The Ethics of the Everyday: Can Normative Ethics Guide Daily Decisions?

Abstract

This thesis asked whether normative ethics could tell us what is the right thing to in daily life. A case-study was employed that analyzed whether each theory could satisfy two requirements: the theory must be act guiding and the agent needs to able to justify the act to herself and to the relevant parties. The thesis discussed four ethical theories: act-consequentialism, rule-consequentialism, Kantianism and contractualism. Act-consequentialism was found to have a structural issue in that the second requirement is only another feature that is put into its calculus and not a starting point for evaluating the rightness of our actions. The other three theories could not satisfy the two requirements simultaneously, either. Each theory is forced to resort to judgment when we require them to weigh between two seemingly equivalent obligations. It would seem then that judgment is a better tool for deciding moral dilemmas than normative theory.

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Introduction

The following thesis seeks to investigate whether normative ethical theories are useful guides for everyday situations. I will discuss four main theories: act-consequentialism, rule-consequentialism, Kantianism and Scanlonian contractualism. This list is not exhaustive, and I will not be able to deal with all relevant versions of these theories.

For a theory to be 'useful' for the everyday, as I interpret it, it needs to satisfy two requirements. The first is that it needs to be action guiding in even the most mundane of moral situations. This requirement (G) is generally taken to be uncontroversial for any adequate normative theory. Basically, it must tell one what is the right action x to do in any situation y. The second is an assumption (J): The agent needs to be able to justify x to herself and to those that are involved in x and y. The former means that the agent must be able to live with her (right) actions and should be able to give herself reasons that maintain her sense of self-respect. The latter states that she should be able to give reasons to all those involved as to why she did what she did; which, she can reasonably expect them to accept. This requires her to try and imagine the position and interests of the involved in y. The second condition has been inspired by Scanlon's contractualism.² Why is J relevant you may ask? Following Scanlon, I think it only makes sense that we wish to justify our acts to others as best we can.³ This wish explicitly acknowledges that we want to recognize the moral standing of others as equals and, in the inevitable vicissitudes of life which lead to conflicting interests we should want to engage others in a manner that shows respect towards their interests. Some might find this assumption unconvincing, but let us simply assume that it has credibility for the time being. This is particularly so for act-consequentialists and I will address this issue in the objection section.

The motivation for this thesis is that, if our best ethical theories are not good guides for our daily lives, then we would have good reason to think that there is something seriously wrong with them. A normative theory must tell us what to do and it must have good reasons for this. Equally importantly, we should be able to abide by its precepts in a fashion that maintains our dignity and respects our own life goals (*J*) (unless our goals are clearly malicious, selfish or wrong in some other aspect).

¹ Henceforth simply called contractualism.

² Thomas M. Scanlon, What We Owe to Each Other (Harvard University Press, 1998).

³ For a more elaborate argument, see the section about the value of living with others in a practice of mutual recognition on 153-168 in *What We Owe to Each Other*.

The thesis will proceed via a case study of a situation that we can expect in daily life. Each theory will be discussed in its own section and, to spoil the conclusion in advance, it will be argued that none of the four can adequately capture both conditions *simultaneously*. Of course, I will not claim that they cannot guide us *some* of the time. Rather, the goal is to see whether they fail in this certain case study. The case will be modified to facilitate or further test each theory during the analysis. I have tried to be charitable to each theory to see how, if at all, they could satisfy *G* and *J*. If the reader finds my case sufficiently convincing and realistic, we can easily induce that this would apply to many cases in our daily lives. Afterwards, I will discuss some potential objections that might be levelled at my account. Nonetheless, contractualism, rule-consequentialism and a liberal reading of Kantianism are the closest to meeting both requirements. All three must resort to judgment as the final arbiter of right action.

1. The case

Suppose there is a philosophy student called Sarah. She is reasonably versed in contractualism, Kantianism, both forms of consequentialism and has a good idea of what they entail. She is not completely convinced of any theory though in different respects sympathetic to the prescripts of each. One night, she realizes that she is due for a stand-up performance at a local bar with an expected audience of (approximately) one hundred. She has promised the owner of the bar to perform. The audience does not pay to see the performance. At the same time, she remembers that she also promised to visit her sick mother (recovering from a successful operation) at the hospital. There is no one else who can visit her mother for the night and the mother is eagerly awaiting her arrival. What is she supposed to do? Aware of the controversies between proponents of the three theories she decides to think about what each would tell her to do and why in hopes of a satisfying answer.

2. Act-consequentialism: Imprecise values, impossible justifications and inconsistency

She starts with act-consequentialism. Being an astute student, Sarah chooses Pettit and Smith's *global consequentialism* as her preferred version.⁴ This version of consequentialism can be summed up as being a consequentialist about 'everything'.⁵ It considers that all the evaluants typically considered in consequentialism such as acts, motives, rules and anything

⁴ Philip Pettit and Michael Smith, "Global Consequentialism" (Edinburgh University Press, 2000), 121-133.

