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Can Contractualism and Consequentialism be used together in a two-stage model?

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Abstract

Contractualism and consequentialism, two of the most prominent theories in contemporary morality, are often perceived to be in opposition to each other. This essay will propose a novel two-stage system for moral decision-making which combines the two. I will explain how this model retains the strengths of contractualism and consequentialism, whilst resolving many of the problems with the theories as they stand alone.



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Introduction

In this essay I will propose a novel two-stage model for moral decision-making. First, contractualism is used to rule out any acts which are forbidden. Then, *if* this leaves more than one act available, scalar consequentialism is used to order the remaining acts in a continuous scale of deontic status. I will first set out some important definitions. I will then explain the two-stage model and the deontic role of each stage in more detail. I will then demonstrate the two-stage model with an example moral dilemma. Finally, I will explain and respond to the two strongest arguments in opposition to my model: the argument that Parfit's hybrid model is sufficient, and the argument from demandingness.

Definitions

Deontology

Deontology refers to the deontic status (the “rightness” or “wrongness”) of acts. There are many deontological categories, including but not limited to “permissible”, “required”, and “forbidden.” See Harman (2016), for example, for a discussion on further categories.

Contractualism

“Contractualism... holds that an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced general agreement” (Scanlon 1998, 153) For the purposes of this essay, “rule” and “principle” are synonymous.

Consequentialism

Consequentialists argue that the “goodness” of an act's consequences (i.e. the act's axiological value) is what determines the “rightness” of the act (its deontology, as above). Specifically, my two-stage model uses *scalar act-consequentialism*, a pre-existing definition of which is hard to find. Hooker (2008, 1) writes “Act-consequentialism is normally characterised as the view that the rightness or wrongness of any act is a matter of a comparison of that act's consequences with the consequences of alternative acts,” although Hooker himself is a rule-consequentialist. Scalar consequentialists argue that “rightness and wrongness isn't an all-or-nothing issue” (Norcross 2016,

220), although Norcross is a scalar utilitarian. Bringing these two theories together, *scalar act-consequentialism* can be understood as:

The comparison of an act's consequences with the consequences of alternative acts determines the *relative* "rightness" of the available acts.

Clarifications to these definition and justifications for choosing these very specific forms of contractualism and consequentialism will be discussed in the following section.

1. Contractualism
 - a. What principles are unrejectable?
 - b. In this situation, which act(s) conflict with these principles?
2. Scalar act consequentialism

The two-stage model

I will now explain the two-stage model and the deontological role of each stage.

1) Contractualism

The process in step 1a) is the same as in Scanlon's principle contractualism, with one clarification. Scanlon writes that the difference between "reasonable" and "rational" rejection is "not a technical one, but a familiar distinction in ordinary language," but I argue that the distinction is more than linguistic and is vital in understanding the strongest version of contractualism. Scanlon's own example demonstrates the difference (1998, 192-194). It would be *reasonable* for you to request more water from your irritable landowner, but not *rational*, as he will likely be angered and reduce your supply further. Contractualism based on *rational* rejection of principles would place too heavy a weight on circumstantial technicalities such as a landowner's temperament, which should not be a consideration in determining the rightness of your action.

Step 1b) is to determine which of the available acts conflict with the unrejectable principles determined above and are thus forbidden.

Thus far we have not strayed from Scanlon's contractualism, so it is now important to explain why his theory is not sufficient *alone* as a moral theory. In most moral dilemmas, the agent is left with several non-forbidden options after implementing steps 1a) and 1b). There are three views on this problem.

Firstly, Scanlon argues that the contractualist does *not* end up with several options. Contractualism's comparative nature means we weigh up the reasonable "objections to permission" versus the reasonable "objections to prohibition" (1998, 195). Crucially, however, these objections are to *principles*, not *acts*. So, indeed, Scanlonian contractualism does not result in multiple conflicting principles. But nevertheless, several different acts can cohere with these principles.

The second view is Sheinman's, who writes "presumably, when we declare an act rejectable relative to an alternative, we are also declaring the alternative unrejectable" (1998, 306). Sheinman argues here that principle contractualism never results in multiple options, because to reject one principle is to automatically accept the other. However, his presumption is only correct when the number of rejectable acts is exactly one less than the number of available acts (and non-action is also rejectable/impermissible). For example, if there are three available acts, to declare two of the acts rejectable *is* to declare the third act unrejectable. But if there are five available acts, to declare two of them unrejectable is to say nothing of the other three.

