, desired advantages from cooperation with the underdeveloped countries of the Third World, if the latter continue to starve in poverty, because potentially productive resources are not put to use, but are left to lie fallow and even unfold destructive effects on the industrialised countries.

The potential profits from cooperation are what Hobbes had in view when in the first and second “natural law” he attributed a validity “*in foro interno*” to possible moral norms: each individual is under obligation to the lasting search for an institutional arrangement that allows the profits from cooperation to be acquired. I would not like to dismiss the moral obligation *in foro interno* to assist the Third World, vitiating it to a bare ideal, which one can either acknowledge or not.

3. Differentiation of the Concept of Interest

A further important point at which contractualism can and must be improved is the concept of “interest” on which morality is to be based. This suggestion for improvement also goes back to economists, to J. M. Buchanan and V. Vanberg. P. Stemmer

grasps the concept, in my judgement, in too undifferentiated a fashion. The following distinction at least seems indispensable in the context of contractualism.

Since the interests of humans aim at the most varied objects or conditions, Stemmer can identify only a very few common interests and he therefore grounds no more than a minimalist morality. Apart from the fact that empirically one will find people to whom their life and self-esteem are of little worth, which raises doubts concerning even a minimalist morality, I very much suspect that the model employed here of deriving norms directly from interests is not meaningful. Stemmer argues at length as if the common interests are obtained as averages from the empirical interests of all. But an atheist has no “interest” in the fundamental right to freedom of religion. Under certain conditions he or she may concede it, but he or she does not have an original interest in it – just as little as Islamic or other kinds of fundamentalists.

What I suggest is that a distinction be drawn between normal, *original interest/preferences* and secondary or *normative interests*. On the condition that the atheist has to live – and, for the sake of greater advantages, even wants to live – together in society with adherents of different religions, he or she can *develop* an interest in the rule of freedom of religion and internalise this to the extent that an emotional attachment arises and he or she even becomes a glowing advocate of religious freedom. Phenomenologically regarded, this may then appear as an original interest alongside other interests.

This, however, ought not to lead to the misconception that systematically it is not a question of an average of the original interests of all human beings – in this way religious freedom could surely be derived no more than other fundamental rights. Rules are systematically something other than interests, they are an *aliud* to them. Rules are instruments with whose help each individual in a world of dilemma structures can realise his or her individual interests with the greatest possible efficiency.

The result is that in this variant the content of moral obligations can be uncommonly expanded. Assistance for poor countries is then not only an ideal, for which one can recruit – and whose appeals fall on deaf ears among firms, for example, under the systematic pressures of global competition –, it is an *obligation to the lasting search* for institutional arrangements that make it possible – for business as well – to appropriate the potential profits from cooperation. Furthermore, it will be possible to establish rules that do not illustrate an average of original interests but are nevertheless morally binding on all – on two conditions: (1) that elementary rights

(human rights) are guaranteed and (2) that those whose original interests are not (able to be) considered (fully), are compensated, overcompensated out of the returns of cooperation. Such common compensation mechanisms are not conceptualisable within the model of the average interest.

4. Action Theory vs. Interaction Theory

By means of the remarks on the problem of validity, on the concept of advantage and interest an interpretation might have come about that creates the impression that philosophical contractualism and my own version of contractualism take their measure from different “worlds”. In a certain sense this impression is apposite.

The “world” of philosophical contractualism is constituted through *deliberate actions on the part of individuals*. The latter “have” interests, “basal” interests, for which it is claimed that one can impute them to strictly all humans. Even the “configuration of interests” that my desire not to be hurt by others is stronger than my desire to be allowed to hurt others, if necessary, represents for this version of contractualism a individualistic psychological presupposition. “Sanctions” are understood as actions artificially and deliberately instituted and intentionally set to work by individuals: spontaneous emotional reactions are just as much excluded as advantages and disadvantages from systematic processes such as markets. “Power” occurs only as a superior capacity to hurt others physically and/or psychologically and thereby to give oneself flexibility. In brief: the core of morality is composed of common interests, which are grasped in rules and reinforced with deliberate sanctions. Society is steered by actions, and the social outcome of a humane world should be deliberately striven for.

In my “world” the interests of individuals likewise form the starting point. But in contrast to the model of the average interest it is not common interests, but *conditions* for the realisation of *different* interests that form the core of morality; it is these conditions that are grasped in rules and established as morality. The fact that we have become so accustomed to rules that many individuals interpret them as interests ought not to obscure that what is at issue are derived, secondary interests, normative interests.

Morality is for me an instrument for the *realisation of different individual interests*, or put economically: the realisation of the profits from cooperation. Profits from cooperation are individuals’ different advantages resulting from cooperation. And in

modern societies this cooperation is ever less coordinated via common goals and ever more via common rules.

Theoretically that means: Because of the underlying dilemma structures the universally desired result does not lend itself to derivation in terms of *action theory*, rather it has to be reconstructed in terms of *interaction theory*. And here it is a matter no longer of “common interests” of an original kind, but of moral – and legal – rules that are responsible for the result. The modern world can be neither understood nor steered in the sense of action theory, i.e. intentionally, but only in the sense of interaction theory. Hence it is not goals, interests, motives, but rules, institutions that are the binding screw.

Modern societies are not “goal-linked”, but “rule-linked” (v. Hayek); intentionally they are decoupled and institutionally linked. Ethics generally and the contractualist grounding of morality in philosophy in particular have only selectively reacted to this so far.