⁵ This is how Toby Ord summarizes the theory in "How to be a Consequentialist about Everything". Yes, even the climate and eye-color and anything else conceivable can be relevant evaluants.

else that is conceivable can be relevant evaluants as long as the primary criterion of maximizing value (rightness) is adhered to. No evaluant is ranked above the other, as long as they each contribute to maximization. Smith defines it as a sophisticated version of act-consequentialism⁶ and, indeed, the proponents are against rule-consequentialism because their criterion of rightness goes against the primary doctrine.⁷ If we judge acts based on rules who have in turn been selected by leading to the best promotion of value instead of judging them directly, we are not really judging acts based on the criterion of rightness. An act that would not maximize could be considered a right act and this is not what consequentialism is about. Global consequentialism considers rule-consequentialism to be inconsistent because of their criterion of rightness.⁸

The appeal of this version over a traditional consequentialist approach that takes only one evaluant is that it can more consistently account for promoting the highest value by excluding nothing from its deliberations. This way, it is inconceivable for it to deem an act right that does not maximize. Curiously, the notion of value is not explicitly described in Pettit and Smith. Following Petit and Smith, I will not assume any specific notion of value either. My argument can be applied to any conception of value and reveal a structural issue with global consequentialism. Finally, it must be noted that many act-consequentialists do not recommend their principle of value maximization to be a suitable procedure to generate right actions. Consciously trying to maximize every act can often lead to less than ideal circumstances. 10 Instead, they often recommend a rule-consequentialist decision procedure for practical purposes. 11 We might already wonder whether any form of act-consequentialism is a suitable candidate to satisfy G in our daily lives if it does not itself come up with a procedure that stipulates right actions. We can ignore this question and simply consider what it can tell Sarah about what to do and why. Nonetheless, at the end of the analysis, I will discuss what global consequentialism would require if one uses a rule-consequentialist decision procedure.

First, she reasons that she has made two promises simultaneously. Promises, of course, have value as we can imagine that the world would be worse off without them. It is plausible that the net loss of breaking each promise (in this case) by *itself* is equal. Thus, the tie breaker must be judged on the basis of which promise would lead to more value if

⁶ See Micheal Smith "The Value of keeping and Making on Promises" for a discussion of his view on global consequentialism.

⁷ Argued for both in "Global Consequentialism" and Smith's article.

⁸ Idd.

⁹ Brad Hooker, "Rule Consequentialism", Stanford Encyclopedia of Philosophy.

 $^{^{10}}$ This is well known and accepted among all consequentialists. See the rule-consequentialism article by Brad Hooker.

¹¹ Idd.

fulfilled. Does the entertainment of the audience for an evening (Sarah is an incredible comedian so they shall be entertained) have greater value than the emotional comfort that the mother would receive? To me, it is unclear how to compare entertainment value with emotional comfort. The repercussions are either way innocent. There is little pleasure to be promoted in one single performance to a hundred people and the same is the case for choosing to fulfil the mother's side. We lack an accurate value calculator and, indeed, a plausible unit of value. Pettit and Smith's examples simply presuppose that the value can be quantified by using terms such as 'greater' and 'smaller' benefit in the description of their own examples or use extreme evil genius cases that have unrealistically horrific consequences, and, thus, obvious answers. ¹² Many consequentialists have the habit of making up units in their own examples which do not help with everyday needs. ¹³ We can overlook this issue and use Pettit and Smith's own method by simply using words in the comparative and superlative like they do, because there is a bigger issue with their position.

The main issue with global consequentialism as a guide for daily decisions is a structural one. In the current case, I have constructed a scenario where Sarah must choose between two parties. From a global consequentialist point of view, one must act so as to maximize. The case takes place in the real world, and, therefore, it is always possible that there is a third act outside of the case that is the actual right thing to do. For example, Sarah might produce more value right now if she goes out and hands out food to the many beggars on the street. Such an act could plausibly produce more value than the upholding of the two promises in the case. In the real world there are often more than two options that we can choose from and the prescription of global consequentialism is clear: do whatever promotes value the most. The assumption that this thesis is based on is that there is such a thing as daily life; this takes for granted the idea that individuals have their own peculiar responsibilities and goals. The other three theories and conventional morality also take this for granted, though to varying degrees. From a global consequentialist perspective there are no preconceived limits on our obligations to others. If this is allowed, the idea that we can prioritize our own goals and responsibilities can only be justified if it would produce the most value. But, it most likely does not do so in the present case. If there is a third act that produces more value than the fulfillment of either of the promises, then that would satisfy G. Sarah's justification to both her mother and the bar-owner would have to be that there is another act that she must do that is more valuable than either of her promises. If their

¹² For the former example see 126 and for the evil genius example see 127 in "Global consequentialism".

Most famously the work of Derek Parfit. For a dazzling array of made up numbers see *On What Matters Volume Two* (Oxford University Press, 2011), 191-212.

disappointment and loss is also accounted for and the third act still has more value, then it would still be the right thing to do. Her ability to justify it to herself is, similarly, only another evaluant to be put into the calculus. The very notion of J is something that cannot be satisfied by a global consequentialist perspective.

Justification *itself* has a certain amount of value and it must be described in terms of consequences like everything else. However, one cannot expect the bar owner, the mother or even Sarah herself to think in these terms. It runs counter to our deeply held convictions. Imagine if Sarah would produce slightly less value by visiting her mother than helping a beggar on the street. This would be wrong according to global consequentialism. Yet, this does not obviously seem wrong. If this act is wrong, the whole notion of 'daily life' seems to be a mostly immoral undertaking according to global consequentialism, for we are constantly refraining from maximization by thinking that we have particular duties and responsibilities to ourselves and to people we know and engage with. ¹⁴ Thus, it is better to put global consequentialism to the side as it cannot account for *J*. Indeed, to press *J* further is to beg the question against them, for it makes global consequentialism impossible. I will deal with question begging more elaborately in section 6. Before we move on to rule-consequentialism, let us look at how the theory fares if we apply a rule-consequentialist decision procedure as most act-consequentialists recommend this mechanism over what we did anyway.

