

The Contractarian Theory of Morals: Frequently Asked Questions

Introduction

Here are the Frequently asked Questions, or Frequently made Accusations; but we'll cast them in the form of questions. The questions go like this:

Isn't it the case that –

1. „Contractarianism refers to a contract that isn't worth the paper it's not written on“;
2. „Contractarianism with its appeal to prudence doesn't deserve to be called an ethical theory“;
3. „Contractarianism is incomplete since it can justify just a few rules, like rules against killing, stealing or cheating“;
4. „Contractarianism might show that it is rational to have those rules but not why I myself should obey those rules“;
5. „Contractarianism leaves all those who are incapable of entering into an agreement without protection“;
6. „Contractarianism has some truly nasty implications since it seems to justify the oppression of minorities.“

To respond to these, we need to re-explain the idea. The contractarian theory about morals is a very distinctive one, is very easily misunderstood or, worse yet, perverted, has been viewed with alarm by many writers, and disdain by even more. There are reasons for both. But there are different kinds of criticisms, not all of them to the same effect and some even at cross purposes with each other. This, as will be seen, is quite notably the case with the set of familiar questions listed above.

As one who began his career in this subject with the utilitarians, it took some time for me to see the point of Contractarianism. But once seen, it is very hard indeed to get away from this outlook, and it can even be argued that a theorist has no real choice but to live with it. The burden of the present exposition, which makes no pretension to originality – quite the reverse, actually – is to explain in general terms what the theory is trying to do, why it is called „Contractarianism,“ rather than something else, and what its broader implications would appear to be. In the course of this, we shall see what to say about the familiar criticisms listed. Hence in the lingo of these techno-times, this is my attempt at a Contractarian FAQ.

1. What Contractarianism Is and Isn't: the Background

The contractarian idea, as we may call it, has been around for a long time – more than hinted at in the writings of Plato, recurring in embryo form in Epicurus, and of course full-blown in the work of Thomas Hobbes. The example of Hobbes, however, brings up the need for an immediate distinction, for in Hobbes' masterpiece „Leviathan“, his avowed main purpose is to justify the State. To do so, he appeals to a moral theory, which he applies to the political problem. Ever thereafter there has been confusion, usually quite thorough going, between Hobbes' moral theory and his political theory. It is the moral theory that we are directly concerned with here. The question

to ask about Hobbes's political theory is whether it is a correct application of the moral theory. I believe that it is not. For that reason, if the perceived problem with Contractarianism is that its political consequences are awful, then we must at least consider the possibility that the fault might lie, not in the contractarian moral theory itself, but in the attempt to extract political blood from contractarian turnips. We will see. But we can't even discuss the question intelligibly until the distinction is clear.

Hobbes' substantive moral theory is encapsulated in the set of what he calls the „Laws of Nature,“ a terminology which suggests, very reasonably, that this is a sort of „natural law“ theory of ethics. But if we want to call it that, we must be very aware of a major difference between two ideas of Natural Law. One involves the obscure idea that the trees can tell us what to do: we look at natural things, and they command us to do this or that; e.g., they do it by having a „natural purpose“ which we must pursue. Of course, as soon as you put it that way, the question arises why I should listen to trees even if they did have anything to say, and why I should pursue a natural purpose if I don't actually see any point in doing so.

The other idea of Natural Law is much more general. It simply says that the „laws“, that is, the rules of morals, are somehow to be got by finding „natural“ truths, i.e., descriptive, empirically confirmed or at least confirmable premises about how things are, including how people are, and then reasoning from those to the best view of morals. So described, it is very difficult not to be a Natural Law theorist. But we shall narrow the notion a

Aufklärung und Kritik, Sonderheft 7/2003

bit by specifically excluding from the range of theories intended the view that morals is nothing but a social convention, that is, that the correct or true set of moral principles is whatever one's society has decreed to be such – that society's marching orders are the only marching orders there are. A Natural Law theory, however, has it that the social convention theory would be true only if that particular society in question happened to get it right – which it might very well not have.

2. What Contractarianism Is and Isn't: Morals and Morality

Contractarianism is a theory of morals, but what is morality? By this I mean, which of various possible directives that we might look to for any sort of guidance to our conduct are the ones called „moral“? As I understand this question, it is not intended to be a profoundly difficult philosophical question, but just an effort to be clear what we are talking about. The word 'moral' is no doubt used in more than one way, to be sure, and if so we will need to select among the familiar meanings the one that applies here. But in fact, the meanings aren't so diverse that the choice among them is arbitrary. In the main, there are two notions going here. One is that morality has to do with controlling one's passions; this is perhaps better called 'ethics,' but it doesn't matter. It was the meaning assigned to 'moral' by Aristotle (or rather, by his translators, by whom I am necessarily guided). The other is that morality is, roughly speaking, Rules for the Group. But the two are not unrelated, for a „rule“ is something that is intended to override one's passions. Given the right set of rules, morality in the second sense requires morality in the first.

The idea of „rules for the group,“ as I call it, has an extremely important ambiguity in turn. Are these (1) the actual rules for an actual group? Or are they (2) the „true“ or „real“ or rationally certified such rules? Contractarianism is a theory about the latter, primarily. It can also be applied to the former question, as in Gilbert Harman’s well-known work on Moral Relativism. But a theorist might, in the spirit of anthropology, simply be trying to explain how a given group’s moral rules came to be what they are, and argue that some sort of agreement had something to do with it; or he might, in the spirit of the rationally reconstructivist philosopher, be arguing, normatively, that this is how a group’s rules ought to look, in the light of reason. It is the latter, not the former, that is the undertaking of philosophical Contractarianism.

Which „groups“ are morals for? To answer this, again, calls for a distinction, since there is no end of possible groups. But we can, for this purpose, distinguish two relevant sorts: Natural or „existential“ groups, and artificial groups – organizations, associations. Morals are primarily about the former, but artificial groups can easily have codes of conduct for their members as well, and they are the same general sort of things for that purpose that morals are for groups that aren’t artificial. In particular, human societies are „groups“ into which people may be, and usually are, born: one doesn’t choose to be born in Lithuania, one simply is born there. After growing up a bit one might decide to move, or not, but that doesn’t make Lithuania an association. The point is that the idea of morals is that its precepts and directives apply to everyone, whether they

chose to be where they are or not, and whether they like it or not.

Further distinctions need to be made. Some rules for certain natural groups are made by their governments: these are „laws“, in the „legal“ sense of that word, the sense in which small deliberative bodies decide upon the rules in question and, once decided upon, they become the laws for that political region. But obviously it is possible for legislators to be wrong, even immoral. Legal laws cannot be the model for moral „laws.“ Moral rules are not and cannot be legislated, in this sense.

Who, then, does „legislate“ morality in whatever sense it can come into existence? The short answer is that, notionally, everyone does. What „everyone“ actually does is, of course, all over the map. But the relevant portion of their activity for present analysis is that in which they (a) advance criticisms(disapprovals and approvals) of other people’s behavior, and (b) take measures to alter or influence others’ behavior, over and above the basically verbal activity in (a). Now, I shall call both sorts of behavior, very broadly, „reinforcing“ behavior, in that the idea is to get other people to act in some ways rather than others.

