

Framework

I value morality, which is defined by Merriam Webster as beliefs of what is right behavior and what is wrong behavior.

Being that the resolution is a question of individual action, in the determination of moral culpability, our natural starting point or analysis must rest within the individual, as a rational agent

All actions by rational agents must be consistent with self-interest which entails evaluating consequences.

Vallentyne, Peter, ed. 1991, Contractarianism and Rational Choice, Cambridge: Cambridge University Press.

Gauthier defends **an instrumental conception of practical rationality, according to which a choice is rational if and only if relative to the agent's beliefs it is the most effective means for achieving the agent's goals.** Except for certain minimal formal conditions of coherence, the instrumental conception of rational choice rejects any attempt to assess the rationality of the goals themselves. Value (utility), Gauthier argues, **is** subjective (**dependent on the affective attitudes of individuals**). **Therefore there are no external norms for assessing someone's preferences.** Gauthier claims, **except the formal coherence properties.**

Extend Vallentyne 91 (1) which shows that all actors will make decisions which allow them to comply to their own beliefs and achieve their own goals, this shows that the individual will serve as an advocate for themselves

Even though we look to consequences, aggregation is impossible as people have different conceptions of the good.

Furthermore, these moral agents not only work for immediate self-interest, but also can constrain themselves to appear credible for the others.

“Notes on David Gauthier, Morals by Agreement” Dick Arneson For Philosophy 160

David Gauthier's view is close to egoism. He holds that **the sole rational goal for each person is maximizing the satisfaction of her own interests.** Here one's interests are fixed by one's basic (noninstrumental) preferences or desires. **If you happen to desire the good of others** in some ways or to some degree, **then your interests include achieving the good of others** in some ways or to some degree. **But the mere fact that another person would benefit from getting some good does not per se give you any reason to bring about the person's getting that good.** ¶ Gauthier thinks that **practical reason so understood justifies moral constraints.** He says, “We shall defend the traditional conception of morality as a rational constraint on the pursuit of individual interest” (p. 2). Example: If morality as traditionally conceived includes the rule that one should not steal other people's property, this rule is a constraint on the pursuit of my own interests. Morality tells me not to steal other people's property even when doing so would be the best way available to advance my interests. How can this be? If what is rational is maximizing the satisfaction of one's interest and morality constrains the pursuit of one's own interest, how can acceptance of moral constraint be rational? Gauthier asserts,

“rational constraints on the pursuit of interest have themselves a foundation in the interest they constrain. Duty overrides advantage, but the acceptance of duty is truly advantageous” (p. 2).¶ Here’s a story that illustrates what Gauthier has in mind. Suppose that if you are a nice, cooperative person, one who keeps her agreements, you will be recognized as such by other persons and admitted by them into mutually profitable cooperative arrangements. **If you are not a nice, cooperative person, but instead prone not to keep your agreements, you will be recognized as such by other persons and shunned by them. They will avoid interaction with you.** If the social world you face has these features, then it is easy to see that being disposed to keep one’s agreements will sometimes lead you to do disadvantageous acts—acts that are really disadvantageous, disadvantageous to you even in the long run, not merely seemingly disadvantageous or disadvantageous-in-the-short-run-but-advantageous-in-the-long-run. However, being disposed this way will still lead you to be better off if the disadvantages of keeping your word are outweighed by the advantages of being recognized as a trustworthy person and being admitted into mutually profitable associations. **Having the character trait of being disposed to keep one’s promises can be advantageous even if the act of keeping one’s promises is sometimes truly disadvantageous.** Example: suppose tom and sally are farmers growing crops on adjacent fields. Tom’s crop ripens first, Sally’s a few weeks later. Both will be better off if they Sally helps Tom harvest his crop and then Tom helps Sally harvest her crop. **So a mutually advantageous deal is possible.** But this is threatened, if Tom acts according to egoism on each occasion of choice. Having already been helped by Sally, he has nothing to gain from helping her later. So he won’t. Foreseeing this, Sally will not help Tom first. If Tom had disposed himself to be what Gauthier calls a constrained maximizer, specifically one who pursues his own interests except that he keeps his promises, then if sally recognizes this is so, she will be willing to make a deal with tom and be willing to help him first, foreseeing he will do his part of the bargain later, when her crop ripens. Note: In this situation, Tom’s helping Sally to harvest her crop is really and not merely seemingly disadvantageous for him.

