

## Towards a Sentimental Contractualism

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**Abstract:** This paper explores the potential for a marriage between a sentimentalist moral psychology and a contractualist ethical theory. My aim is to show that sentimentalism and contractualism, together, may have the resources to address some of the serious problems plaguing each individually. My general point is two-fold: (1) contractualism provides a way for sentimentalists to avoid the charge of relativism; and (2) sentimentalism provides a way for contractualists to better include non-human animals, mentally handicapped people, and young children in the contract. In this way, I suggest that sentimentalist moral psychology and contractualist normative ethical theory, when combined into one position, is stronger than either taken alone. I call this position *sentimental contractualism*.

### 1. Introduction

This paper explores the potential for a marriage between a sentimentalist moral psychology and a contractualist ethical theory. My aim is to show that sentimentalism and contractualism, together, may have the resources to address some of the serious problems plaguing each individually. My general point is two-fold: (1) contractualism provides a way for sentimentalists to avoid the charge of relativism; and (2) sentimentalism provides a way for contractualists to better include non-human animals, mentally handicapped people, and young children in the contract. In this way, I suggest that sentimentalist moral psychology and contractualist normative ethical theory, when combined into one position, is stronger than either taken alone. I call this position *sentimental contractualism*.

An all-out defense of this novel position requires defending moral sentimentalism and contractualism individually. I am not, however, able to take on the entirety of this project in the space of this paper. Rather, my aim here is merely to motivate what I hope to be a much larger future project. For this reason, what follows is best thought of as a *sketch* of sentimental contractualism—rather than its detailed formulation and defense.

The plan is as follows: in sections (2) and (3), I briefly characterize sentimentalism and its apparent vulnerability to the charge of relativism. In sections (4) and (5), I discuss contractualism and its apparent inability to include irrational (or unreasonable) individuals under the protection of the contract. I present, in section (6),

the way in which I envision sentimental contractualism to be a potential solution to both of these problems. I conclude, in section (7), by setting future goals for this project.

## 2. Varieties of Sentimentalism

A discussion of moral sentimentalism finds its natural starting point in the words of David Hume, “The final sentence... which pronounces characters or actions amiable or odious, praiseworthy or blameable... depends on some internal sense or feeling which nature has made universal in the whole species” (Hume 1975, 172-73). Morality, Hume famously claims, “... is more properly felt than judged of” (Hume 1978, 470) Within meta-ethics, however, there has been much disagreement as to how this Humean sentimentalist view should play out. For the purposes of this paper, I distinguish between three families of sentimentalist positions: normative, semantic, and psychological.

On some accounts of moral sentimentalism (apparently including Hume’s own), an action is to be judged morally right only if certain sentiments of approbation are appropriate towards it. On this view, appropriate sentiments can justify moral judgments (Wiggins 1991, McDowell 1985, Hume 1975). I characterize this view as:

*normative sentimentalism*: appropriate sentiments lead us to the correct moral judgments and actions.

Normative sentimentalism has been notoriously hard to defend. One of the main reasons for this difficulty is that any attempt to defend normative sentimentalism appears to be circular. Afterall, how can we deem a particular sentiment appropriate to a certain feature of the world without having an antecedent conception of what sorts of acts should match up with what sorts of sentiments?<sup>1</sup> For reasons having to do with this apparent circularity, I do not endorse normative sentimentalism.

Other proponents of sentimentalism have taken it to be a semantic thesis. On these views, when we make a moral statement, our statement just indicates that we are evincing some sort of non-cognitive sentiment. Here, we can include traditional emotivism and prescriptivism (Ayer 1936, Stevenson 1937, and Hare 1952). According to traditional emotivism, the statement “Murder is wrong,” is equivalent to “Boo,

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<sup>1</sup> Wiggins agrees that there is circularity here, but denies that it is vicious. To the charge of circularity, he writes “I reply that, on a proper understanding of the point of subjectivism and its having no need to supplant valuational by non-valuational language, the circularity is benign...” (Wiggins 1991, 228).

murder!” Prescriptivism contends that moral statements amount to prescriptions either to do or not to do a given act. Meta-ethical expressivism is a contemporary version of semantic sentimentalism, equating moral statements with the expression of commitments to system of norms, or planning states (Blackburn 1993, 1998, Gibbard 1990, 2003). I characterize this family of views as:

*semantic sentimentalism*: evaluative and moral terms are semantically equivalent to the evincing of non-cognitive states of mind.