Some of this reinforcing behavior is simply self-interest, or on behalf of avowedly local interests, and that, as such, isn’t as yet moral activity. We have moral activity when the agent in question wants everyone to behave in certain general ways, and so wants this or that particular person to act in those ways. Morals is a set of directives addressed to everyone, and the agent doing the addressing intends

and expects all to comply with those directives.

This enables us to setup our question – the question of what the truth is in moral matters, that is, the question of what the right or true set of directives might be. To this general set of questions, various answers are possible and have been advanced, starting with the view that there is no such thing as „the right set.“ That can be meant in several ways, however, and what was intended in the previous sentence was moral nihilism – the view that, literally, nothing is morally wrong. Others will try a relativistic tack, suggesting that there are only rules for this or that varying group, but not for all. And finally, one lengthy tradition in philosophy holds that there is indeed one fundamental set of rules, valid for literally all persons everywhere, any time. Contractarians have mostly been allied with the latter group, purporting to find rules for, literally, all.

I have said only a little about what a „rule“ is for this purpose, and intend to say very little more. What is to be emphasized about rules is that they purport to over-rule the individual, if that individual should happen to prefer to do otherwise. Morality purports to be authoritative in that sense. There is a reason for that, as will shortly be seen.

3. The idea of a „True“ Morality

What, then, makes a set of rules for the group „true“? To get into this question, we should first ask what is meant by predicates like ‘true’ in this context. Of course many moral theorists over the ages have supposed that truth in morals is just like truth in, say, chemistry, and that what

Aufklärung und Kritik, Sonderheft 7/2003

makes a moral statement true is that there is this set of facts out there which happen to be moral facts, and true moral propositions are ones that state those facts as they are. This idea, though, is either totally unilluminating – the idea of „fact“, after all, cannot be clearer than that of truth in this context, so defining truth in terms of facts gets us nowhere – or else is quite baffling, and apparently irrelevant. Who, after all, cares if there are „moral facts“ out there to which sentences we utter might correspond? Until those facts matter to us, until we have some reason to care about it, until we give a damn, claims that there are that sort of facts are irrelevant. But when they are relevant it is because we do care, we do mind. This really gives it away, then: morals, like all valuation, has to be practical, and it can be so only if it engages the soul of the valuer. In this sense (and only this sense), the language of morals has to be „internalist“ rather than externalist.

But as soon as we say that, we are confronted with obvious problems. People can, alas, ignore morality, and how could they do that if, when they claim that x is morally right, they imply that they are enthusiastic about doing x? Interestingly enough, the contractarian view of morals makes sense of all this, and that is one of its chief theoretical recommendations – a point I shall be explaining shortly.

Meanwhile, we need only be reminded that morals is a canon, an „ordering“ to be impressed on the „community“, as Aquinas has it; and so the question is, what does „truth“ mean in this context. The answer is this: a true such directive is one which it is rational, that is, practically

rational (or reasonable – here it makes no difference) to support. But „support“ has two sides to it- not just one. We can support morals (a) by doing what it tells us to do, of course; but also (b) by trying to get others to do what it tells us (and them) to do, by publicly acknowledging its claims. There is, of course, no Moral Court of Law, with sober judges officiating to decide cases. But there is a public arena of discourse and action, where we make bold (or timid) to criticize our fellows and they us; and when they do, then if their criticism is such as to go hard with us if it sticks, we had better have something to say in our defense, and what we have to say has to be that „somehow, what we suppose to be the general rules applicable to all actually decides in my favor in this case, as you can see in the light of the following subtle considerations...“ – and go to it. Those who think such activity is pointless should ask themselves that question again as they stand in the circle with stones descending upon them from their irate neighbors. The second way of supporting morals, of entering into it, is fully as important as the first, though in a different way. Obviously, compliance is basic: but morals ask us, often, to do what we don't want to do, and so securing compliance is consequently of crucial importance to morals as a social institution. And, after all, morals is a social institution – whether we like it or not.

Thus our question is this: which set of possible rules for this purpose is it rational to embrace, in either or both of the ways distinguished? Now, to embrace in the second way is to be in an advocacy position, a position of publicly putting forward

the rules in question, publicly supporting them. Those who do that and then don't comply with them put themselves in an interesting situation. Noncompliance on their part undermines their efforts of the second type. And therein lies a considerable part of the case for Contractarianism – and against every other conceivable view of this subject.

The other aspect of this situation that offers insight into the contractarian idea is that rules, being directives to people, will be of no use if they can be simply ignored. And yet morality is asking people to act, of their own accord. It expects people to comply „from the inside“, and not because someone is standing over them with whips. In order to do that, we must seek out resources from within each person that can possibly be efficacious in this connection. A set of moral rules that those addressed have, simply, no possible interest in accepting, is a non-starter, a nonsense morality.

4. The Logic of Contractarianism

Right and wrong don't grow on trees or fall out of the sky on us. Intelligent people must address the problems that morality might be able to help us out with, and must then act accordingly. There is no other way. What, then, are these problems? What is the possible use of morals, anyway?

In a sense, we should not expect a single answer to this question. On the other hand, however, morals being what it is, there must be some sort of commonality. We can't expect a rule to be universally accepted by rational people unless it somehow appeals to all; but „it“ won't be able to

appeal to all if some people are such as to have no interest whatever in that rule's adoption.

Some sort of commonality, yes: but what? There is an answer to this question, with the right sort of generality to it. In many treatments, this answer has been „self-interest.“ But that answer is extremely misleading, and taken in the strictest sense, probably wrong. For the purposes we are now pursuing, namely the foundations of morals, the sense in which it is wrong is clear and too important to be ignored. To see why, however, requires that we be very clear about what Contractarianism is and what it isn't.

According to Contractarianism, the principles of morals are a sort of agreement, or „in a sense“ an agreement. But what sort, or what sense? The word 'agreement' suggests two things, both to the point. On the one hand, parties to an agreement agree. But you and I both agree that the world is round - yet we have not in any sense at all made an agreement to that effect: you know it's round, I know it's round; so our views agree; so we agree. Agreement in the second sense is quite different. Here we envisage a previous exchange of proposals: you say, „The price is \$2.00“; to which I respond, perhaps, by saying „Too much – no deal“, or perhaps by saying „sold!“ In the latter case, I then reach for my pocketbook, out comes the money, you hand over the widget, I hand over the two dollars, and we've done our deal. We came to an agreement which did not previously exist – a practical one. I agreed to do a certain thing for you, namely give you two dollars, provided that you do something for me, namely transfer your

Aufklärung und Kritik, Sonderheft 7/2003

control over that widget to me. Neither of us were under any antecedent obligation to do anything of the sort. And it could have been the case that, for some or no reason, I just felt like giving you two dollars, no strings attached; and you, coincidentally, were suddenly seized with the urge to give me a widget, likewise with no quid pro quo. In the latter case, we would have „agreed“ in something more like the sense in which we both agree that the world is round. But in the former, normal case, our coming to an agreement involves a conditional intention. The exchange is „iffy“: I'll do x if you do y; you'll do y if I do x.