Now, Sarah would not need to try and calculate anything, but merely follow a rule of thumb. Two commonly accepted rules of thumb would be: give special care to your loved ones and uphold your promises. ¹⁵ In the present case, there are conflicting rules for she has made two mutually exclusive promises. It is not important to settle this issue as we have struck a bigger problem either way. Whichever promise Sarah would fulfil, the theory has caused itself to be internally inconsistent. For if we follow any of the rules and provided that the actual best action is indeed some third act, we have willingly refrained from maximizing value and we could have *foreseen* this ¹⁶ (Sarah could have known that there are hungry beggars on the street). Ironically, the same criticism that global consequentialism flings at rule-consequentialism, can now be made against their own position. ¹⁷ Which is, that requiring people to act based on rules whose validity is determined by their tendency to promote value the best *on average*, would result in many situations that do not actually maximize, such as

¹⁴ Some consequentialists actually bite this bullet. See Walter Sinnot-Armstrong, "Consequentialism" on *Stanford Encyclopedia of Philosophy*

¹⁵ See the section on rule-consequentialism for an explanation of the code of rules.

¹⁶ I add this claim to make it clear that it would not matter whether we judge acts based on actual or foreseen consequences.

For similar arguments against global consequentialism see Hooker's discussion about global consequentialism's inconsistencies in his Stanford article.

this one. To act based on rules solely as a decision procedure would lead to acts that would not maximize all the same.

We have seen then, that global consequentialism becomes implausible as a guide for daily life. It cannot agree with the premises that J is based on in the first place and, if we apply a rule-consequentialist decision procedure, it will become internally inconsistent. In the next section, we shall see that rule-consequentialism comes much closer to satisfying the two requirements, but seems to fail as well.

3. Rule-consequentialism: Moral indeterminacy when rules conflict

For rule-consequentialism, Sarah picks Hooker's version. ¹⁸ This version seems one of the best contenders among rule-consequentialist theories as a guide for daily life, because one of its primary aims is to formulate the code of rules to correspond as closely as possible with conventional morality. ¹⁹ Hooker's principle can be paraphrased as: An act is wrong, if the established code of rules forbids it. ²⁰ The code of rules is selected based on the expected good they can be reasonably be supposed to produce if a large majority would internalize them. To internalize a rule is to accept all of its characteristics within a community of people. Thus, if you internalize the rule that stealing is wrong: you will not steal, you would despise the idea of stealing, you would expect, demand and promote in others to have the same disposition. ²¹ The rules have to be simple enough for the large majority to be able to internalize them at a reasonable cost. There is, therefore, a push to simplify rules as much as possible to suit the lowest denominator. ²²

Two simple rules are to take special care of your family (prioritize them over others) and to uphold your promises. ²³ The present has a conflict of rules. We will get into Hooker's method of choosing between conflicting rules shortly, but the present case can be easily and intuitively solved without it. One is generally not allowed to look at the consequences of the fulfillment of the rule. ²⁴ To do this is to revert into act-consequentialism and try to calculate the best circumstances. Moreover, because the rules must be internalized, it would be psychologically demanding to the agent to start calculating all of a sudden. Even the act-consequentialists think that this is a bad idea so let us not dwell on this issue further. The case

¹⁸ From his book *Ideal Code*, *Real World* (Oxford University Press, 2000)

¹⁹ Ideal Code, Real World. 4-5, 32-33.

²⁰ Idd. 32

²¹ Internalizing does not entail perfect compliance. See 81 and 91.

²² Idd. 86.

²³ Idd. 66.

²⁴ With the exception of extreme disaster cases.

can be solved by the simple inference that in any situation where one is forced to break a rule, it is best to break as few rules as possible. Sarah would break two rules if she performs: a promise and taking special care of family, but only one rule if she visits the hospital, namely the promise to the bar-owner. Since one is not allowed to weigh consequences any promise is as good as any other and they cancel each other out. But, the rule to take care of her mother remains. So now we have satisfied G, but also J. If we assume that Sarah has internalized both rules, then justification is easy to give. A concerned daughter can naturally justify a visit to her sick mother to both herself and the mother. It would be part of the internalization of the rule that you ought to take of your family.

I should remind the reader that this is not a claim that breaking the promise to the barowner is the right thing to do. The goal is to see whether the theory can satisfy both requirements in order to plausibly be a guide to daily life. The ultimate question of actual rightness goes beyond the purposes of this article.