Extend Arneson this card shows that people will follow their interests but that typically their interests are not hedonistic and instead will lead them to be cooperative with society as a whole as it allows them to be socially accepted and over time benefits them more

And contracts are the only means to take into account this self-interest as rational people would never join a contract that harms him/herself.

Vallentyne, Peter, ed. 1991, Contractarianism and Rational Choice, Cambridge: Cambridge University Press.

Gauthier agrees that a **rational agreement should make everybody at least as well off as under the noncooperative outcome, but** argues nonetheless that **the non cooperative outcome should not be treated as the initial bargaining position. A rational agreement** Gauthier claims, **must be one with which it is rational** for the agents **to comply**, and agreements based on the noncooperative outcome do not satisfy that condition. In particular, **it is irrational** he argues, **for those who would be net victims** of noncooperative interaction (ie those who would be worse off in the presence of the noncooperative activities of others than they would be if left completely alone) **to comply with agreements based on the non-cooperative outcome. Such agreements would perpetuate the benefits and costs of coercive activity** even though such activity would no longer take place, and therefore be unstable. Gauthier claims that, **in order for there to be a rational basis for all to comply** with an agreement, **the initial bargaining position must be the hypothetical result of noncooperative interaction** constrained by the Lock-ean Proviso, that is, of noncooperative interaction subject to the constraint that no one makes him/herself better off by making someone else worse off. **Like the noncooperative outcome, this represents an outcome where all social cooperation ceases.** Unlike the noncooperative outcome, however, it is based on the assumption that no one engages in coercive or predatory activity. **People neither help nor harm others.**

Extend Valentye 91 (2) this shows that a rational agreement is one where neither party will receive a negative outcome from either engaging in the process of making the contract or as a result of the contract that is established

This means that there can be no objective side constraints as it's up to the individual to decide if following a particular constraint or action is consistent with self-interest. Contracts resolve potential issues with moral subjectivity because people can subjectively decide which agreement is best for them.

These contracts must exist outside a realm of coercion and be free from undue duress and coercive practices otherwise it violates the autonomy of agents

Bigwood, Rick (1996). *Coercion in Contract: The Theoretical Constructs of Duress*. *The University of Toronto Law Journal*, 46(2) doi:10.2307/825693 Pp 204

Doubtless, freedom and choice play central roles in liberal societies such as our own.

Choice, after all, is a morally valuable expression of our autonomy, and of our freedom to shape, for good or for ill, our own lives." The freedom to undertake binding contractual obligations is but one important aspect of this autonomy.¹² The freedom to exercise the power one acquires by virtue of physical or economic strength is yet another."

Freedom and coercion, however, are generally considered to be 'antithetical relations or realities,' such that 'freedom entails the absence of coercion, and coercion involves the absence of freedom.'"

Thus, to say that D forced or coerced P to do X, or that P did X under duress, understandably gives rise to some powerfully emotive questions about precisely what it means to be 'coerced.' To denominate D's conduct toward P as 'coercive' is generally to condemn D. **But beyond its obvious tendency emotively to persuade in**

favour of the coerced party, a 'coercion claim' (or any of its more technical analogues) can have special significance in law. For what one is really claiming when one complains of 'being coerced' is that because of coercion or duress, one should be relieved of the normal moral or legal consequences of one's actions.¹⁵ Hence, **as a result of coercion in this context, contracts are not binding**: the 'consent' brought to them is treated in law as revocable.¹⁶

Extend the Bigwood 96 evidence this shows

This means that there cannot be coercion used in the deliberation and association of individuals that are established through contracts.

Thus my value criterion is maintaining consistency with the contractarian system of mutual constraint, we specifically do this through preserving social contracts between members of a society.

