

## Presentation for BESETO Conference

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1. In his *A Theory of Justice*, John Rawls launched his severe criticism of utilitarianism. Since then, utilitarianism has been a target susceptible to being attacked in normative ethics as well as normative political theory. Rawls argues that utilitarianism, owing to its commitment to maximizing aggregative welfare, seriously ignores personal separateness. Accordingly, when a utilitarian moral theory is applied to public affairs and public domain, it is disposed to give rise to a distribution-insensitive theory of social justice. Bernard Williams attacks utilitarianism from another similar perspective, arguing that utilitarianism engenders serious threat to personal integrity because of its commitment to a consequentialist structure of practical reasoning.

2. The problems generated by these criticisms are multidimensional. It seems to me, for example, that they are not only concerned with how to construe the nature of morality and the moral point of view, but they also put forward the question of how to understand the importance of persons and personal interest in social lives. In particular, how do we solve the conflict between interests of different individuals, on the one hand, and between personal interest and some social goal in a morally acceptable way when such a conflict does occur? It is beyond doubt that some particular normative ethical theory may provide a starting-point or foundation for solving such conflict. However, there is a really hard problem here: These problems arise precisely because, at least in part, different normative ethical theories can have quite different understanding of the nature of morality and moral demands.

3. Then, how to seek a foundation to dissolve the divergence that is generated because of the fact that different ethical theories can have different understanding of the nature of morality and moral demands? Some considered moral intuitions may be what we can seek as a foundation in this regard. However, in this paper, in addition to making appeal to such intuitions, I also try to explicate the alleged tension between consequentialist moral theory and contractualist moral theory on the basis of some understanding of Kant's ethics. I adopt this strategy out of, among others, such a consideration that while either libertarians such as Robert Nozick or contractualists such as John Rawls and Thomas Scanlon, who strongly argue against utilitarianism or consequentialism, also take Kant's ethics to be a leading origin of their thought. Accordingly, if it can be shown that Kant's ethics under some interpretation is not incompatible with the basic ideas of consequentialist moral theory, then the attack contractualists launch on utilitarianism or consequentialism can be significantly undermined.

4. The starting-point of my argument in this paper is thus the Kantian idea of persons as ends-in-themselves and its related concept of moral autonomy. What I try to show

is that if we can make sense of Kant's formula of humanity on the basis of his account of the kingdom of ends-in-themselves, then not only can the value of humanity be understood as a agent-neutral and universal one, but Kant, as I will argue, also takes as our duty the promotion and perfection of rational nature in every human being. This idea is not inconsistent with some form of consequentialism, for example, the one which takes some specified goal to be the object of being promoted. Kant obviously conceives respecting rational nature of persons as a precondition for happiness. However, in Kant, or precisely speaking, in the traditional interpretation of Kant's ethics, there is also an idea that is frequently ignored, namely, the idea that it is one of our duties to promote the harmony of the kingdom of ends-in-themselves.

5. Since Kant has regarded moral obligations as a kind of practical necessity, he fails to sufficiently recognize the possibility that there can be conflict between moral obligations. As a result, when we try to show that Kant's moral theory bears some affinity with consequentialism, or even includes a consequentialist structure, conflict between moral obligations will be one of the most difficult problems we have to face. Respecting person's rational nature means, in the very least, that we should not do whatever will harm the rational nature, which naturally generates a class of negative duties. However, in the real world, what are we to do if the positive duty to promote the maximal harmony of the kingdom of ends-in-themselves is in conflict with such a negative duty? Kant gives no explicit answer to the question, even though we may be able to find some clues to solving the question from his works on anthropology and moral psychology. For instance, from his account of natural teleology and moral teleology we can find such an idea to the effect that some disasters faced by human beings as a whole (or human individuals) may be a condition for moral progress in humankind. From this view and other similar views, Kant at least thinks that it would not be merely using someone as means to sacrifice him or some of his interests in order to promote the maximal harmony of the kingdom of ends-in-themselves. Conversely speaking, if we feel that doing so is a terrible thing for us, it would mean that we should not have brought evil into the world, or that as rational agents, what we always should do is to respect rational nature of every person so as to preserve the harmony of the kingdom of ends-in-themselves. Since Kant had been quite explicit to realize that we human beings are merely imperfect rational agents, he would probably allow us to adopt a consequentialist way of thinking in the circumstance where the negative duty to respect national nature is in tension or conflict with the positive duty to promote the maximal harmony of the kingdom of ends-in-themselves.