It could have been that I said I'd pay you now for delivery of the widget tomorrow. In that case, your agreement would have created an obligation for you; you would have incurred an obligation to me to do that.

Contractarianism generalizes this. Its idea is that the principles of morals are a kind of grand agreement. In theoretical principle, what makes it an „agreement“ is that its rules are, at least implicitly, „iffy“: each of us is to treat each of the others in certain ways provided that they do likewise. If they don't, the deal is off. And if it's off, the idea is, then we are both worse off than if it were on. Mutuality, reciprocity, is the byword.

There is a bit more complexity, and there are some puzzles. But let's first explain the general structure, for purposes of exploring the Foundations of Morals. Contractarianism proposes to generate morals, and to generate it out of a previous condition (at least in theory) which was not mo-

ral. In the Beginning, as it were, there were just people, going about their various businesses. It is the interests these people have antecedently that motivate them to get into the morality business. If everyone does what the agreement calls upon him to do, then everyone is better off than he or she would be without it. Morals must be to everyone's expected advantage or benefit, in the condition in which all comply.

Of course there is a problem that they might not comply. After all, morals asks them to do something which, looked at in isolation, is not advantageous. For example, I might be better off if I had both the widget, from you, and yet retained my two dollars, which I would now be free to use to garner other benefits for myself. The fact that compliance for me, given that others comply, is apparently disadvantageous is what makes the whole situation so interesting, and the theory so fruitful for the moral philosopher.

Indeed, we can go farther. If you don't comply, I certainly shouldn't comply, and would be a fool to do so. If you do comply, however, it looks as though I also should not comply, if I could get away with not doing so. Does this, then, make morality irrational after all – as so many have claimed? On the contrary. But it certainly makes life interesting.

At present, the point is this. Most moralists generate obligations out of assumptions about obligation. But why the original assumptions? We aren't told. Of course, we are told that they are „intuitions“ – but that's just another way of not answering the question, really, because to say that is to say that they are moral truths. What we

wanted to know, however, is why are they such? And appeals to intuition are by definition incapable of answering that.

If we are to answer it, we need an analysis of morals. And that is not so very hard to provide. Morals are rules or requirements, presuming authority over us all: they are rules that all are supposed to obey. To show that a proposed morality is reasonable, then, we need to show that everyone – those being the people who are asked to comply with them – has a reason to comply. And that reason must already exist. Making reasons out of thin air doesn't cut it. The contractarian view enters the picture by proposing that the right set of principles to play this role is the set such that everyone, looking at those proposed principles from his or her point of view *ex ante*, can see that he or she will do better if everyone, including himself or herself complies with those principles than if there are none or some other set.

The kicker is „everyone including himself or herself.“ For remember, it is of the essence of morals to claim authority – to overrule what you happen to want, if that should collide with what morals wants you to do. Now, at the point when it does overrule you, it looks as though morals is disadvantageous to you. On the other hand, though, when it overrules other people, it becomes quite advantageous to you. Morals is to the advantage of people other than the agent, typically; but of course, every single one of us is a person „other than the Agent,“ all the time. We are in the position of being the beneficiary of others' compliance much more often and much more seriously than we are in the position of being imposed on by morals.

Let's take the example of one of the strongest and most fundamental of all moral rules – the rule against killing innocent people. (We will discuss the role and foundation of the term 'innocent' below.) Now and again, perhaps, it would be useful to you to kill somebody else. Suppose that morals says you cannot do this. On that occasion, it deprives you of a possible benefit. Meanwhile, however, suppose it was to somebody else's advantage to kill you. Morals deprives that person of the benefit of killing you; but of course, that means it provides you with the benefit of not being killed. It is not too much to say that it provides you with life.

Well, which is better? You have to decide that, and to decide it in accordance with your own values – not with some hypothetical set conveniently provided by the moral philosopher. Is this an uncertain, dicey calculation? There are two answers to this. The first one is that if we are dealing with any remotely familiar set of personal values, and if we bear in mind that the rule we are talking about affects, because it applies to, everyone, then it would be pretty astonishing to be told that there was anything at all difficult about it. You lose the benefit – if such it ever is – of being able to kill others, and you gain the benefit of not being killed. What is your life expectancy if there is no such rule? We first ask this generally and notionally: Can we reasonably think „Well, I might find it useful to kill somebody else, but nobody could ever have any reason to kill me?“ The answer to that is so obvious that there is no serious room left for argument at this level. There are currently six billion people out there, and all except the infants in arms and the paraplegics and

Aufklärung und Kritik, Sonderheft 7/2003

a few others are perfectly capable of killing me, if they should take a notion to. And who's to say they never will? Indeed, who's to say they wouldn't have done so a long time ago, had they no reason to desist? Hobbes suggests, in effect, that the life expectancy of the individual in a totally non-moral world is very short. At that level, in the complete absence of any socially imposed controls on violence, it's a plausible surmise.

Of course, we are all particular, actual people living in a (changing) set of real circumstances. It could be that on some occasions, someone might reason that the chances of others wanting to and being able to succeed in killing him are small, while the chance that he could „get away with murder“ are good; and that this person would find it very advantageous to kill that person. What about this?

5. The Fourth Challenge: Moral Obligation

This brings us, in effect, to the fourth of our six challenges: „Contractarianism might show that it is rational to have those rules but not why I myself should obey those rules“.

Here is where most discussions of contractarianism are, I think, simply and utterly irrelevant. The question they ask is: wouldn't this person, in these circumstances, rationally go ahead and murder his victim? They discuss the subject entirely on the basis of this person's acting in these circumstances. They do not address the subject of whether our potential killer seriously wants it to be the case that murder is not publicly regarded as wrong, forbidden, not to be done. Yet that is the subject we are discussing: morality is propo-

sed as a set of social rules, rules to be applied and reinforced in the context of general interaction among people. Philosophical morality considers the question of what makes such social rules sensible, rational, and in the process may offer suggestions for improvement. But the idea that the rules, once formulated, should have no force, no role in assessing and guiding behavior, is equivalent to the idea that we shouldn't bother with this subject in the first place - rather than being, as some seem to think, some kind of new insight into the subject.

There seems to be an assumption among discussants of the Compliance Problem that we show morality to be rational by showing that on each occasion, each individual has sufficient reason, apart from any considerations of social interaction, to do what is right. That is a completely absurd portrayal of the problem, however. For if it were so, we would not, of course, need morals. The assumption they operate on is that we solve the problem of showing morals to be rational only if all cases are cases in which morality is totally unnecessary. That is a very odd assumption, especially since no moral theory could meet it – unless you count „do whatever you like!“ as a moral theory.