Nonetheless, it is easy to change the example to make it difficult for the theory. Suppose everything is the same, but Sarah made no promise to her mother. She still knows her mother is in the hospital and that she is alone with nobody to visit her. Now she can only break one rule either way. We can still assume that Sarah has internalized the code of rules. What is she to do? I will follow Hooker in saying that rule-consequentialism does not allow exception clauses to be built into the rules, so let us put that idea to the side. 25 We are not allowed to calculate consequences and every rule holds equal value. Hooker's method for deciding between conflicting rules is that of the conscience of the morally well-trained person. 26 A morally well-trained person will feel a degree of aversion when she is forced to break a rule. When choosing between two rules, the stronger aversion wins out. Certainly, one who has internalized a rule to uphold promises would feel immense aversion at breaking it. This aversion is measured by imagining what it would be like if everyone felt free to ignore the rule.²⁷ It does not mean that everybody would flaunt the rule at all times, but merely that they felt no obligation to uphold the rule. If everybody had this disposition to ignore upholding promises this would be catastrophic and incite great aversion. But, feeling free to neglect family members would similarly be catastrophic. What if mothers felt free to abandon their children whenever they felt like it? Could they even be a mother if they had not internalized the rule in the first place? The lack of a disposition to uphold each respective rule by everyone is tantamount to ruining society. It is not clear to me which scenario would incite

²⁵ Idd. 89. ²⁶ Idd. 89-92. ²⁷ Idd. 89.

stronger aversion. Eggleston makes the same critique but takes it further. According to him, Hooker's rule-consequentialism has no way of deciding between conflicting rules *at all.*²⁸ The issue is that the conscience of a morally well-trained person, according to rule-consequentialism and explicitly stated by Hooker himself, *is* the very same thing as the internalization of the ideal code of rules.²⁹ After all, in selecting the ideal code of rules, rule-consequentialism has already considered which code would produce the greatest net result if it could be internalized by a large majority.³⁰ But, we are already dealing with the ideal code, since the two rules are a part of it, and Sarah's internalization of the code (thus the right conscience) would have already given all the guidance that the rules can provide. The rules themselves do not provide a built-in clause for arbitration, as this was not allowed. So, there is nothing that determines how rules can be weighed against each other in rule-consequentialism.³¹ There is no action prescribed (no *G*).

In a different passage, Hooker admits that his theory cannot completely get rid of moral indeterminacy.³² When faced with a difficult decision such as conflicting rules one is to exercise judgment. This passage is surprising as it does not cohere with the previous method of the conscience as arbiter. The method with the conscience is an intra-theoretical method, that is to say, it follows and is a part of the theory (though it was unhelpful). Whereas, to say that one must ultimately exercise judgment is to simply admit that the theory cannot guide you any further. Any theory can claim that you ought to exercise judgment when you are faced with a dilemma. We shall see that contractualism gives the same advice when pushed far enough. Despite the generality of the advice, it is a realistic move and it can work some of the time. In the present case, most theorists would agree that a promise entails a heavier duty than a visit to the hospital.³³ A promise ought to be broken only when there is a large loss of well-being and this is not the case.³⁴ So, this move, would tell her to uphold her promise to the bar-owner (G). The justification is easy enough to give, as breaking promises is intuitively a very wrong act. It cannot be justified to the bar-owner in the present circumstances and Sarah could justify it to herself to uphold the promise. In the next section, we shall see that the most charitable reading of Kantianism must also resort to judgment for decision making.

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²⁸ Ben Eggleston, "Conflict of Rules in Hooker's Rule Consequentialism".

²⁹ Ideal Code, Real World. 91.

³⁰ Eggleston. 337.

³¹ Hooker does allow exception clauses for disaster scenarios to overrule the following of a rule, but this clearly not such a scenario.

³² Ideal Code, Real World, 107.

³³ Hooker, 133. Scanlon, 199.

³⁴ Idd

4. Kantianism: Promises can be broken

Let us use the Formula of Humanity (*FOH*) as the test to see what Sarah ought to do. This formulation of the categorical imperative (*CI*), is, in my view and many others the most attractive and intuitively appealing formulation.³⁵ It states: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means." We know that a promise, according to the *CI*, is a perfect duty that never ought to be broken.

There is immediately an issue in that Sarah must choose between two perfect duties. In other words, she must break a promise either way. Since it is inevitable that she is going to break at least one, she will have to violate the CI in some way. Of course, she should have not gotten into this predicament in the first place but that is neither here nor there. It seems that G cannot be satisfied unless we add another principle that can specify what to do when one is forced to choose between two (completely equivalent) perfect duties. This added principle, however, would have to be something outside of the CI itself. The CI is the formula that tests what maxims can be rationally conceived and willed universally, not a tool of arbitration between two equivalent imperatives. However, the Kantian might reply, that this situation (inevitably breaking the CI) goes beyond the domains of normative ethics (if that is conceived to be Kantianism). This is not convincing as this situation is surely realistic and common. However, I think that we can claim an even greater issue with Kantian ethics as a guide for daily life.

To simplify the inquiry, let us change the situation and say that Sarah only made a promise to her mother. The bar is hosting a talent show and anybody could show without prior notice. Clearly, under a Kantian analysis, she has to fulfill the promise to her mother lest she use her as a means.³⁷ This would follow, since, if she would go to the talent show, because she wants some publicity for her future career as a comedian, she would not value the humanity of her mother unconditionally. Someone could not possibly agree to be a promisee if they knew that the promiser would break the promise on a whim to further other goals. They would not treat themselves as an end in this case and, therefore, this must apply to the promiser as they could not will this either if their roles were reversed.³⁸ Now, G is certainly satisfied and there is a plausible J.

 $^{^{35}}$ I will leave the question as to if this formula is equivalent with other formulations of the CI to the side though if our answer to the question would be negative my analysis would not formally apply.

³⁶ Immanuel Kant. *Practical Philosophy* (Cambridge University Press), 80.