6. One problem with which this interpretation is faced is just a view popular in the conventional interpretation of Kant's ethics, that is, in Kant, negative duties must in some sense assume a normative priority over positive duties. It is worth of indicating, however, that Kant himself does not put forward any position of this kind. It is true that he does indeed make a distinction between perfect duties and imperfect duties, linking the former to respecting rational nature in human beings, and associating the latter with the conditions for promoting the rational nature as well as with human

happiness. However, the distinction does not mean that imperfect duties are merely optional. Instead it merely means that the agent has some degree of latitude in performing this kind of duties. Nevertheless, Kant's account of these two kinds of duty may suggest the necessity of establishing just social institutions so as to make the necessary conditions for everyone's rational nature fully fulfilled.

7. The leading purpose of this paper is to make some critical remarks on Thomas Scanlon's contractualism with regard to his understanding of morality and moral demands. Scanlon's contractualism is aimed to demonstrate what obligations we owe to each other and establish such obligations. For the purpose he works out a largely negative account of morality—trying to conceive morality merely by putting forward a definition of moral wrong. To put this more precisely, Scanlon holds that an action is wrong to the extent that it is prohibited by some conduct-regulating principle(s) which no one can reasonably reject. However, in this paper I will not challenge Scanlon's definition of moral wrong. Instead I will focus my attention on the question of how the principles are established in Scanlon. In constructing his contractualist moral theory, Scanlon has dismissed the Rawlsian idea of the veil of ignorance, allowing the parties who participate in working out these principles to have full knowledge of their identity. In other words, according to Scanlon, the parties judge whether a proposed principle can be reasonably rejected on the basis of what he calls 'generic reasons'. Scanlon does so largely because he wants a moral theory which is more distribution-sensitive than Rawls's one so that such a theory can sufficiently avoid the charge about personal separateness which some theorists make of utilitarianism or consequentialism. Scanlon also assumes that generic reasons are not merely concerned with one's happiness or welfare, even though it is already evident that his specification of happiness or welfare is quite narrow.

8. However, once Scanlon begins to conceive his moral theory in this way, a serious problem with the theory comes to the surface: once the parties have possessed full self-knowledge, and have been determined to judge whether a proposed principle is reasonably rejected in terms of generic reasons, how is unanimous agreement over such a principle reached? Here I am not arguing about whether people can arrive at this kind of agreement with regard to rejection or acceptance of such a principle. Instead the question I want to ask is this: what kind of reasons are exactly the reasons on which they accept or reject such a proposal? It is evident that Scanlon requires that the acceptability of a proposed principle be sensitive to the generic reasons of everyone involved so that he can decisively distinguish his theory from a consequentialist theory. However, through a detailed investigation of the egalitarian principle of priority, fairness and aggregation, which are thought to make huge trouble for consequentialism or utilitarianism, I try to show that if the parties participating in Scanlon's contractualist procedure can really arrive at unanimous agreement over some proposed principle, then the reasons by which they consult about this point have, in the very least, included some morally heavy or thick reasons. This is not to deny that we can establish some conduct-regulating principles by using such a procedure.

Instead what I want to indicate is that if people could arrive at unanimous agreement over such a principle, then we would have no reason to think that they are morally innocent. In other words, among the reasons by which they accept or reject a principle, some substantive moral reasons have been included, among which there may be consequentialist reasons. It is quite interesting to observe that Scanlon's procedure is in some way similar to the Kantian test of universalizability. However, as some Kantian theorists (for example, Barbara Herman, among others) have convincingly shown, it is impossible to expect with any plausibility that someone who has no moral consciousness or does not have some fundamental moral considerations in mind can make his maxims pass the test in question.

9. Accordingly, I don't believe that Scanlon's contractualist moral theory provides a real alternative to other forms of moral theory, especially a consequentialist one. The moral life is inevitably intertwined with the other aspects of human life, as such theorists as Bernard Williams have insisted. In this case, what reasons we have to act largely depends on some overview we have of ourselves and the world as well, and this is a fact that is, in my view, neatly captured by a consequence-based moral point of view. It seems to me that Scanlon's theory has failed to grasp the complexity and variety of our moral motives. It is without saying that it implausibly cuts down the content of human morality. Moreover, as I have argued in this paper, even though we accept Scanlon's theory, it turns out that the demands it imposes on us are not less demanding than those which a consequentialist moral theory may impose on us. There is no good reason to deny that morality does require us to act in a certain way. What is at issue is that what kind of moral requirements is what we can reasonably accept as we live in the world. In this issue, it seems to me that Scanlon's theory might have been misplaced.