Like normative sentimentalism, there have been tremendous difficulties for defenders of semantic sentimentalism. Specifically, emotivism, prescriptivism, and expressivism seem to fall prey to the Frege-Geach problem of embedding (Geach 1960). This problem makes the following charge: (1) if moral statements are non-cognitive evincings of attitudes, then they cannot take truth values and cannot function in logically embedded contexts. (2) We *do* use moral statements in logical contexts that require them to take truth-values. Therefore (3), emotivism, prescriptivism, expressivism fails to adequately capture moral discourse.<sup>2</sup> A similar and more general problem for semantic sentimentalism, however, is this: people generally *do mean* to assert truth-functional statements when they issue moral utterances like “Kicking puppies is wrong.” Our moral discourse is chock-full of claims with, what Richard Joyce calls, *assertoric force* (Joyce 2001, 12). In that regard, the expressivist’s attempt to reinterpret these statements as non-truth-evaluable seems to do injustice to what people actually take themselves to be doing when they issue moral utterances. For these reasons, I am unwilling to endorse semantic sentimentalism.

Besides normative and semantic versions, there is a purely descriptive or psychological form of moral sentimentalism. On this account, to believe that something is morally wrong (or right) crucially involves having a sentiment of disapprobation (or approbation) towards it. (D’Arms and Jacobson 2000; Prinz 2006, 2007; Nichols 2002, 2004). I call this family of views,

*psychological sentimentalism*: evaluation, and in particular moral evaluation, is somehow grounded in human sentiment.

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<sup>2</sup> There is at least one plausible recent solution to this problem that I shall be unable to treat in this paper (Ridge 2006).

This position avoids the problems of circularity that confront normative sentimentalism because it makes no claim about whether our sentiments lead us to justified moral beliefs. Psychological sentimentalism is merely a descriptive thesis emphasizing the link between human moral judgment and the presence of human sentiment. Neither does psychological sentimentalism make any problematic claims about how people use moral language. Rather, it allows for the fact that people use moral language in a plurality of ways.

Psychological sentimentalism strikes me as the most attractive and defensible version of moral sentimentalism. In the absence any definitive arguments for this position, however, I can only offer some *prima facie* reasons why this is so. (1) There is recent and convincing empirically-based psychology and brain science that points to (some sort of) link between moral judgment and human sentiments (Greene et al. 2001, 2004; Haidt 2001; Moll et al. 2007, 2008). (2) Emphasizing the role of sentiments in morality makes sense of the motivating nature of moral statements (the Humean theory of motivation). (3) Connecting morality to human sentiments better explains why the most persistent and agreed-upon moral norms across time and cultures have been those most closely tied to sentiments of disgust (Nichols 2002, 2004).

For the forgoing reasons, when I speak of sentimentalism in the remainder of the paper, I refer to psychological sentimentalism.

### 3. Sentimentalism and Relativism

Even if a purely descriptive, psychological version of sentimentalism can avoid the problems associated with normative and semantic sentimentalism, there remains one serious concern. Namely, any theory that grounds morality in human sentiments seems vulnerable to the charge of relativism.

Here is an argument for why moral sentimentalism seems inherently relativistic:

- (1) Sentimentalism grounds morality in human sentiments.
- (2) Different people have different sentiments about the same things.
- (3) Therefore, morality is grounded differently for different people.

If our moral beliefs (in some way) arise from sentiments of approbation or disapprobation for things in the world, then each person's morality springs from his or her own

psychological states. If morality is grounded in subjective psychological experience, then there can be no mind-external, objective measure of moral right and wrong. Without such an objective measure, sentimentalism seems committed to some form of moral relativism.