³⁷ An astute reader has notified me that Sarah could simply call her mother and explain the situation. For the present purposes let us assume that Sarah is a forgetful person and left her electronics at her friend's place.

³⁸ My interpretation of the Formula of Humanity and the conditions for breaking it are taken from John Rawls.

Now I will argue that it is possible to break a promise under specific circumstances to further one's own goals without breaking the FOH. For this, we need more information about the example. Say that Sarah and her mother are incredibly close. The mother knows and cares deeply for what Sarah wants in life. She would know that Sarah would want to go to a talent show and knows its importance to her. She also knows that Sarah is a principled person and does not lie or break promises generally. Because she trusts her daughter to such a great degree she would not be distraught by a broken promise but immediately assume that it was because, of something important. The ends that the mother has coincide (partially) with that of Sarah. An important end for Sarah is immediately an end for her. Sarah knows all of this as well, and reasons that she could break the promise to her mother, because she is aware of their mutual trust. Has she used her mother as an end if she breaks the promise? It does not seem that she has withheld any information from her mother about her intentions and motives. Indeed, it is quite the opposite. Moreover, Sarah only considers performing because she is positive that her mother would want that too. If their relationship was not so impeccable, she would have reason to think that it is better to keep the promise, in the event that they are not on the same page. It is plausible then, to say that they both have the same end (Sarah's career) in this case and that her breaking the promise would promote the mutual end. Thus, it seems that Sarah would break a promise but not use her mother as a mere means. To make this clearer, let us compare it to Kant's own example of the deceptive promise and use the CI-procedure to see if the *FOH* can allow it.³⁹

The issue with the deceptive promise is that it is impossible to even give a promise, if the promisee knew that they were being duped. Similarly, the promiser, if she would imagine being on the other side of such a promise, would have to reject such a maxim. There is a contradiction in conception, for one could not conceive of a world where deceptive promises would be a universal law. In this case, the promise is not deceptive as Sarah was initially intent on keeping it and is only considering breaking it now. The justification for breaking it, as discussed above, only allows promises to be broken in special cases. The very conception of a promise would not cease to exist in a world where promises are broken with such qualifications. ⁴⁰ Furthermore, the two cases are parallel in the sense that we must test whether both parties could rationally will such a promise without contradiction. And, indeed it seems that they can, for the mother could have still agreed to the promise even if she had known in advance that Sarah would break it for the furthering of her career and so could Sarah if the

Lectures on the History of Moral Philosophy. 181-183.

³⁹ Rawls, 170.

⁴⁰ I would say that the real-world functions exactly in the way that I describe it. The concept of a promise has meaning in our world, but they are broken regularly often because of specific justification.

roles were reserved. We have passed the CI-procedure. Under this reading of the FOH, we have satisfied both conditions. She may break the promise (G) and she can justify it to herself and to her mother (J).

Perhaps, one could object now and say that the conditions for foregoing the promise were specified in advance (through their relationship) and that she would not really break it if she performed. However, that would mean that the mother could not have a genuine expectation of the promise being fulfilled as the implicit conditions would lead her to expect that it is likely that it would not be met. This is not the case though, rather, it is their trust that creates this implicit condition, which is not itself a part of the promise.

At this stage a Kantian (and certainly Kant himself) would object. Kant is clear that breaking a perfect duty is *never* permissible and that my reading is flawed, because if one is allowed to break promises some of the time, it is not a perfect duty as such. I can accept this critique for the sake of argument. We would still satisfy *G*: Do not break the promise. But now, the justification for *G* has become entirely unconvincing. What is exactly the issue if Sarah breaks her promise to her mother if we take the information about their relationship into account? Kant would say that Sarah is holding her own humanity and that of her mother in contempt. Surely, with what we know of Sarah and her relationship with her mother it is better left to themselves to justify if they can break promises to each other seeing as they know each other best (to give their own *J*). We have no reason to assume that their relationship is in any way abusive or disingenuous. Furthermore, Sarah and the mother's self-respect and dignity are not necessarily threatened if Sarah breaks the promise. Therefore, a traditional Kantian analysis also satisfies *G* but not *J*.

This does not mean that Sarah would be right in breaking the promise, but merely that a traditional Kantian analysis does not seem to give a convincing prescription. It would certainly be convincing (and correct) for more general promises, but the specificity of the situation makes it seem perfectly innocent. My liberal reading allows for an agent to break a promise if she was: initially intent on upholding the promise, would uphold if she had good cause to think that the promisee would object a break, and is aware that there is mutual trust between both parties in terms of their ultimate ends. These qualifications allow the agent to pass the CI-procedure. The liberal reading would require the addition of judgment since the agent needs to look closely at the specificities of the situation to apply the CI-procedure responsibly. Interestingly, the liberal reading could also plausibly be used to choose between two promises. If Sarah can break the promise to her mother, she would naturally come to

⁴¹ Kant; *Metaphysics of Morals*, 182.

think that she must fulfil the bar-owner's promise in the original case. This also requires judgment. And, even if the maxim passes the procedure such as Sarah's, she must still consider whether there are other considerations that play a role in determining the rightness of breaking the promise. In the next section, we shall see that contractualism, at the end of the day, is also forced to use judgment as the only tool that can decide between right and wrong.

