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CONTRACTARIANISM AND THE ASSUMPTION OF
MUTUAL UNCONCERN*

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A contractarian moral theory states that an action (practice, social structure, etc.) is morally permissible if and only if it (or rules to which it conforms) would be agreed to by the members of society under certain circumstances. What people will agree to depends on what their desires are like. Most contractarian theories — for example those of Rawls (1971) and Gauthier (1986) — specify that parties to the agreement are mutually unconcerned (take no interest in each other's interests). Contractarian theorists, do not, of course, believe that this is true of real people, but they insist (with Kant) that the basic moral constraints on conduct (if there are any) apply independently of whether individuals care about each other.

I shall here argue against the appropriateness of the assumption of mutual unconcern for contractarian theories, such as Gauthier's, that are supposed to ground morality solely in rationality.

Gauthier's project is to "generate, strictly rational principles for choice, . . . without introducing prior moral assumptions" (p. 6). Unlike Rawls, Gauthier does not merely want to apply the principles of rational choice to some morally privileged choice situation (i.e., a choice situation, such as Rawls' original position, in which morally irrelevant features of reality have been screened off). He wants to apply the principles of rational choice to real life choice situations. Consequently, on Gauthier's theory "the parties to agreement are real, determinate individuals, distinguished by their capacities, situations, and concerns" (p. 9). In particular, no veil of ignorance is imposed on the parties.

Gauthier assumes, however, that the parties are mutually unconcerned (take no interest in each other's interests) (pp. 10–11, 102–103). Note that there are two different places that assumptions about people's preferences (desires, utility functions) may enter in contrac-

tarian theory. One place is in the specification of the features of the people whom the agreed upon norms are to regulate. More specifically, it concerns assumptions relevant for determining the outcome of adopting a given set of norms. What will happen if a given set of norms is adopted depends on how people will act if it is adopted, and that depends in part on what their preferences are. Clearly, for these purposes realistic assumptions about people's preferences must be used. Given that people have at least a limited sympathy for others, it would be inappropriate to assess norms on the basis of what their outcome would be if people had no sympathy for others. Rationality requires that one use realistic assumptions.

The other role for an assumption about people's preferences concerns their motivation *at the bargaining table*. This is relevant for determining which option(s) the parties would agree to, given the information available to them (including the expected outcomes of each option). It is here (and only here, I think) that Gauthier and Rawls assume that individuals are mutually unconcerned.

But why not use people's true preferences here too? Both Rawls and Gauthier defend this assumption by saying that the goal is to show that — no matter what our preferences are like — there are rationally acceptable constraints on conduct. Gauthier, for example, writes: "For we agree with Kant that moral constraints must apply in the absence of other-directed interests, indeed they must apply whatever preferences individuals may happen to have" (p. 100).¹ We must be careful here, however, with the order of the quantifiers. On the strong view (the one held by Kant) the existential quantifier over constraints comes first: there are (particular) rational constraints on conduct that apply no matter what people's desires are like. On the weak view the universal quantifier over preferences comes first: No matter what people's preferences are like there are (some sort or other of) rational constraints on conduct. The weak view, but not the strong view, allows the content of the constraints to vary depending on people's preferences.

Because Gauthier accepts the instrumental conception of rationality (which Kant rejected) he cannot hold the strong view. For the strong view says that there are rational constraints on conduct the content of which does not depend on what people's preferences are like, and that entails that the rationality of conduct does *not* depend solely on how

well one's preferences are satisfied — as claimed by the instrumental conception of rationality. Thus, because Gauthier accepts the instrumental conception of rationality, he must accept only the weaker reading of the “Kantian” dictum.

But on the weaker reading there is no need to *assume* that we are mutually unconcerned. On the weak reading the important point to make is that *the existence* of constraints on conduct does not depend on the nature of our preferences (and in particular, it does not on the presence of altruistic preferences).² One need not establish that the *content* of these constraints is independent of what our actual preferences are like. Indeed, if these constraints are to be rationally grounded, and if one accepts (as Gauthier does) the instrumental conception of rationality, then the exact content of the constraints (determining which actions satisfy the constraints) must depend on people's actual (reflective) preferences. The counterfactual assumption of mutual unconcern therefore undermines the rationality of the constraints that would be agreed upon.

To restate this point: There are two contractarian projects at issue here. One is the theoretical project of showing that the *existence* of rational constraints on the pursuit of self-interest does not depend on any sympathetic concern for others. For this purpose contractarians should make *no assumption* concerning the nature of people's preferences. Contractarians can then argue that no matter what people's preferences are like (even if they are purely self-interested, for example), it is rational for them to agree and conform with principles constraining their pursuit of self-interest. Here Gauthier does not need the assumption of mutual unconcern. Indeed, to be successful, he must not make any assumption about people's preferences.