What is the problem with moral relativism? Relativistic views, for one thing, leave open the possibility that the Hitler and the Nazis *might not* have been morally wrong. After all, morality is grounded in individual's sentiments; Hitler had certain feelings about the world, and his moral appraisals were linked up to those feelings. Who are we to criticize them?

The sentimentalist might reply something like this. Sentimentalism indeed does ground morality in individual's sentiments. But sentimentalists are entitled to a *first person privilege* to their own sentiments, and as such, are still able to criticize others. My reaction to Hitler's 'final solution' is one of extreme disapprobation. And I am perfectly licensed to conclude that, from my perspective, what Hitler did was depraved, impermissible, and wrong. Just because this sentiment of disapprobation is grounded in my own psychology and not in the mind-external world, does not mean I am not allowed credit my own judgments as being better than other people's. And on the basis of these first-person-privileged moral sentiments, I can still criticize Hitler and the Nazis.

Though this response appears to make some headway in addressing the charge of relativism against the sentimentalist, it cannot get all the way around it. The reason is this. One of the things an objective morality is able to do is to resolve disputes between people with differing moral opinions. The problem with sentimentalism, even with a privileged first-person point of view, is that there is little hope of adjudicating between disputes over matters of moral import. Suppose I am the sentimentalist with severe disapprobation towards Hitler's regime. Now, imagine I run into William-the-white supremacist in the produce aisle of our local supermarket. When I enter into a heated dialogue with William-the-white-supremacist, how am I to convince him that his position is the wrong one? It seems all I can say is something about how I feel about the Holocaust—and how much disapproval I have for it. Maybe I can shake my fist while I say just how much disapprobation I feel toward what Hitler did. But when William-the-

white-supremacist says he feels the opposite about the Holocaust, there is no arbitration possible: no moral law, no divine command, nothing to adjudicate the disagreement.

Indeed, it is on the basis of this problem, that relativism seems especially troubling for the sentimentalist.

#### 4. Contract-based Moral Theories: Contactarianism vs. Contractualism

The central purpose of this paper, as indicated in my introduction, is to explore the potential for a contractualist solution to the problem of relativism for the sentimentalist. Before doing so, however, something should be said about what it means to be contract theorist in normative ethics as well as something about some of the main differences between approaches taken by various contract-based theories.

Contract theory in ethics is about the origin and justification of moral rules. The most basic formulation of a contract-based ethical theory states the following:

*Moral Contract Theory:* Moral rules get their authority from a contract or mutual agreement, either hypothetical or actual, between members of a given human society.

Any discussion of contract-based moral theory finds its natural starting point in Thomas Hobbes's seminal piece of political theory, *The Leviathan* (1651). According to Hobbes, people are inherently self-interested agents. Hobbes has us imagine an original "state of nature" in which people could not attain any basic goods because they are too fearful of relying on others. Hobbes describes pre-contract human life as "solitary, poor, nasty, brutish, and short." In this state of nature, individuals cannot relax their guard due to constant fear of each other. The prudent person, on Hobbes view, comes to realize that it really is in his or her own best interest to enter into a contract with the other members of his or her society: namely, a minimal set of maxims of prudence to be enforced by a strong sovereign, or Leviathan. A minimal set of maxims like these, it is supposed, is all our set of moral rules is (Hobbes 1651).

There have been various attempts at constructing ethical systems according to such a contractual rubric. Following Hobbes, David Gauthier presupposes psychological egoism, and argues for a conception of normative ethics according to which, "We shall define the traditional conception of morality as a rational constraint on the pursuit of

individual interest” (Gauthier 1986, 2). On this view, morality is a system of principles such that it is advantageous for everyone, if everyone accepts it. Gauthier’s version of contract-theory is based on mutual advantage—thereby accommodating the inherent self-interested nature of humans. Contract-based moral theories that presuppose the inherent self-interested nature of participants are called *contractarian*.