5. Contractualism: On the horns of a dilemma between indeterminate reasons or weak justification

Now Sarah considers what contractualism has for advice. For a contractualist analysis the interests and reasons of all involved members to the dispute must be assessed. The individual who bears the largest burden can reasonably reject all principles that would impose that burden towards the others according to the principle: "An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced, general agreement." ⁴² We need to be able to assess the burdens of each party member in the case in order to apply the contractualist principle. I will now give more information about the peculiarities of the case. These were not relevant for the verdicts of the above theories so there was no need to mention them until now.

Suppose the owner will lose a significant sum of money, but keep his bar afloat. In addition, he has no employees and no children. Sarah actually comes from a highly traditional Chinese family. Filial piety is an important aspect of the values of her family. ⁴³ A key concept that guides the mother's life projects is that her daughter takes care of her and honors her dedication to her daughter. If Sarah does not visit her mother, she will feel that she failed her lifelong project as a mother (Sarah knows this). The question is now: What ought Sarah do? The answer would hinge on who can reasonably reject the principles of the other party. Since Sarah is the one that is breaking the promise(s) her position to reject either the mother or the owner is weaker. After all, she is imposing the burden on at least one of the others by making a dual promise.

⁴² Scanlon, 153.

⁴³ This concept is often a cornerstone of Confucianism and Chinese culture though almost all cultures share such a conception to some degree. It basically makes a virtue out of honoring one's parents and ancestors. In addition, the children are expected to take care of their parents till death. Though this notion is not so strictly practiced in modern Western cultures, we still hold that we have special duties to our parents.

There are several ways how contractualism could go about this. Scanlon formulates principle M that stipulates how promises are to be kept.⁴⁴ In the present example, I take it that there are no special justifications that Sarah could use that can override her promise to either of the promisees. It is certainly not an emergency or highly unusual situation. She is simultaneously bound by two people through principle M. Now we need a strategy for comparing the burdens of the promisees. Suppose that we reduce the mother's claim of filial piety to a quest to fulfill her projects for personal success. This would be congruent with the owner's claim to become a successful bar owner and it leads Sarah to formulate:

Principle *S*: It is not permissible to hinder individuals from seeking their personal success in life if and only if the realization of their project does not violate some more important principle.⁴⁵

Thus, individuals may strive to achieve whatever it is that they deem to be success (being a good mother etc.) so long as this cannot be reasonably rejected by another's weightier claim. 46 Sarah is violating *S* to both promisees and neither of the promisees are engaging in an activity of success seeking that seems to be able to be reasonably rejected by some other party to this dilemma. 47 Let us further suppose that both will recover from the broken promise to potentially regaining their shot at success after around the same amount of time. This would lead to a tie and the recommended solution should be a coin toss as that is the only way to give equal consideration to both parties 48; a possible solution if we reduce both projects to success seeking. We now have a *G* and Sarah could justify this to herself; but, are we sure that both parties have equal claims? This *could* be an effective way to generate a generic reason that no one could reasonably reject but, as Scanlon himself admits, there is a tension to specify or generalize the principles based on appropriate considerations to all the relevant parties. 49 Perhaps it was too easy to reduce both claims to something like *S*. A closer

⁴⁴ Principle M: In the absence of special justification, it is not permissible for one person, A, in order to get another person, B, to do some act, X (which A wants B to do and which B is morally free to do or not do but would otherwise not do), to lead B to expect that if he or she does X then A will do Y (which B wants but believes that A will otherwise not do), when in fact A has no intention of doing Y if B does X, and A can reasonably foresee that B will suffer significant loss if he or she does X and A does not reciprocate by doing Y. Scanlon, 298.

⁴⁵ In contractualism there are no limits to how many principles there are. The agent is encouraged to formulate their own principles according to the needs of the situation.

⁴⁶ Obviously, this is meant to limit how we seek success by disallowing any conduct that would impose a stronger burden (say stealing to become rich if that is considered success) on other people and allow us to stop the success seeker should they be doing so.

⁴⁷ Owning a bar and being a traditional mother are surely innocent activities.

⁴⁸ Similar to Scanlon's analysis of saving people from drowning. Scanlon, 233.

⁴⁹Idd. 205.

look is necessary. What if one party could have an objection to her justification that both are seeking *S* and that one claim is more stringent than the other.

To determine whether Sarah could (morally) break her promise to one of the parties in favor of the other we must ascertain if she would be doing something wrong. Wrongness in contractualism can be defined as that which cannot be justified.⁵⁰ If it cannot be justified it *can* be reasonably rejected. Sarah comes up with the following solution:

Principle *O*: In a moral dilemma (such as a dual promise) which cannot (seemingly) be resolved according to principles that nobody could reasonably reject, a settlement between the damaged parties should be reached that seeks to mitigate the burdens to all parties as much as possible.

She *imagines* calling her mom and telling her the whole ordeal. The mom, though disappointed in her daughter, tells her that it is best to fulfill her promise to the bar owner and see her first thing tomorrow. The mother reasons that she can carry the burden and that, anyways, the bar owner has a right to have his promise fulfilled. This would be an application of Principle O. Similarly, we can imagine Sarah calling the bar owner who – being morally motivated to justify his claims like the mother- reaches a settlement too. Perhaps he can host the show a bit earlier and let her leave sooner. He would still suffer losses this way, but now he would lose less money and Sarah can still see her mother. There are other possible settlements of course that are in line with O. The above seems completely realistic and it is a boon of contractualism that it could allow something such as principle O. Again, we have both a O and O.