Such persons should also ask what we are to regard as the options. Suppose, for example, that we say, „Morals is not founded on the interests of those party to it; rather, it is founded on Intuition, or Religious Inspiration, or the adoption of the following mystical beliefs, or ...“ Those who say things of that kind – namely (hard though this may be to believe) almost everyone in contemporary philosophical

circles, plus the usual run of preachers, mystics, prophets, religious fundamentalists, and assorted pundits – seem not to notice that their view automatically loses all those people who do not share the mystical or prophetic or intuitionistic stuff they advocate. And, of course, for any given proposed non-rational scheme, it will be true of most people in the whole world that they do not share it.

It is also true, to be sure, that most people do believe that killing, imprisoning, enslaving, maiming, lying, cheating, and so on, as done to innocents, are wrong, and so when the wily non-rational theorist proclaims that morals is founded on his pet intuition, he will turn around and say, „See! Most people have this intuition!“ But what he says is either trivial or false. If all he means is that they agree that killing, etc., are wrong, fine: we know that. What we were asking for, however, was an explanation of the matter, not just a pleonastic restatement of the fact. If, on the other hand, our theorist means that people believe this because they have unanalyzable belief P, for some or other value of P, then what he says will be false, or at least incapable of rational proof, in almost all cases. The sad fact seems to be that the standard meta-ethical stance among philosophers today is unilluminating and useless; and when employed in a context of genuine disagreement, it is also aggravating, since it licenses the delivering of peremptory statements that are bound to fall on deaf ears in the case of the many who disagree in the case at hand.

That said, let's return to the contractarian idea. The basis of this idea is that morals is a human institution intended, or at least

hoped, to promote the well-being, the good life, of those subject to it. That invites the characterization of St. Thomas Aquinas, who says of law generally (including what we would call morals), that it is for the common good; and indeed, I take Aquinas' characterization to be definitive. However, human relations are frequently complicated by the presence of opportunities for one person to gain at the expense of another, notably by using force against that other. If we are all on our own, lacking any sort of socially reinforced protection against such behavior, we will inevitably invest much of our time and energy in defensive activities. Indeed, if Thomas Hobbes is right, we would simply ignore the distinction between aggression and defense, for we would come to see all others as our enemies and competitors. The result of this kind of social organization is disaster for all. We can do better.

Modern analysts have isolated the general problem in an abstract form, the game-theoretic Prisoner's Dilemma. In the two-person case, this is where the agents in question face a choice between two (or more, but two will do) options in which A's best outcome is B's worst outcome, and vice versa; but between those two are two outcomes, one of which is better for each than the other, though neither is as bad as each player's worst outcome. If both strive for the best, they in fact get third-best; but if both forego the temptation to go for the best, they both do second-best. Achieving this mutual, common good, therefore, requires restraint on the part of each. The temptation to go for the maximum, at cost to the other party, is ever-present and must somehow be resisted if cooperation is to be achieved.

Suppose the alternatives are x and y for each of us, and that if B chooses x , then A does better to choose y , and that if B chooses y , A also does better to choose y ; and the same for B vis-a-vis A; and yet both doing y is worse for each than both doing x . Each player, then, „rationally“ chooses y – so it is said; game-theory has been taken to confirm a depressing result – that rational individuals in Prisoner's Dilemma games will inevitably do badly. It is intriguing that where rationality is defined in terms of the disposition to maximize one's utility, that it to say, to do well, yet rational players are claimed to make choices which can be foreseen to leave both worse off than another available choice.

Intriguing though that may be, it is also crazy. What players in such situations need to do is to co-operate, and this involves resisting temptation, foregoing the option to exploit one's fellows. It involves foregoing it in precisely the sense that the game-theorist tends to deny is possible: namely, to resist the temptation to go for the theoretically best outcome. In our previous little example: I am better off paying you \$2 for your widget, but I am, prima facie, still better off if I take the widget, keep my \$2, and run; yet if both of us reason thus, we stay where we are – me without my widget, and you without \$2 that could have been yours.

Well, I am if I am good at running and you are not. But of course, such behavior invites a defensive response from the other, such as shooting me as I depart; and it is not too difficult for normally intelligent people to see that it does so, and to consider that it would be better if we all, including ourselves, have a tendency simp-

ly to keep one's agreements, without having to resort to guns, and that's that. In so doing – by internalizing these socially rational norms – we save enforcement costs: more cooperation, more gains for all.

David Gauthier, who is the 20th-Century's chief exponent of the Hobbesian idea, characterizes this internalized rejection of the temptation to take advantage as „Constrained Maximization“. The constrained maximizer is defined as having the tendency to cooperate with those who will cooperate, and to „Defect“, as the technical term has it, with people who will not. Translated into ordinary language, this means that we play ball with those who will play by the rules, while with those who won't, we reach for our guns.

In the mean time, however, what is perfectly clear from this analysis is that if we are to achieve the better lives that social living affords, we must be able to trust each other, and that to do that requires morality – an inner resolution to cease acting on simple self-interest and instead to conform to rules for the common benefit, so long as there is reasonable prospect of others' doing likewise. This is moral obligation, the inner propensity to follow the right rule because it is right, rather than because, on that particular occasion, it pays. For on some particular occasions, it won't pay. What pays, rather, is being in a social milieu in which we can trust each other and thus reap the advantages of things like promises, contracts, and simple understandings and reliances on fruitful interaction with others. But that really does pay, and is the reason why we should develop and practice this knack of local

renunciation of simple-minded self-interest.

First Challenge: The „Unwritten Contract“

We may next explicitly address the first of our Frequently Asked Questions, or Frequently Made Challenges: that „Contractarianism refers to a contract that isn't worth the paper it's not written on.“

Now, in what sense is the „social contract“ a contract? That the social contract is unwritten is true enough. Obviously there is not a constitutional convention in which everyone, or representatives thereof, gets together on some particular occasion, draws up and signs an agreement, and is thereafter subject to its provisions. The latter is a bad enough model for political institutions, but is simply a non-starter for moral ones. Indeed, the „contract“ is not exactly a contract at all, since it is not exactly „made“; it is, rather, an identifiable disposition which anyone can adopt, or not, independently of everyone else. What is „contractual“ about it is that the disposition in question makes one's behavior a function of what others do. „I will treat you thus if you treat me thus; and not if you do not“ is a disposition that I do well to advertise, as it were, for the point of it is to emerge better from one's social interactions than one would otherwise stand to do. But the advertisement needn't be, though it can be, verbal. We encounter others, we size them up, and we deal with them in a way that invites profitable rather than conflictual response. Whether they do or not is up to them, of course; but the point is that if they do respond in a desirable way, and we to them likewise, then our interactees may well see the advan-

tages of life as so lived, and proceed to live it. Of such interactions there is no end, and on each such occasion we are presented with the option of interacting in that way – or not. On each such occasion, there is a theoretical temptation to cheat: that is, to extract benefits from others instead of earning them by mutually agreeable means. And on each such occasion, the logic of social contract applies.

Once we understand this, it is also obvious that a written contract could not possibly serve the purpose. We have only to ask, in the spirit of Hume, why we should keep any written contract? There has to be an unwritten understanding that what is so written has the force that we intend under the notion of ‘contract’; writing this out ten thousand times won’t make any difference. The social contract is worth, in short, incomparably more than the paper it isn’t written on, and is so precisely because what it affirms is not writable on any paper.