The second project is to defend particular constraints as rationally justified. On the contractarian view a set of norms is rationally justified just in case it would be rationally chosen by the members of society. If one assumes, as Gauthier does (Ch. 2), an instrumental conception of rationality, according to which a choice is rational if and only if it best satisfies one's considered preferences, then it is inappropriate for a contractarian theory to ignore any of one's considered preferences. Although, if I were purely self-interested, it might be rational for me to agree to norms that are favorable for me, but extremely unfavorable for

my friends and family, it need not (and in general is not) rational for me to agree to such norms *given that I care about how my friends and family fare*. By making the legitimacy of norms depend on what we would agree to if we had preferences that we do not in fact have, Gauthier undermines the rationality of the agreed upon norms.³

Of course, a contractarian theory need not maintain the tight connection between the *actual* preferences, capacities, and circumstances of agents and those assumed for the social contract. Such a theory might assume mutual unconcern on the grounds that a *negative* concern for others (such as that stemming from envy or hatred) is (for obvious reasons) *morally irrelevant* to the social contract; and assume that *positive* concern for others is morally irrelevant for reasons of symmetry, or because it allows someone's welfare to be counted more than once (if several people care about it).

Although Rawls does not defend the assumption of mutual unconcern along the above lines (at least not in his book), such a defense is open to him. This is because he does not reject the use of assumptions about what is morally relevant to the social contract. Indeed, his imposition of the veil of ignorance is defended precisely on the grounds that the knowledge that is blocked (of one's capacities, social position, etc.) is morally irrelevant to the selection of principles of justice.

The above defense of the assumption of mutual unconcern is not, however, open to Gauthier. This is because, unlike Rawls, he wants to base the social contract solely on real life, rational considerations without any moral assumptions (e.g., about what is relevant). On his theory the correct principles of justice for a given community are those that it would be rational for those members to choose in full knowledge of their positions, capacities, and concerns. No feature of reality is to be deemed morally irrelevant. This aspect of Gauthier's theory, which makes the theory so interesting, makes it inappropriate to use counterfactual assumptions in general, and about people's preferences in particular.

It might be objected that I have misunderstood the role of the assumption of mutual concern. Its role, it may be suggested, is simply that of a worst case scenario. Gauthier uses the assumption to show, the suggestion goes, what sorts of constraints (in terms of their content) would apply in the worst case. It is highly doubtful that Gauthier does

use the assumption in this way,⁴ but in any case, it is not an appropriate use of the assumption mutual unconcern. For that assumption does not represent the worst case scenario. Far worse is the case where people are highly *negatively* concerned for others. In such a case people actually desire that others be poorly off (either in absolute terms or relative themselves). So, if the purpose is to identify what sorts of constraints would be justified in the worst case scenario, the assumption of mutual unconcern is not the right one.⁵

Another role the assumption might have is as a simplifying assumption. People are, we may grant, predominantly unconcerned for others. They care for their friends and family, but are often largely unconcerned for others outside this limited sphere.⁶ Thus, the assumption of mutual unconcern may be approximately correct. So, the assumption may very well be appropriate as a simplifying device, but it must be kept in mind that: (1) it is an empirical assumption — not a commitment of the moral theory, and (2) a more careful application of theory would recognize that we are not mutually unconcerned.

If Gauthier is to generate rational principles of interaction, he must drop the assumption of mutual unconcern — except perhaps as a simplifying assumption for the application of the theory.

NOTES

* I have benefited from suggestions from Grant Brown, Morry Lipson, and an anonymous referee for this journal.

¹ See also Gauthier (1986), p. 104, and Rawls (1971), p. 129, and p. 254.

² For simplicity, I have ignored one assumption that contractarians must make about people's preferences for their argument for rational constraint to succeed. This is the assumption that mutual benefit from cooperation is possible. This rules out zero-sum game situations, i.e., situations in which people's preferences are strictly conflicting (one's person's gain is always another person's loss). So, strictly speaking the contractarian argument must be: if mutual benefit from cooperation is possible, then there are rational constraints on conduct. (Gauthier's argument has exactly this form.)

³ On p. 11 Gauthier suggests another reason for the assumption of mutual unconcern, and that is that "it becomes a source of exploitation if it [sociability, concern for others] induces persons to acquiesce in institutions and practices that but for their fellow-feelings would be costly to them." He cites the oppression of women as an example of such exploitation. This is a possible defense of the assumption of mutual concern, but it is incompatible with an instrumental conception of rationality, which takes people's considered preferences as they are. Since Gauthier assumes the instrumental conception, this defense is not open to him.

⁴ Certain passages do suggest this reading of Gauthier. See, e.g., the bottom of p. 101.

⁵ I owe this point to Grant Brown.

⁶ Gauthier does write sometimes as if the role of the assumption is as a simplifying assumption, e.g., on pp. 100–101.

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