There have been some contract theorists, however, who do not presuppose psychological egoism. John Rawls, in his book, *A Theory of Justice* (1971), bases his conception of the contract on mutual respect rather than egoism. On Rawls’s account, bargainers in the original position go behind a “veil of ignorance” in order to form agreement on a set of rules that will govern society. Behind this metaphorical veil of ignorance, bargainers do not know their place in society, class, gender, race, religion, generation, or social status (Rawls 1971). From behind this veil of ignorance, bargainers are thought to come up with fair and equitable principles.<sup>3</sup>

Another non-egoistic version of contract theory comes from T. M. Scanlon. According to Scanlon,

An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis for informed unforced general agreement (Scanlon 1982, 110).

On Scanlon’s view, actions are right or wrong in virtue of being allowed or disallowed by a system of rules which no one would reasonably reject. Rather than serving mutual advantage, Scanlon sees the contract as a set of rules with which people could not reasonably disagree—out of respect for each other. Contract-based systems, like Rawls’s and Scanlon’s that do not presuppose the inherent self-interest of participants, are called *contractualist*.

As mentioned above, I cannot fully defend any particular version of contract-theory in this paper. That said, I take Scanlon’s version to be, *prima facie*, attractive over the others I mentioned for the following reasons: (1) it is far from obvious that human agents *always* act egoistically; many people report altruistic motives for action, and

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<sup>3</sup> Rawls is primarily concerned with *justice*, rather than normative ethics. As such, my reference to him here is meant only as a contrast to Hobbesian approaches—not a suggestion that Rawls took himself to be addressing any of the issues I am discussing in normative ethics.

psychological egoism, I take it, is in the business of calling these people liars. I do not like calling people liars, so I do not feel comfortable with presupposing egoism.<sup>4</sup> (2) Scanlon's version of contractualism explicitly conceives of the contract as hypothetical. This is apparent in Scanlon's above description of the contract as a set of rules "which no one could reasonably reject." It is not that all members of society have *actually* considered and rejected every other system of rules that is logically possible. Rather, Scanlon builds his contractualism on the notion that our moral rules arise as a system that people would not reject *if they considered it*—in a hypothetical fashion. This approach enjoys the benefit of not claiming that people actually have agreed on anything, which seems implausible. Finally (3), Rawls's veil of ignorance approach strikes me as having smuggled egalitarian conclusions into its set-up conditions. There is an air of fallacy in the project of employing forced equality into the machinery of the veil of ignorance which is, itself, supposed to yield egalitarianism as its conclusion.

For these reasons, in this paper I adopt a Scanlon-style contractualist approach to contract theory.

##### 5. Contractualism: Who Gets Protected by the Contract?

Even if Scanlon's version of contractualism escapes the problems associated with the Rawlsian approach, as well as any problems with psychological egoism associated with contractarian versions, there remains one serious problem. Namely this: any contract-based ethical system seems to have problems with not being able to necessarily include irrational or unreasonable parties from consideration and protection under the contract.

Here is an argument for why this appears to be a problem for any contract-based ethical theory:

(A) Contract-based approaches to morality ground moral rules on what rational or reasonable people would accept (or reject).

(B) Given (A), only reasonable or rational people are necessarily considered when forming systems of moral rules.

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<sup>4</sup> Note: I am not suggesting that psychological egoism is false, only that, for it to be true, people would have to have mistaken access to their motivations. This is an implication I am hoping to avoid.

(C) Given (A) and (B), it is possible that unreasonable or irrational beings get left out of consideration when forming the contract, and are thereby not necessarily protected by it.

(D) Given (C), it is possible that non-human animals, mentally handicapped people, and young children, in virtue of being unreasonable or irrational, are left out of consideration and are unprotected by the contract.

(E) The above formulation of (D) is unacceptable.

(F) Therefore, contract-based approaches are not viable.