Nonetheless, the issue remains what one ought to do in a *normative* sense. We would still like to know as ethicists which party *would* have had a greater claim if we assume that they cannot be subsumed into principle *S*. After all, it is about what no one *could* reasonably reject and not what agreements people might reach with reasons they *actually* have. ⁵² Moreover, *O* is dangerous in the sense that it already admits moral indeterminacy by calling something a dilemma. We have not *shown* that both parties' claims are equal, but simply come up with a reasonable alternative. We have not shown that (one of) the parties could not

⁵⁰ Elizabeth Ashford and Tim Mulgan in "Contractualism", Stanford Encyclopedia of Philosophy.

⁵¹ She of course, still does not have a phone with her, but it is enough that she imagines it.

Some critics of contractualism have failed to see this distinction in the theory. The theory is not just about what reasons people actually have, but (more importantly) what valid reasons they could have that would allow them to reach hypothetical agreement with other individuals.

reasonably reject O. It should only be a last case resort for the theory. For our purposes, it means that Sarah thinks that she ought to find the best G and J that contractualism may allow.

The issue above concerns that of various values between the two parties. Scanlon introduces the notion of parametric universalism for dealing between various value systems. 53 This notion allows for variation in what is justifiable according to the contingent circumstances of the society or the situation. Thus, Scanlon allows that certain societies may have distinct reasons that create distinct dues. But his account is all too simplistic for both the mother and the bar owner are from the same 'society' yet come from different backgrounds (say the bar owner is not Chinese). The bar owner might not value the notion of filial piety as much as the mother and Sarah do and vice versa; We might say that he, the mother and Sarah do not share the exact same form of reasonableness. Reasonableness entails a shared body of information and a range of issues that are considered relevant.⁵⁴ They might agree on many more fundamental claims about what we owe to each to other, but they could still disagree about something as specific as the relevant reasons and weight of supporting motherhood and not suffering losses. Of course, Sarah must weigh what could be reasonably rejected, not the promisees as it is her responsibility to act, but she must be able to weigh the burdens impartially. If she is to simply carry out her own form of reasonableness she is merely using her own judgment.

The ability to weigh and compare between these different kinds of claims is, I believe, one of the most significant gaps of contractualism. Scanlon does not want to give a general theory of reasons. ⁵⁵ Indeed, if he specified a certain set of values that count as reasons his theory would be redundant (the values are what matter, not the reasons as such). ⁵⁶ He contends by stipulating that reasons are primitive and that one may generally interpret a reason as an argument that states that something counts for it. ⁵⁷ He admits that there are many difficult cases and that one must always practice judgment in assessing principles. The advantage of this approach is that it holds the largest subtlety of the four discussed theories. No reasons are rejected from the onset. ⁵⁸ But this causes the issue of how one could possibly *objectively* weigh such specific goods as the maintenance of motherhood (for a family that practices filial piety) and the success of a small business? Perhaps we ought to apply judgment to this case, but that does not illuminate which has the greater claim. The

⁵³ Scanlon, 329.

⁵⁴ Scanlon, 192.

⁵⁵ Idd, 360.

⁵⁶ See section 5 of the Stanford article on contractualism.

⁵⁷ 17

⁵⁸ The exception would be reasons that would blatantly favor a specific individual or a specific group. No proper nouns or descriptives may be put into a principle. This is in order to prevent it from being 'rigged''. Every individual has equal claim to reasons and each reason must be justifiable to others.

conclusion seems to be a case of moral indeterminateness. Therefore, contractualism, when pressed for precision, will not able to satisfy G.

It is not clear what Sarah ought to do if she really tries to take their reasons for rejecting into account, in this case. If she reduces them to S or O, she will satisfy G, but risk making J inadequate, because there is no way to be sure whether Sarah could justify S or O to the promisees. If she presses further, however, the theory cannot provide a G. There is no central method of weighing other's claims. Like rule-consequentialism, judgment is the ultimate arbiter.

6. Objections: Question begging and puritanical duties

I cannot possibly deal with all objections, but I will try to briefly focus on the most important ones. First, I must reiterate that it was not my purpose to refute any of the theories. The goal was to test each theory according to two common requirements in order to see if they can account for the needs of our daily decisions. The assumption was that this would be a big issue for each theory if they happened to fail. In various degrees, I have argued that they all did. Nonetheless, my addition of condition J did not cause any fundamental disagreements with contractualism and rule-consequentialism. I will only respond to possible objections from the other two, since J did lead to deep disagreements with them.

Act-consequentialists will no doubt object that J is not a requirement for their theory, and that it even begs the question against them. Act-consequentialism considers everyone's value to be equal and the right action must follow from a completely impartial view. Clearly, J assumes that the agent may prioritize their own interests by allowing her to reject acts that ruin her self-respect and dignity. I agree that act-consequentialism does not require it, but I must dig my heels in. How could we live our lives reflectively and with integrity without something like J? It is inconceivable for most (if not all) people not to prioritize their own goals and relationships to a large degree. Daily life is not about the maximization of the common good. The other three theories would agree and so would conventional morality. I am not claiming that J is legitimate beyond argument but we would need a knockout argument to dismiss J as act-consequentialism would want to. I am not aware of such an argument. A second objection they could make is that there might be a construal of value that can account for daily life and that they are not forced to maximize. This is true, and I concede this point. My analysis is, of course, incomplete.