Second Challenge: Morals and Self-Interest

The previous exposition is enough to put in perspective the second challenge as well. The challenge trades on a confusion, in fact. If the content of morality consisted in the „advice“ to do what we like anyway, then of course morality is redundant and pointless. But in fact, since it is the tendency of independent action to get us into trouble that gives rise to the need for morality, a useful morality must be one whose content overrides self-interest on various occasions.

On the other hand, the foundation of morals that is proposed is rational: it
Aufklärung und Kritik, Sonderheft 7/2003

appeals to the rationality of every agent. And this rationality is not, intrinsically, moral – if it were, we wouldn’t have a problem that morality had to be brought in to solve. Rationality tells us to order our actions in such a way as to get what we think best, whatever it is. But it may not be moral. So we then ask what happens in social conditions, where our actions affect each other, and we soon see the need for trust and cooperation. Those require that we reign in self-interest, as we have seen. And along with this comes, of course, the likelihood that we will be tempted to pursue our own interests regardless of their effects on others.

As noted, the argument that this temptation is „rational“ – indeed, the very identification of rationality with the tendency to succumb to it – is, while plainly something that needs an answer, also one that has it. The answer is that the point of morality is to enable us all to live well, but seeing the potentiality of each to frustrate others, we can only do so with a set of rules with teeth, and it is up to us to provide those teeth. So, to the person who is ready to extract benefits at involuntary cost to others, all we can say is that there’s a good chance the price will be high enough to make it a bad bargain for him, and that he has no reasonable complaint about that treatment, seeing that he too benefits, enormously and continually, from the beneficial behavior of others, the condition of which is that those to whom these benefits are given likewise adhere to the rules that make those benefits possible for all.

The sense of moral obligation is the sense that a certain bit of behavior is required by the general rules of interaction as they

apply to this case, and that one is to do this even if doing something else appears, or even actually is, more desirable at the time. The idea that contractarianism „appeals only to prudence“ and cannot account for obligation is, in short, confused. Prudence is often, and indeed one would hope usually, consistent with morals, but sometimes it is not, and when it isn't, the point of morality is to be the rule that is to prevail when our separate prudences get us into trouble.

Of course there remains the question whether Prisoner's Dilemma is an adequate model of those human situations that generate a need for something like morality. There are, of course, many other „games“, many other structures of interactions with complex differential payoffs. To discuss this adequately is material for a book. But I believe that there is, in the main, just one further game that needs to be taken major notice of: Chicken. In such an interaction, the two parties have a common worst outcome, and the opposition comes in at 3rd-vs-1st rather than 4th-vs-1st as in PD. The two teenagers driving toward each other on the country road vie for „most courageous“ but the cost if both stick to their path is destruction for each, and this they want least of all. The short thing to say about chicken is simply that the social rule has to be to avoid playing it. A longer thing to say is that the tendency to knuckle under to threats is wholly normal, and the basis of all tyranny everywhere. If norms can be socially imposed in a rational way for prisoner's dilemma, they should likewise be so for Chicken. Much exploration needs to be made, and is being made, on these matters, but I believe that cooperation as the rational basis

of social rules will survive all these investigations.

6. Moral Liberalism (1)

The preceding descriptions come close to telling us what the substance of the „contract“ is, as well as its form. In general, the social contract approach to morals holds up as the general form of morality that moral rules are those such that everyone does better if everyone lives up to than they would with any alternative set of general rules, or with no rules. But there are interesting complications. Especially, there are two, and they make a great deal of difference.

In the first place, this loose talk, as it has been thus far, of „benefit“ and „well-being“ and what is „in our interest“ or „for our good“ obviously raises the question of what all that means, and of how, especially, we are to decide what is indeed in our interest and for our good. To this, there are important answers and non-answers – and the non-answers are at least as important as the answers. And in the second place, there are different kinds and levels of „rules“, a point that has been attended to much too little, or more frequently just ignored altogether, in typical discussions. Let's at least briefly address both of these. Discussion of the first point occupies the remainder of this section; the second is important enough to require a section on its own – indeed, two, actually, as will be seen.

All benefit is benefit to somebody or other; all good is somebody's good, all interest somebody's interest. But does each person know what is good for himself, what is to his real or true interest, what is a „benefit“

and what isn't? Here we have the non-answers. Few of us claim that we know these things, indeed, and in many cases we are ready to point to one person or another as a fine example of someone who thinks he knows what's good for him and obviously doesn't.

The question is „So what?“ Or, in another vein „So what else is new?“ It is often said that contractarianism assumes that preferences are all there are and cannot be questioned, and must be taken for granted, and suchlike. Since none of us does take our preferences for granted, and many of us spend a lot of time questioning our own preferences, the suggestion that contractarianism „assumes“ that we do not had better be responded to, since what it would assume, if meant that way, would so obviously be false.

But indeed, so what? When I am dealing with you, each of us has various preferences, various interests, desires, values, which frame our interaction. Now, each of us is welcome to question the values of others as well as of himself; but, as I say, the fundamental question is – So what? For the relevant issue here is not whether I can „question“ your values and preferences, but how I am to act in relation to you; and for that purpose, the question is whether I act toward you in the light of what I think should be your preferences, or should I instead act toward you in the light of what your preferences, as represented by you yourself, are. For this purpose, you are indeed the ultimate authority – meaning by this, not that what you say about what's good for you is necessarily true, but rather, that what you say about what's good for you is the only thing I have any business assuming in your case.

Aufklärung und Kritik, Sonderheft 7/2003

Much life experience has made it extremely clear to me that, incomprehensible as this may be, there are people out there who don't seem to like the music of Anton Bruckner. Obviously they ought to, because, after all, this is great music, including some of the most sublime and elevated ever written, and of course anybody should expose himself to and absorb the beauties of such music. Right, they should. But they don't, alas. And so when it comes to deciding what to entertain my guests with, I had better not just assume that they truly know what's good – it's a pretty safe bet, as I say, that they don't, and so far as they're concerned, I'm not doing them a favor if I inflict this music on them.

Multiply this example by as many cases as there are, and the point is clear enough. Morals cannot allow people to dictate other people's values and preferences; rather, it requires us to act toward our neighbor in the light of what our neighbor announces that he is, what he claims to be. That we are not to „question“ our neighbor's values doesn't mean that we can't raise any such questions; it means, rather, that unless he agrees with our answers, we must go by his, in his case, and not by our own.

This, in a word, is moral liberalism, and the contractarian view of morals is essentially liberal. Liberalism focuses on individual autonomy, or more precisely, self-government; that is why it says that we may not override, however much we might want to question, the values of those with whom we deal. Morality is everybody's show, not just ours – not just the show of the self-appointed elite.

7. Moral Liberalism (2): Libertarianism

The other general point concerns the substance of morals in a different way. Moral rules, I have said, are intended to „override“ individual desires, interests, values, if they should conflict with those rules. That makes it sound, rather too much, as though all the rules of morals is of the type that say, „Don't!“, or „You Must!“ This is not so, however, and we will relegate section 8 of this essay to discussing that point. Meanwhile, however, some of the rules of morals certainly do have that structure, and the question is, What do they require and forbid?