The above argument, or something similar to it, has been the cause for much trepidation with regard to contract-based approaches to morality. I take one of the reasons for this to be as follows. One of the things we need our morality to do is to give protection to those members of society who cannot fend for themselves. However, as the above argument shows, contract approaches allow a large swath of the most vulnerable members of society to be left out of consideration in the formation of the contract and the protection it offers. The upshot is this: if you are not capable of reason or rationality, then you do not necessarily get the benefits of contract-based morality. This conclusion is disturbing.

The contractualist might respond something like this. It is indeed true that the contract is founded on the principles that reasonable or rational people would not reject. But this does not mean that we reasonable folks cannot think about unreasonable beings (non-human animals, mentally handicapped people, and young children) when forming the contract. It just means that we think people *would* reasonably reject systems of rules that leave irrational or unreasonable people out of the protections that the contract offers. This response amounts to an optimism about peoples' tendency towards benevolence with regard to irrational and vulnerable members of society. If people would indeed reject systems of rules that do not offer protection to the weakest members of society based on their benevolent natures, then it seems that the contract can protect non-human animals, mentally handicapped people, and young children after all.

Though I agree that this type of response makes some progress towards countering the above argument, I argue (in the following section) that the contractualist would benefit from a more secure, principled reason for considering irrational agents when forming the contract. I maintain that, if we *can* construct a version of

contractualism which gives a principled reason for considering non-human animals, mentally handicapped people, and young children in the formation of the contract—without relying on the benevolent nature of bargainers—this would be, on balance, preferable to a system where that relies on the good-nature of those negotiating the contract.

So let us consider, in the next section, a potential way of doing this.

## 6. Sentimental Contractualism: A Potential Solution?

So far, I have argued that moral sentimentalism has the problem of being vulnerable to moral relativism. And contractualist normative theory has the problem of not necessarily being able to include irrational (or unreasonable) members of society under the protection of the contract.

In this section, I propose the following solution to both of these problems: *The Sentimental Contractualist Solution*: sentimentalists can appeal to a hypothetical contract between members of a society to avoid the charge of moral relativism; and contractualists can appeal to the sentimental grounding of morality to better motivate the inclusion of non-human animals, mentally handicapped people, and young children under the protection of the contract.

Let me say something about each of the two parts of the solution respectively.

### 6.1 Contract and the Charge of Relativism for the Sentimentalist

Recall that moral sentimentalism seems particularly vulnerable to the problem of moral relativism. If morality is grounded in the sentiments, then morality springs from individual's subjective psychological states, and there can be no mind-external arbitration between moral disputes. If no such arbitration is possible, then moral relativism rears its ugly head in a powerful way.

Recall additionally, however, that the version of sentimentalism I am supporting is purely descriptive or psychological. It makes no claim about which sentiments are the correct ones for identifying or justifying moral action. Rather, psychological sentimentalism merely claims that our moral beliefs and judgments are grounded (in some way) in human sentiments. This position importantly leaves open the question of which moral norms are the correct ones. Here is where contractualism can step in to

inform the sentimentalist. Specifically, contractualism has the resources to provide the crucial normative element and arbitration-ability to a sentimentalist psychological view. On the solution I am describing, the sentimentalist can appeal to a Scanlon-style hypothetical agreement between agents to ground certain sentimental-based norms over others.

Let us go back to the example of William-the-white-supremacist. Before, when I ran into William in the produce aisle of our local supermarket, I did not have much to say to him. All I could do was shake my fist emphatically and insist that my sentiments on the matter of Hitler's 'final solution' are (in some way) superior to his. But now that I am aware of my ability to draw on a contractualist normative grounding, I seem to be able to say much more. I might say something like this: "Look William-the-white supremacist, Hitler's 'final solution' was morally wrong because it would be disallowed by a system of rules regulating behavior that no reasonable person would reject." I could go on, "People just would reject a system of rules according to which someone can just decide to wipe out a whole race of humans." If William disagrees, I could even take a little survey among my fellow grocery shoppers. I could jump upon a box of Florida oranges and exclaim, "Who among us would not reject a system of rules according to which it would be acceptable to wipe out a whole human race?" When my shopping comrades remain silent, perhaps William would come to realize some small aspect of the deplorable nature of Hitler's regime—either that or he would punch me in the face and continue shopping. The point is that contract theory lets me say something; whereas sentimentalism alone leaves me mute. Contractualism gives me a way of appealing to some external arbitration on the matter, rather than nothing at all.