I argue for a third view: contractualism *does* often leave the agent with several available, non-forbidden acts but this is not necessarily problematic. This is exactly why the two-stage model is required. To attempt to use Scanlonian contractualism to justify *only* one act in a moral situation is misconceived and is to weaken an otherwise very sound moral theory.

I will now explain the deontological role (and limits) of contractualism in more detail. As discussed, the strongest version of principle contractualism only determines which acts are **forbidden** (as it is framed in Scanlon's definition). Sheinman (2001, 292-293) defines contractualism by framing it around two other deontological statuses:

A has an **obligation** to do X (and A's failure to do X is wrong) just when principles no one could reasonably reject as public standards of behaviour (unrejectable principles) require A to do X.

Additionally/alternatively:

A's doing X is right (**permissible**) just when A's doing X conforms to unrejectable principles.

Sheinman presumes that principle contractualism "includes both prongs." This sweeping presumption is made with little consideration for the effect this would

have on the role of the theory. Being obligated to do act X means the agent has a duty to do X. Failure to do X would constitute a moral wrong. Being permitted to do X, however, means the agent is allowed to do X, but failure to do X does *not* constitute a moral wrong. More importantly, neither of Sheinman's definitions are accurate of Scanlonian contractualism. It may appear that Sheinman's second definition (re: permissible) is simply another way of wording Scanlon's definition (re: forbidden). However, as explained above, if the contractualist determines that one act is forbidden (or rejectable), they have not necessarily determined that any alternative acts are permissible (or unrejectable).

Scanlon's conception of "what we owe to each other" does have some constraints (see 1998, 180-187), such as not being directly applicable to nature. But as I have argued, the strongest version of contractualism is even more minimal: it is used in my model *only* to determine which acts are forbidden according to "what we owe to each other". Scanlon does briefly suggest a hybrid system of contractualism and another theory, to resolve the conflicts between contractualism and intuition: he suggests that once "what we owe to each other" is established, another moral value could be used to make decisions (1998, 231). This is exactly what I am arguing for in this essay. Scanlon writes that such a system's "hybrid character is unsatisfying," but does not elaborate. Scanlon does explain (1998, 246) that his moral theory does not specify named moral values (e.g. welfare or good consequences) because the purpose of moral theory is not to remove moral judgement entirely. However, as will be demonstrated in the *Example* section, the use of *scalar* consequentialism ensures that judgement is very much still needed in the two-stage model.

If the process so far leaves only one available act remaining, then the moral decision-making process stops here. IF, however, there are several acts remaining after steps 1a) and 1b), the agent moves on to step two.

2) Consequentialism

Consequentialism is only used if contractualism is inconclusive. As we are using scalar act consequentialism, the remaining acts (those which have not been forbidden by contractualism) are ordered according the *relative* optimificity of their consequences.

I will now justify the use of *scalar* consequentialism. The decision-making agent would be misled to attempt to use consequentialism to sort acts into discrete categories of "permissible", "obligatory" etc. It makes sense to use contractualism to put acts into

(exactly) two discrete categories, “forbidden” or “not forbidden”, because the question “Does the act conflict with unrejectable principles?” has (exactly) two answers: yes or no. However, it is nonsensical to use consequentialism to put acts into discrete categories because “How good are the act’s consequences?” is not a yes/no question. It is impossible to effectively use a continuous axiological value (goodness) to place acts into discrete deontological categories (Norcross 2016). Thus, scalar consequentialism is the stronger version of consequentialism.

Act-consequentialism is used rather than rule-consequentialism because using rule-consequentialism would mean the two-stage model would be as follows:

1) Contractualism

- a) What principles are unrejectable?
- b) In this situation, which act(s) conflict with those principles?

2) Consequentialism

- a) Which principles generally have the best consequences?
- b) In this situation, which acts conform/conflict with those principles?

A model using two separate sets of rules would be confusing and convoluted.

The problems which usually apply to act-consequentialism do not apply in the two-stage model. For example, Hooker argues that act-consequentialism (but not rule-consequentialism) often leads to acts which contradict our intuitive moral judgments (2008, 4-5). For example, suppose that Fabio physically harms Antonio to obtain a benefit to himself which is *very slightly* larger than the harm done to Antonio. Rule-consequentialism would hold that this act is wrong, because it conflicts with a rule (“do not physically harm people”), the acceptance of which generally has better consequences than its non-acceptance. Act-consequentialism would hold that Fabio’s action was right because it had better consequences than not performing the act. I agree with Hooker that rule-consequentialism coheres better with our intuition than act-consequentialism does in examples such as these (which are indeed common). I also agree that cohering with our intuition is an important marker to consider. However, this is not problematic for my model. Such unintuitive acts would have been ruled out by contractualism in stage 1b). Fabio’s harming of Antonio would conflict with the unrejectable principle “do not physically harm people”, so would not have made it past stage 1. In the two-stage model, act-contractualism is only applied to acts which Scanlonian contractualism does not forbid.