A note about requirements and prohibitions is in order, first. A prohibition is in principle clear enough: it describes a type of behavior, and it says, Don't do that! In so saying, it leaves quite wide open the question of what you may do instead. So far as a particular prohibition goes, you may do anything else; but of course, there may be other prohibitions to worry about. Still, again speaking notionally, prohibitions do have this fairly simple structure. But what about requirements? In brief, a requirement is also a prohibition. But instead of describing fairly specific kind of behavior which you are not to do, leaving you free to do more or less anything else, a requirement describes a fairly specific kind of behavior, and then prohibits doing anything else. The area left to the individual's own free choice is, in short, severely restricted in the case of requirements. For that very reason, one can conjecture, morals shouldn't have too many of those. Prohibitions are better, because they leave so much of your life up to you. And why should we leave a lot of your

life „up to you“? Because that's what got us into this business in the first place: your, and my, and everyone's, interest in pursuing a good life as seen by its pursuer. When an individual is acting under his own steam, acting as he pleases, we presume that his activity is directed at his good, just as we always see ourselves to be pursuing our own good. Letting us do so, letting us „get on with it,“ gets pride of place in the contractarian view of things.

David Gauthier is the latest of a classic set of exponents of liberal morals in holding that there is a fundamental constraint on all human interaction, to be observed by everyone. This is the injunction, Not to Harm; or in Gauthier's some more perspicuous terminology, „Not to Worsen“. When we encounter others – deal with them, interact with them – we are not to do so in a way such as to make them worse off than they would have been if you were not around. They, of course, are similarly under obligation to everyone else in the world; so that, for example, to prohibit worsening is not to say that we don't get to prosecute torturers and murderers. Quite the reverse. But we are not to worsen the lives of those who, in their turn, have not worsened the lives of others who ... etc. Those who have harmed no one we may call the „innocent“, and the basic moral prohibition is not to make life worse for them. What to do about the guilty depends on a lot of things, starting with just what they've done; but certainly the general obligation not to worsen does not apply to them, since the idea of morals is to try to get people behaving in mutually acceptable ways, and those who don't may need to be compelled, somehow, to do so, unlike

those who do, who of course are not to be so compelled.

Thomas Hobbes proposes as the fundamental Law of Nature that we „seek peace and follow it“; and only if it is not possible are we entitled to use „all the helps and advantages of war“. Peaceful behavior is non-aggression – non-worsening. Likewise John Locke has it that the Law of Nature requires us not to „harm others in their life, health, liberty, or property“ – those being various forms of aggression or, in Hobbesian terms, war. Kant also held that the fundamental principle of justice is that we not abridge the freedom of anyone whose activities are consistent with the freedom of all. All these, I think, show a striking convergence toward Non-Harm as being the essence of what morals requires of us all. Non-harm is avoiding those activities of ours which would worsen the situations of those we relate to, in terms framed essentially by the interactee.

Thus our action in relation to innocent others must always be such that, whatever we do, we do not in the process kill, maim, infect, disable, rob, lie to, or imprison them. Several of the famous Judeo-Christian Ten Commandments reflect this: its „thou shalt nots“ address killing (and otherwise physically injuring), lying, adultery, and stealing (or ‘coveting’ – but we may surely assume that if we are ordered not to covet, we are certainly ordered not to go so far as to actually take the things we covet from those who have them). All these rules have the striking characteristic that they are negative: that is, they tell us, fundamentally, not to do certain things. And this is very much what one would expect from a broadly contractualist viewpoint. I am worried about how

Aufklärung und Kritik, Sonderheft 7/2003

you might treat me, in that it might be badly. Your extracting things from me against my will is what I don’t want, and likewise my extracting them from you. The compromise is to be at peace with each other, committing ourselves to refrain from doing whatever would leave us worse off.

Third Challenge: Completeness

This brings us to Challenge No. 3., that „Contractarianism is incomplete since it can justify just a few rules, like rules against killing, stealing or cheating.“ We should note that, unlike the first two complaints, this one appears to be made from the perspective of a particular view, or at least a range of particular views, of morals, and that view might be disputed. Let us see.

In effect, the question is, What about positive morality? Are avoidings all there is to it? When asking this question, we must note the previously-made logical point, that all requirements are forbiddings. So the question needs to be carefully understood as a non-trivial one. I can respect the requirement not to worsen your situation by just avoiding you altogether. As we sleep, we refrain from killing, lying, and stealing from anyone else in the entire world, and it costs us no effort at all! We can refrain from doing things by doing nothing – to speak roughly, of course, since we are always in some sense „doing“ something or other. But the question remains. In addition to Not Harming Thy Neighbor, should there not also be a duty to Help?

This brings up, in a big way, the question of what is meant by ‘duty’ and ‘required’.

When moral rules are put in terms of „must“ and „shalt nots“ and the like, we have a sense of rigidity and severity. We can explicate that, I think, fairly straightforwardly. When we say, „You Must!“ we had better mean, „If you try, I’ll do ...!“, where the blank is filled with something decidedly adverse. The criminal law is a set of conditional threats: do this or that, and we put you in jail, or even execute you. The sense of „must“ lies in the way we fill in that blank.

Now, the part of morals that consists in strict requirements is, I take it, the enforceable part. But the term ‘enforcement,’ and especially the term of art, ‘reinforcement’ might take in quite a lot. Should we talk of enforcement when what is really in question is reward? Reward for doing what is wanted; punishment for doing what is forbidden. But in between we have lack of either. If neither punishment nor reward for doing x is proposed, then the individual whose behavior in question is his own, to do whatever he feels inclined to do.

The question now is this: when is it reasonable to sign up for, to accept, a scheme of punishments for non-performance, as distinct from a scheme of rewards for performance? The plausible response is that the case in which A proposes to do something adverse to B is the one in which B, or B’s aides, are to use punishments; whereas the case in which we hope to elicit positive benefits is the one where reward is appropriate. You do me a hurt, I get to threaten you with a counter-hurt if you do; but if you want a benefit, then you should be ready to do something positive to me for provision, rather than something negative for non-provision. This is in the

spirit of Gauthier’s Lockean Proviso: It is rational for A to allow B to do anything that makes A no worse off, and rational for A to do something to induce B to do what makes A better off.

This, then, is the proposed principle for what is to be required of people: that they refrain from worsening the situations of those with whom they interact. A counter-threat to worsen theirs if they try is a plausible proposal about the appropriate methods of enforcement in the case of proposed harms. But an offer to reward in some way is the appropriate proposal for inducing benefits.

What we all want of others, of course, is benefits, if possible, and failing that, non-harms. The basic interpersonal principle, then is: each may defend himself from hurts, but each must earn benefits in some positive way. What is forbidden is the use of hurts to elicit benefits.