Prefer this criterion because

1) **Contracts are the only consistent view of morality regardless of culture or ideas.**

Jan Narveson OC is professor of philosophy emeritus at the University of Waterloo, in Waterloo, Ontario, Canada "The Libertarian Idea" 2001

Why accept the contractarian view of morals? Because **there is no other view that can serve the requirements: namely, of providing reasons to everyone for accepting it, no matter what their personal values or philosophy of life may be, and thus motivating** this informal, yet **society- wide “institution”**. Without resort to any obfuscating intuitions, of “self- evident rights” and the like, **the contractarian view offers an intelligible account of why it is rational to want a morality** and of what, broadly speaking, the essentials of that morality must consist in: namely, those general rules that are universally advantageous to rational agents. **We each need morality**, first **because we are vulnerable to the depredations of others, and second because we can all benefit from cooperation** with others. So **we need protection, in the form of the ability to rely on our fellows** not to engage in activities harmful to us; and **we need to be able to rely on those with whom we deal. We each need this regardless of what else we need or want or value.**

This precludes any epistemic arguments because the way people come to know is through their cultural adaptations. Other ethical theories that attempt to derive how we come to know don't take into account how people are raised in different cultures and ideas, which only contracts can take into account. This essentially means that contracts resolve any questions of cultural relativism.

2) **Morality and justice, which are the central questions of the resolution, always begs the question of why we should follow them- contracts is the only way to resolve this issue in a manner that is both efficient and respectful or subjective agency.**

David Copp University of Western Ontario Apr 26 1987 “Contractarianism and Moral Skepticism”

A contractarian sees the main skeptical challenge as consisting in a view of moralities as imposed ideologies that often call on people to act irrationally against their self-interest. The skeptic holds that people are neither rational to comply with morality nor to dispose themselves to comply. To be sure, **many of us have preferences that can make it rational to comply with certain moral requirements**. We have been socialized to comply with the going moral code, and we have emotions and feelings and attachments to other people that can make it rational to comply with the going moral code. In addition, certain of the going moral requirements are supported by sanctions in a way that can make it prudent to comply. But **the skeptical position is that these are reasons for compliance that obtain only adventitiously or** because the going requirements have been imposed on us **through socialization or** threats of **sanctions**. A person would not rationally choose to have the preferences, or the emotions, feelings and attachments, or to be subject to the sanctions, that can make it rational to be moral. The contractarian strategy for defeating this challenge is to argue that **[However contracts mandates that] there is a set of moral requirements such that, at least under certain conditions, a population of fully rational people would agree to comply with them**, dispose themselves to comply with them, and in fact comply with them, **given the reasonable expectation of mutual benefit. People would** be rational so to agree, and rational to **comply, even if** hypothetically, **they had no antecedent** moral **preferences and no attachments to other people**, and even if they

were bargaining outside of society, where they were not subject to the sanctions of an antecedently accepted societal moral code. **The contractarian claims that the moral requirements that are adequately and appropriately justified are those** and only those, if any, that are defensible in this manner, as objects of hypothetical rational agreement and rational compliance.

The thesis of the Negative is that an unconditional right to strike harms the ability of workers to enter and create contracts with other agents.

Contention 1: Striking Prevents Contracts

“The Employment Relationship and the Nature of Strike Activity.” **NTHR**, 10 June 20**16**,
newtohr.com/the-employment-relationship-the-nature-of-strike-activity/. Accessed 3
Nov. 2021.

The changing structure of the workforce in this economy has added to the change in the employment relationship. **Work has become** very **fragmented and employers need** more flexible **workers, job insecurity is at an all time high** pushing to and **encouraging a** highly **individualistic labour force**, without the same 1990's values and beliefs.

Therefore **this** is **making industrial action** (in an individualistic way) very **difficult as people do not have the same core values**. (think of the many freelancers and women that have come into the workforce) Individual bargaining is a ‘new’ way of by-passing unions and mediating with the employer directly.

Employers are now more **aware about what employee relations entails**. (this does not however mean that it is always applied!!) Things like **training and development** have **strengthened the bargaining power of employees**, by creating commitment and motivation **effectively** trying to **improve employee relations**.