Example

I will now use the moral dilemma of eating meat to demonstrate how the two-stage model is used. Note that another agent could disagree with me on the decisions made at each stage, but the specifics of this exact dilemma are unimportant here.

1) Contractualism

1a) Which principles are reasonably unrejectable? The relevant unrejectable principle here is “Do not harm living beings”.

1b) In this situation, which act(s) conflict with these principles? Clearly, killing/hunting an animal oneself conflicts with the above principle, and is thus forbidden.

This is all we can clearly say using contractualism.

At this point we have several acts still available, so we proceed:

2) Consequentialism.

The remaining acts are considered and ordered according to the optimificity of their consequences, resulting in a scale which can be conceived as follows:

Most optimific consequences



- Never eating meat or animal products
- Never eating meat, eating animal products
- Occasionally eating meat
- Regularly eating meat

Least optimific consequences

The agent then judges which of these acts to implement. Moral theory cannot remove the need for situation-based judgement (and it is mistaken for moral theorists to think that it can). The two-stage model is used to inform the agent of the “rightness” of the available acts, *relative* to each other, so that the agent can decide which act to do.

Objections and responses

Objection One: Parfit

Derek Parfit, in *On What Matters: Vol. III* (2011) proposes a different hybrid model of contractualism and consequentialism. His Triple Theory combines Scanlonian contractualism, Kantian contractualism, and Rule-Consequentialism. A proponent of Triple Theory might ask three questions, which I will answer in turn.

Why not include Kantian contractualism?

Kantian contractualism is based on rationality which, as I argued in the section *Two-Stage Model*, is an inferior basis of morality to reasonableness.

Why not consider the theories side-by-side? What is the need for a hierarchy?

The problem with Parfit's model is its contradictions. There are many cases in which consequentialism and contractualism differ in their outcomes, which Parfit does acknowledge throughout chapter 81. The hierarchical system solves precisely that problem. There are two types of contradiction:

Type one: Contractualism forbids the act, but it has good consequences.

This is quite common. For example, the "killing/hunting animals" option above would fall into this category if the agent is a hunter who makes their entire livelihood by killing animals. But in the two-stage model if contractualism forbids it then we do not consider consequentialism, so this contradiction never arises.

Type two: Contractualism does not forbid the act, but it has bad consequences.

This is very common, for example the "regularly eating meat" act in the above example. This is precisely why we have consequentialism as a second stage, to determine which of several contractually-non-forbidden acts to do.

Roughly speaking, combining the two theories means that if the act is contractually forbidden AND/OR has bad consequences (relative to the other available acts), we should not do it, removing the problem of contradictions.

Why is contractualism prioritised first?

It would make no difference to the outcome of the two-stage theory if the order of the two stages was reversed. One could place *all* the available options in order of optimificity of consequences, *then* exclude those options which are contractually forbidden, and end up with the same results as with the current formation. This is simply more labour-intensive.

Objection Two: Demandingness

The argument from demandingness is a common criticism of consequentialism. The objection claims that it is too demanding to expect agents to do the *most* optimific act in every situation. The response to this objection has largely already been addressed in the discussion of *scalar* consequentialism. When consequentialism is rid of deontological categories, we avoid strange situations where the only “permissible” act is one which seems above and beyond what is intuitively expected of someone. Rather, we have a range of available acts on a scale, and, as discussed, the agent chooses which to implement.

Conclusion

The two-stage model fills in many of the gaps in other moral theories. There is no attempt to determine which singular act is permitted from a theory which is much stronger when only used to determine which acts are forbidden (Scanlonian contractualism). There is no mistaken use of a continuous axiological value to categorise acts into deontic status groups, as in non-scalar consequentialism. There is no justification of unintuitive acts, as there is in act-consequentialism. Finally, there are no problematic contradictions, as there are in Parfit’s non-hierarchical Triple Theory. Combining the strongest versions of contractualism and consequentialism constructs a much stronger model for moral decision-making.

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