8. Virtue and Supererogation

What will be the connection between morals and the bestowing of benefits? In most cases, we will obtain benefits from others by offering enough in return that the provider will regard that as a satisfactory „price.“ But while transactions of this kind are in general allowed, there is a reasonably interesting subset of cases in which morals can do more. We have discussed above the category of requirements. Here, however, we may speak instead of what we may call „moral recommendations.“ We commend people for various acts, dubbed ‘virtuous’. What is their common character? The obvious answer is: the giving of benefits to people who can do little or nothing in the way of returning the favors

in question. The disabled, the very sick, the very old or young, and the very poor are cases in point. Principles going beyond justice commend people for doing good to people they scarcely know, or not at all. The disposition to benefit random strangers in need is one we all have reason to commend. Why so? Because, the behavior being voluntary, we can't lose on this one. It's no skin off my back if A helps B in a jam; and it's positive in return to me if I am B and in the said jam. The cost to me of bestowing praise on those who do good is quite low, and moreover, for normal people, pleasant. To be like that is a good idea; to develop such dispositions is a good investment. We are never required to help, but we are recommended to do so, and praised if we do. Yet we are in no danger of being punished for non-performance.

In general, then, the proposal is that the Principles of Morals will consist of two branches, with straightforward general principle corresponding to each. The „compulsory“ part, in which enforcement is envisaged, has as its principle Don't Do Evil to Others. The „voluntary“ but commendable part has as its principle, „Do Good!“

Most contemporary writers appear to want to add to the above a principle of „distribution“. We are, on this view, not only to Do Good, but we are to distribute the good in question equally, or be disposed to provide it for those who have currently got less of it. And indeed, there is nothing wrong with doing this. The question, though, is whether there is anything very special at stake here. May we not benefit whom we choose? If someone is better off, and no one worse off, as a result of my

Aufklärung und Kritik, Sonderheft 7/2003

action, it would seem that society should approve, and should do so whoever is better off, so far as it goes. We can add to our previous argument, however, by pointing out that from the point of view of potential beneficiaries, we are perhaps more interested in those benefits from others that relieve us from pain, or prolong our lives, and so forth, than in those which raise us from an already desirable state to a somewhat more desirable one. Perhaps: but it is clear enough that sometimes people are more interested in benefits than in ministrations to their ills. The person who arises from a sick bed to see the opera once again, though he'll be worse the next day, exemplifies the general point.

It is also suggested that we should regard it as a duty to cater to people's „needs:“ help the poor, the sick, the lame, the down-trodden. And of course such things are indeed to be commended. But what is the modality of this proposed principle? Are we to do this, rather than, say, giving new stereo systems to one's niece, or enabling my middle-class daughter to go off to college, or helping to build the new symphony hall? Who says this, and why should we listen to them?

It might be suggested that, in the spirit of a sort of broad-based social insurance system, we should help those who need it, and regard this as more important than doing favors to those who don't particularly need them. We should engage in this helping behavior on the ground that the beneficiaries of this activity will in turn be motivated to help us when things are tough. But reflection suggests that, while there is something to this, there is not very much. All of us have loved ones, business

associates, friends, co-workers in assorted causes or clubs, etc. Should all this have to wait until we have healed all, or even very many, of the miscellaneous sick, and improved the incomes of the poor? The short answer is – most certainly not!

There is a factor of immediacy that is relevant here. A duty to help those whom we can help greatly, at little expense to ourselves, and can be regarded as part of the „social contract“: but what makes it work is that the cost to the agent is small, the benefit definite and pretty immediate. Being in reasonable physical condition, I stand ready to help a lame person across an intersection – but not two dozen of them. Seeing a child in distress, I’ll try to do something for it, time permitting. We can all multiply instances of this sort of thing, and clearly it increases the value of our society to us that people should be disposed to be like that; so, I should too. But as soon as costs increase considerably, as soon as benefits are less certain and longer-maturing, the likelihood that we will do better to embrace these dispositions goes down. No one can quantify this with any precision, and we don’t need to. All we need say is that the proposal to aim at distributing benefits equally, or with a view to increasing equality, has really nothing to be said for it, while the proposal to accept a limited duty of mutual aid has a great deal to be said for it.

Frequently Asked Question No. 3 complained that „contractarianism is incomplete since it can justify just a few rules, like rules against killing, stealing or cheating.“ The question is why those who pose it think this is a complaint, since it is quite the reverse. We are asking what the general

charter for human interaction is to be: interaction with all and sundry, not just our friends or fellow believers or fellow pursuers of the sporting life, or biochemical research, or whatever. To those who think it a moral duty to be everyone’s mother, the reply is simple: we are not everyone’s mother, but instead a human being with a variety of interests, needs, and abilities, all of which go together to make up a life which we value and whose value we hope to enhance by our decisions. It is our life, and it is we who are in charge of it. Persons anxious to load others down with onerous duties will get not much of a hearing from their fellow humans. But to be free from aggression, theft, chicanery, fraud on the part of those around us is indeed something everyone can see to be worth having, and worth its cost in the way of peacefulness and honesty on our parts.

That, on the other hand, there is plenty more to morals besides doing our duty is clear, and the above discussion has shown why there is indeed this „more“. There is the part of morals that consists of recommending, praising, admiring, patting on the back, and singling out for admiration those who do various good things to people who are not their immediate loved ones or friends. It is very clear that and why we should all approve of acts of effective altruism. But approval isn’t the same as requiring. We require that people approve of such things, not that they do them themselves.

Fifth challenge: Marginal Agents

Having expanded the notion of the social contract to take in an area normally thought to lie beyond its range – virtue

and supererogation – we should pay attention also to the complaints that „Contractarianism leaves all those who are incapable of entering into an agreement without protection.“ What, for example, do we do about the sick, the infirm, the aged, the very young? Or for that matter, what about animals?

This is in fact not just a single group. Some among the infirm or ill are people who were once well and whole; others among them were just born that way; and all persons are for awhile in that situation, for we must all grow from a stage of minimal cognitive consciousness to the mature persons we now are. And it is these mature agents who are capable of understanding the idea of a contract or general understanding about what we are all required to do.

Perhaps those who ask this question did not think about it this way, but we should also include the question, what about animals? After all, animals are also incapable of entering into anything like a contract.

Or aren't they? Some owners of faithful dogs will insist that their particular beasts do indeed keep faith with those owners, and might as well have entered into an agreement on the matter. But of course, the Social Contract is intended to be universal, and to claim a few special cases or exceptions will not do much for the general proposal that animals, and other beings not capable of making agreements, are left out.

Our first question, though, is – just what are they left out of? The answer is only that a living creature unable to communicate with adult humans is „left out“ of
Aufklärung und Kritik, Sonderheft 7/2003

the fundamental agreement – such creatures will not be among those who create morality. It does not follow, however, that they must all be left without protection.

To begin with, we must distinguish between being protected as a basic part of the social agreement, and being protected by virtue of having certain relations to those who „create“ that agreement. Consider, first, domestic animals, pets, and many others who are the property of human adults. Protection of their property includes protection of those animals. This takes in a great many. Not only would cows and pigs be protected, but so too would animals in private game farms in Africa, for example.