Modern-day employee-employer relationships are social contracts

McCarthy, Jeremy. “The Social Contract at Work.” *The Psychology of Wellbeing*, 18 Oct. 2011,
psychologyofwellbeing.com/201110/the-social-contract-at-work.html. Accessed 3 Nov. 20**21**.

Most **employers understand** their **relationship with** their **employees as** being based on **a simple** employment **contract. The employee is provided with** a **compensation** package including a living wage and a certain amount of benefits **and in return they are expected to fulfill certain functions** of the job, usually outlined in an employee handbook and/or a “standard operating procedures” (SOP) manual.

Contention 2: Doctors have a social contract and striking is a violation of the contract

Doctors have a Social contract with their patients

Ogunbanjo and Knapp write

GA Ogunbanjo & D Knapp van Bogaert (2009) Doctors and strike

action: Can this be morally justifiable?, South African Family Practice, 51:4, 306-308, DOI:

10.1080/20786204.2009.10873869

The social contract, an idea derived from political science, **has** recently **come to be used to describe the relationship between the medical profession and the society which it serves** [1-5]. Medicine's contract with society has always been more implicit than explicit. It functioned reasonably well when both medicine and society were relatively homogeneous, sharing many values. Medicine knew what society expected of both individual physicians and of the profession as a whole. The obligations of physicians necessary to sustain the contract were understood and passed on by respected role models. For its part, society understood what it wanted from those responsible for the care of the sick. Societal obligations were present, but less clear. **Society granted physicians status**, respect, autonomy in practice, **the privilege of self-regulation, and financial rewards on the expectation that physicians would be** competent, altruistic, moral, and **would address the health care needs of individual patients and society** [6]. This "arrangement" remains the essence of the social contract. Professionalism is fundamental to the social contract: society uses the concept of the profession as a means of organizing the delivery of complex services it requires. Professionalism is the basis of the contract and of the expectations of the profession of medicine. Hence, it is important for physicians to understand the origins, evolution, and obligations of professionalism. **Each physician fills 2 roles**—that of **the healer and** of **the professional** [6]. Even before recorded history, mankind required healers. With the development of science, the healer learned to cure. The professions arose in the guilds and universities of medieval Europe and England. They had little impact on society until science made health care worth purchasing and the industrial revolution provided sufficient resources so that society could afford it. Some means of organizing health care was required and society turned to the preexisting concept of the profession [1-3]. This occurred in the middle of the 19th century, when licensing laws were passed granting the medical profession a monopoly over the use of its complex and expanding knowledge base, thus establishing the basis of the modern social contract. Until the mid-20th century, the structure of the health care system evolved slowly: Trust in authority, including medicine, remained high, and the term *social contract* was not used. Assuming that members of the profession would be altruistic, social scientists looked favorably upon the professions, and medicine's influence on public policy was substantial [2,3]. In the 1960s and 1970s, all forms of authority were challenged. Social scientists argued that medicine had abused its monopoly to further its own interests, had self-regulated poorly, and that its organizations were more interested in serving their members than society. In a 1984 book, Paul Starr used the

term social contract to describe medicine's relationship to society, stating that it was being renegotiated to cope with the complexities of both modern medicine and contemporary society. Although much of it is unwritten, it is possible to outline broadly the terms of the contract by examining both the expectations of the medical profession and those of society.

Doctors social contract believes that doctors should prioritize patient lives over anything else and allowing doctors to strike can lead to patients dying breaking the social contract

Abbasi writes, Abbasi IN. Ethics of Doctors' Strikes. J Community Med Health Care. 2017; 2(1): 1008