In my opinion, on the basis of the improvements suggested here a purely prudential theory of morality becomes feasible. Besides Hobbes, from the history of philosophy an author such as Kant may be cited, since he considered a state, i.e., a social order, a possibility for a “people of devils (if only they have understanding)”. A contemporary author such as Karl-Otto Apel, who has for nearly 20 years at least seen the unresolved implementation problem of discourse ethics, said a few years ago: “For the scope of traditional, personalistic morality with its theoretical focus on action is, in the light of the institutional and factual constraints, if not exactly zero, nevertheless extremely small, when viewed socio-phenomenologically.”

5. The Implementation Problem in the Discussion of Ethics

No ethics can guarantee that moral norms will no longer be transgressed. Every society invests a great deal in measures that promise to check such infringements. Such investments are also provided for in contractualism.

If nonetheless normative obligations are transgressed, which in reality occurs daily, different explanations can be given.

The “traditional, personalistic morality with its theoretical focus on action” passes sentence in these cases on “weakness of will”. The model, which informs

such an ascription, model A, assumes that norms are “given” – through “Reason” in Kantian accounts, through the human being’s moral, altruistic motives in other accounts – and that the will is too weak to set morality in motion. The lapse has its roots in the individual, who therefore is made responsible for it. As measures to strengthen this will, education particularly with the help of examples, appeals, insights, emotionally touching pictures and narratives, and the like, comes into consideration. This is so that the good motives/preferences, which humans after all – and “fortunately” (N. Hoerster) – also possess, might be strengthened and egoistic interests, especially in the economy, successfully resisted.

In my opinion, this model A founders on the problem of implementation under the conditions of dilemma structures: under these conditions whoever acts morally before others have decided to do so, is the fool of Hobbes, because he or she becomes systematically – and not just by chance – exploitable. This is exacerbated under the purposefully established structures of competition of the free-market economy: competition is nothing but a prisoner’s dilemma on the same side of the market, thus among competitors. It is abstraction from the partners of interaction and fixation on the context in which the individual acts and decides that abandon the individual to exploitability and irrationality, and this is something that no ethics can require.

By contrast, the strength of contractualism lies in the fact that it interprets morality *ab ovo* as an *interactive state of affairs* and even when dealing with the decisions of the individual it takes into account the conditions of interaction. This is model B. The formal exposition arrives at the prisoner’s dilemma: unless the others go along, no individual – in the long term – can act morally. To a considerable degree the individual who does something good owes this to the other(s): if they do not play cooperatively as well, the individual cannot long stand by his or her morality under prevailing global conditions.

In contractualism morality is grounded in individual expectations of advantage. For the sake of social advantages, hence advantages for *all* individuals, the social order must see to it that moral behaviour in individual actions and/or action sequences is *also individually* rewarded. Only in such a way is the prisoner’s dilemma with its dubious incentive structures avoided.

When moral norms are transgressed, then with respect to this model we must differentiate two possibilities. (1) If we have norms that are valid in *foro externo*, model A, the action–theoretical model, comes into play; one could speak therefore of “weakness of will”, but within this theoretical framework one should rather say that

the incentives for transgressing the norm were too strong. (2) If, however, we have no norms valid *in foro externo*, model B comes into play: a reason for why the universally desired behaviour is not practised is here the absence of the guarantee that (a sufficient number of) other people will also act cooperatively = morally. The reason why people do not act “morally” has, in this case, nothing whatsoever to do with “weakness of will”; it lies rather in *institutional deficits*. In a world that finds itself in dynamic upheavals this situation is clearly the more frequent case. Here a personal will, no matter how strong, cannot make good “a failure of the institution” (H. Krings). Strictly speaking, in this situation, where there is no guarantee that others will act cooperatively, one cannot at all refer to a “valid norm” in the conventional sense, i.e., “valid” *in foro externo*. The intended “norm” can “apply” using the Hobbes distinction if necessary *in foro interno*. This is not by any means without consequences, but it obligates “only to a desire and endeavour” (*Leviathan*, Chapter 15), not yet directly to action.

One can no longer comprehend the world, in particular the modern world, with the categories of intentional action theory, because they do not systematically make allowance for the social conditions of all individual action. Only an interaction theory whose starting point is the dilemma structures is able to incorporate these conditions systematically in its account. The time has come to give ethics a new basis on these problem structures.

Concluding Remark

All morality is grounded on advantages promised to the individual. Thus the formal, explicit concept of advantage in modern economics is placed at the foundation. I enjoy comparing the relationship between morality and advantages with an iceberg. Moral norms, ideals, and values resemble that seventh of the iceberg whose beauty, glittering in the sunlight above the surface of the water, magically attracts all of us, but especially the philosophical ethicist. However the remaining six sevenths, which floats invisibly beneath the surface, forms the foundation; it corresponds to the economic substructure. One cannot separate the two – for example, so that morality might develop a reality of its own and should even serve to domesticate and to restrain the economy with its self-interest. Whoever wants to strengthen morality must ensure that appropriate incentives are established, and whoever wants to prevent the erosion of morality within the systematic processes of the modern world must ensure that the advantages of moral action are not dissolved: like the iceberg, morality melts away from beneath, from its economic foundations, and not, say, through any irrational “change in values”.

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