This, in itself, strikes me as a powerful virtue of sentimental contractualism.

## 6.2 Sentimentalism and the Exclusion of Irrational Beings from the Contract

Recall that contract-based normative ethical systems do not offer any principled reason to include irrational or unreasonable beings from consideration and protection under the contract. If the way we devise the contract is by appealing to what reasonable or rational people could not reasonably reject, then no necessary consideration is made of non-human animals, mentally handicapped people, and young children, because they fail

to meet the rationality or reasonability requirement. As such, contract-theories rely on the benevolent nature of bargainers to establish any protection for irrational or unreasonable members of society. Since it is far from clear that humans are reliably benevolent (as the egoistic contractarians would suggest), there seems to be some cause for doubting whether non-human animals, mentally handicapped people, and young children would be able to enjoy the protection of the contract. Since these are the most vulnerable members of our society, any morality does not necessarily include them seems particularly flawed.

Recall additionally, however, that the view of contractualism I have adopted need not require that we form the contract from a self-interested motive. The formation of the contract, on a contractualist view, allows for the motive to be one of mutual respect. Here is where sentimentalist moral psychology can step in. Specifically, non-human animals, mentally handicapped people, and young children may not be rational or reasonable, but they surely have sentiments. If morality is seen to be grounded in sentiments, and non-human animals, mentally handicapped people, and young children are seen to have sentiments, then perhaps we can have a good reason after all to consider them in the contract.

This proposed solution suggests the following revision to the traditional Scanlon-style view of contractualism. Rather than including non-human animals, mentally handicapped people, and young children under the protection of the contract out of benevolence alone, we can include these beings because they share the relevant precondition for having moral beliefs and judgments: they have sentiments. Since non-human animals, mentally handicapped people, and young children are all the sorts of beings with sentiments, and that is where morality is grounded, it seems we do have a secure reason for including them in the contract.

It should be noted here that I am not suggesting that non-human animals, mentally handicapped people, and very young children are capable of forming and accepting moral beliefs and judgments. The thought that dogs and infants form and accept beliefs about what is morally right or wrong is an implausible one. However, it is my contention that moral sentimentalism shows that these irrational and unreasonable beings share an important feature with mature moral agents. Namely, they share sentiments. This

certainly provides more of a reason for their consideration in the contract, then if rationality is thought to be the only relevant desiderata for inclusion in the contract. Indeed it is on the basis of this shared feature of sentiments that I contend sentimental contractualism, on balance, is more accommodating to these vulnerable members of society than contractualism alone.

## 7. Conclusion

There is much more work that needs to be done to adequately flesh out the view that I have been calling sentimental contractualism. This work will require the following sorts of undertakings: (1) independently defending and explaining the precise role of the sentiments in moral belief and judgment; (2) more thoroughly describing what the sentiments are; (3) exploring whether sentimental contractualism truly escapes all species of moral relativism; (4) analyzing whether contractualism's reliance on a hypothetical agreement makes morality arbitrary in some deleterious sense; and (5) discussing whether basing morality on agreed-upon systems of rules accommodates the desire we have for morality to be categorical rather than hypothetical.

For now, however, I have been content to sketch sentimental contractualism as a potential solution to some of the serious problems plaguing sentimentalism and contractualism individually. If my arguments are sound, and sentimental contractualism can make some important strides towards solving the problem of relativism—while still offering a principled reason for including our most vulnerable members of society in the contract, then the marriage between sentimentalist moral psychology and contractualist ethical theory might be a happy one indeed.

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