Next, consider the case of children, all of whom are born to certain adults. In most cases, those adults are very interested in the well-being of those children. The moral requirement that we refrain from damaging adults will extend to refraining from damaging those who are in the care of the original members. Hurting my child will be, very much, a case of hurting me.

In addition, there is the interest that we all have in children growing up to become useful members of society. This is an interest that may not be shared by some few, indeed. But very few of those who don't share it will be parents, and the requirements not to injure what is under the care of existing adults will cover almost all such cases.

We are left with a possible conflict, between some miniscule number of people who would like to kill their newborns or very young children, and others who

would want to take on the care of those children. It is not obvious that a right to kill one's infant children is an essential part of the liberty we will all guarantee each other. This is especially so if, as I think, a right to abortion is an essential part of it. The parent who has the option of abortion and does not take it, may reasonably be asked to handover unwanted infants to people who do want them.

The case of the sick, the infirm, the aged, and the comatose or victims of accident who are no longer capable of normal human functioning: These cases have the important feature that they are later stages of adult humans who do have those capabilities, and who are very interested in their own futures. There's no reason why they would abandon that interest when they are capable of thinking about their own futures.

What can be agreed, however, is that the social contract would extend only negative rights to all of these. Continued life and immunity from danger at the hands of their fellow humans is no small thing, certainly. But what about the costs of hospitalization and various kinds of care? I would agree that the right to care at others' expense is not to be expected. Care is costly; we will pay such costs for selected persons whom we care about, but it is not reasonable to expect agreement by all to share the costs of all. And so, if this fifth challenge is based on an assumption of the universal welfare state, the contractarian parts company with them. But it is clear that in that case, the assumption behind the question is controversial. We may argue that the contractarian case covers all and only those who are indeed to be covered.

There is one last special class of cases, also controversial, to mention: those born defective at birth. Are we to say that all such persons are entitled to the care of all of their fellows, too? Again, I think the answer is in the negative. The primary responsibility is always in the hands of parents. If those parents do not want to bear the costs of care, then abortion might be the answer. If not, the rest of us must ask what right we have to rule out infanticide by the parents as an option. If we are unwilling to assume the responsibility in such cases, then, I think, we have no such right. Again, care should be left to those who care. And if there are not enough of those, in our opinion, then maybe we had better dig a bit deeper into our own pockets, rather than turning to force and exacting payment from the millions of innocent bystanders who had nothing to do with the generation of these cases, and who have nothing to gain from helping with their care.

9. Plausibility?

Such, I think, are the general terms of the Social Contract. But having set them out, in this brief but reasonably inclusive way, we need now to return to the fundamental question: why „sign“ at all?

Why not make the social contract, not with society at large, but only with a small segment of, say, the tough, the smart, the quick, and the resourceful, reserving to that group the right to treat their inferiors in those respects precisely as they please? This is an important question, to be taken seriously. It has, I believe, a convincing answer – indeed, a definitive answer. But it is understandable that it should be asked, and sad that too often those asking it do

not stay for an answer, and do not think what they are saying.

The temptation to engage in gang-warfare against the rest of mankind is sometimes quite strong, and indeed, opportunities to do so are now built into the favored political system of the day – or, perhaps we should say, of the Millennium – Democracy. Political democracy enables a majority to inflict all sorts of indignities and costs on the minority, and isn't that what the rational man wants?

The mention of political democracy already suggests that there are chinks in the armour of the tough. For the majorities in democracy are decidedly not legions of the „tough, the smart, the quick, and the resourceful“; they are, instead, majorities of very ordinary people, and of course it can't be otherwise, for by definition most people are ordinary. Political majorities in a democracy will, one may well imagine, have little to do with the elites envisaged by our objector. They will thumb their noses at Nietzsche's Zarathustra on his lonely mountain top; they will cast down the mighty, and increase their taxes no end; and, in general, they will make a proper mockery of any idea of „the strong“ lording it over „the weak.“ Of course, alternatively one might say that majorities are „the strong“ – in numbers!

So, now: what is our objector saying, again? Something about how „contractarianism has some truly nasty implications since it seems to justify the oppression of minorities.“ Well, political democracy certainly has those implications, but the minorities in question aren't quite what the objector seems to have in mind. Or perhaps they are – for perhaps the minori-
Aufklärung und Kritik, Sonderheft 7/2003

ties that will be oppressed by democracy are, indeed, the clever, the strong, and in general the would-be elites for whom political democracy doesn't have much respect. For political democracy will oppress the mighty and the rich to contribute to the hospital bills of the infirm, and the VCRs of the unemployed.

The question for the social contract is: would the rational individual go for no general requirements, preferring instead to take his chances with his particular gang of tough guys? This is a familiar option in world history, and it does not work all that well. But however it may have worked back in the days of prehistory or even early history, its prospects now are zero. For every gang of tough guys, there is a much larger gang able to bring them to heel if they get obstreperous. Nobody and no gang can stand up against the rest of mankind.

Sixth Challenge: Oppressing Minorities

This, of course, brings up Question Six: why not oppress minorities? The general answer to this is that literally everybody is in a minority with regard to almost everything that matters to him or her, so that if we allow the oppression of minorities, we are allowing the oppression of ourselves. It would be, in the longer run – and the longest possible run is what we are talking about here, after all – most unwise to write into a proposed universal social contract that such-and-such a majority should be recognized as having hegemony, even if you at the time happen to be a member of it. Of course, no non-members would accept that, and so to propose this is simply to propose war with those people, thus depriving everyone of

any benefit to be got from individually peaceable dealings with them. And too, even members of that majority would soon come to regret it when they realized that no majority is solid – members of a majority differ as much from each other as from outsiders, and the majority’s power is more likely to be used against its own members as on their behalf. Far better to have a universal recognition of a basic and general right of liberty for all.

So the reply to claim six is that those who invoke this complaint simply have not considered what they are getting into. The contractarian proposes a contract with all of mankind for the simple reason that anything less isn’t good enough and won’t work. It will, of course, be asked, What about the non-signers, those who will have no truck with any agreements at all? The short answer is that non signers, having claimed no protection, are entitled to no protection. The rest of mankind is, in effect, at war with them, since they have, in effect, declared war on it. What this means is that those who act in violation of reasonable arrangements may be regarded as enemies by everyone, and due protective measures taken. The moral „state of nature“ is apt to be one in which, in the classic phrase of Hobbes, life is mean, solitary, nasty, brutish, and short; or at least, the rest of us have good reason to see to it that those who insist on staying in it, at our expense, face such prospects. The right of self-defense needs no rationalizing, no „contract.“ We just do defend ourselves, as best we can. But we do far better if we are united with a great many others, and morality, indeed, is an arrangement for doing just that. Morality gets us together under an acceptable set of rules

for all, rules such that we will all do better if we all abide by them; and so it also assembles the community on the side of the rules and against the breakers of those rules. We thus do our bit to try to bring it about that people who don’t have enough savvy to see the value of abiding by the rules without any threats from others are exposed to those threats. For everyone else, the rewards of civilized life are immense.