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⁵⁹ They could also go for satisficing.

Kantians will no doubt object that my reading of the FOH was dubious. Arguably, to read it as I have is to deny the notion of perfect duties. If we can put so much detail into the formula only imperfect duties could arise, since one can always break a promise (or lie etc.) some of the time. 60 I have given my response in the respective section, but I admit that my reading removes much of the robustness of the theory, though I did follow the CI-procedure. I challenge Kantians to locate what quality it is exactly that makes it so wrong to break a promise (or lie etc.), even when doing so in my example seems perfectly innocent. Why should it not be left to loved ones to decide among themselves, provided they are honest, committed and not abusive to each other?⁶¹ I have taken the liberty to read the FOH in my own way instead of Kant's way for his own application of it results in so many conclusions that I cannot imagine to be wrong, at all, or even according to the FOH itself. 62 The application of the FOH is clearly not a straightforward affair. There is no definite demarcation as to what details one can and cannot put into it. I have applied it in a way that could make it a plausible tool for the requirements of daily life whilst respecting the CIprocedure. My reading turns it into a tool that services our judgment and not a principle generator.

Conclusion

Let us sum up all the arguments. Global (act) consequentialism does not provide a precise unit of value that can determine between two choices of small consequence (entertainment of an audience of a hundred versus a sick mother). It is questionable whether it can really tell us what to do if it there is no accurate means of quantification. The main issue, however, is more fundamental to the theory. The premises that support J cannot be supported by global consequentialism in the first place. The theory will invariably ask the agent to maximize whether she can justify this to herself and others or not. The value of justification is only one more evaluant that is put into the calculus not a starting point of deliberation itself. It cannot be expected to fulfil the needs of daily life.

If a rule-consequentialist decision procedure is followed, one can satisfy both a G and J, but now the theory is internally inconsistent. Following rules will lead to inefficient

⁶⁰ In effect, this would start resembling contractualism who, to put it in Kantian terms, only has imperfect duties. ⁶¹ These three character traits mirror the three conditions on which Sarah was allowed to break her promise to her mother. See section 4.

⁶² I refer the reader to passages in the *Metaphysics of Morals* where Kant considers masturbation incredibly immoral (425) and a degradation of one's humanity, compares women to objects (282-284) that can be owned, among many other judgments.

maximization which goes against their criterion of the right. This is exactly the critique that global consequentialism uses to reject rule-consequentialism.

Rule-consequentialism has no issues with the original case. It is better to break one rule than two, and, therefore, Sarah should visit the mother complying with the rule to uphold a promise and take care of family against only breaking a promise to the bar-owner. A modified case with no promise to the mother leads to moral indeterminacy. There is no method of choosing between conflicting rules. One is forced to simply use judgment. This is an extra-theoretical last ditch effort, but it will always produce a G.

Kantianism has no method to choose between the two perfect duties of the promises. An extra theoretical arbitrating principle would be required. Therefore, it cannot satisfy G. A charitable reading in a modified case- with only a promise to the mother- of the FOH can allow Sarah to break a promise to the mother by adding details about their relationship into the CI-procedure. This makes the procedure more complicated and judgment will be required to proceed responsibly. A traditional reading requires Sarah to uphold the promise, but now the justification is weak as it is unclear why it is immoral of Sarah to break the promise.

Contractualism can generate several principles such as S and O (seek a settlement) that can plausibly give G. While this can be justified to oneself it is unclear whether it can really be justified to others. More precisely, it is unclear how one can really weigh different subtle burdens without reducing them to a more general principle such as S and O. If one wants to make sure who has the greater claim (not risk being overly reductive), moral indeterminacy results, because subtle burdens cannot be objectively weighed. Like rule-consequentialism and a liberal reading of Kant, judgment is the only option.

At this stage, the reader might be weary of the rather mundane case(s) I have taken in this article. This was done on purpose. The current case illustrates a domestic and relatively innocent situation. Nobody's life, limb or physical or mental constitution is heavily endangered. But these kinds of cases are the ones that people undoubtedly face most often. These relatively trivial cases are the subject matter of most of our moral choices. The literature tends to neglect these cases in favor of more weighty and dramatic (not to mention unlikely and unrealistic) cases that arouse stronger intuitions. No doubt this is a helpful tool to scrutinize our theories with, but they are only a fragment of ethics. We have seen that none of the theories really seem to have an accurate manner of weighing between two subtle considerations whether this concerns the quantification of value or deciding between rules, duties or reasons. It must be repeated that nothing I said excludes the possibility that a reformulation of any of the theories could meet our daily needs.

We can resort, like rule-consequentialism, contractualism and my reading of Kant do, that we must simply exercise judgment when the theories fail to give guidance. If my analysis was convincing to the reader, we would come to the conclusion that judgment is pervasive in daily lives. There is no reliable principle of rightness that can be readily followed.

This raises a question for future inquiry: Are we not better off to simply use judgment in our daily lives instead of normative theory? From the conclusion of this thesis, it would seem that a morally committed and reflective person has no real disadvantage if she would do so. All the same, there is no harm in trying to polish our ideas in the eternal attempt to come up with an ethics that will tell us what kind of person we ought to be. At the very least, it could inform our judgment.

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