Doctors' strikes present an ethical dilemma due to perceived central role of doctors in relation to human health and life. Doctors are seen and judged by higher standards than the ordinary people. Under Hippocrates oath, **doctor is considered to be in a social contract and is obliged to treat patient's health and life as a priority over everything else and going on strike is considered a breach of such contract.** Though socialized medicine (being practiced in several developing countries) advocates that health care is the joint responsibility of the state, the healthcare institutions and the doctors, yet the doctors' strikes carry greater ethical predicaments for themselves. As most societies seem to follow a Utilitarian view that pronounces strike as ethical only under the condition when such action carries greater good for the doctors and to society than the loss occurring as a result of denial of health services to the patients during the strike. However decision regarding what defines greater good is complex. There is no single best answer against or in favor of doctors' industrial action. In a system of socialized medicine, government being in charge of resources and management decisions has to assume greater responsibility in faith of the greater good of all stakeholders including doctors and patients and working conditions of doctors in developing countries in particular demand a contextual analysis of the situation. According to the United Nations' universal declaration on human rights articles 19 and 20, right to freedom of expression and peaceful assembly is a basic human right [1] and the governments are responsible for ensuring that everyone can exercise it without fear of intimidation or violence [2]. This right is exercised and there is varied response of state governments around the world; sometimes in favor and sometimes against it. However, **protests and strikes by doctors are viewed from a perspective known as the social contract which a doctor enters as soon as he/she swears the Hippocrates oath. He/she swears to act in the highest interest of his patient and keep the health and life of his patient a priority above everything [3].** As part of their profession **doctors' proximity to life and death situations renders strikes and protest by them as an ethical misconduct.** Because of their direct link with human lives, doctors are envisioned as highly respectable in every society and the society judges them by standards higher than those of ordinary humans and they are considered as 'the Messiahs' (the saviors) of mankind by the society. **Under Hippocrates oath, care of the patient** is a contractual obligation for the doctors, superior to everything else [3]. Though Utilitarian perspective views doctors' strike justifiable under the circumstances where there is evidence of long term benefits to doctors, improvement in service delivery and when those in need of health care will seek the greatest benefit out of the strike [3,4]; yet the formula becomes increasingly complex when the benefits of the strike are to be weighed against the risks to the patients. Historically, strikes by doctors were kept limited to nonemergency cases while keeping the emergency services functional. Such types of strikes were carried out in Israel, Australia, Tanzania and more recently in the UK and Pakistan. In Israel, an alternate system called fee for service was established to deal with outpatients and ensure continuity of care during strike [3,9,10,11]. In the UK, it was called as 'urgent and emergency care model' where all non-emergency surgeries, investigations, out-patient consultations and routine procedures were kept suspended [12]. Park et al. (2013) argues that doctors can protest given that any emergency care required is urgently provided. However, the emergency as defined by doctors may differ from the general perception and delaying care to non-emergency cases could ultimately turn into preventable emergency cases. Therefore, this mode of the strike also bears moral repercussions for doctors. **Strikes may impact patients in the form of an increase in severity of the medical condition, prolongation of sufferings, irreversible damage**

to health or loss of life, delay in treatment or unwanted drug interruptions, loss of work and waste of money on transportation [13].

Suspension of public sector health care services turns the flow of the patients to the private sector. Public health services are relatively cheap compared to private sector and therefore people of low socioeconomic status may not be able to avail health care at all.

Moreover, private health sector's capacity may not be adequate to meet the requirements of the population in times of strike adding to the misery of those in most need. The key areas requiring consideration are: i) responsible role of government in preventing strikes and the consequent system failure ii) role of doctors in ensuring continuity of care during strikes and minimizing its impact on those in need of health care. First, since the social contract between doctor and patient is not considered void under any circumstances, strikes by doctors seem to raise ethical concerns about their professional conduct. Here it is vital to consider that doctors in their entirety are human beings having similar emotions, feelings and more importantly the needs as those of a common man. Bounding them with social contract does not eliminate these basic human characteristics rather it puts an added burden in the form of social responsibility tied to their profession. Therefore, while it is expected from doctors to obey the social contract, consistently ignoring their basic needs may lead to circumstances that then manifest in the form of so called undesired outcomes. Forcing doctors to work under adverse working condition can lead to demotivation and demoralization culminating in poor health care quality and brain drain. Second, enjoying an optimum level of health is the basic right of every individual and is a constitutional responsibility of the state. The state is responsible for ensuring the adequacy of resources both financial and human, and proper resource allocation. Lack of seriousness and timely interventions into the issues such as strikes ultimately ends in patients' sufferings. Moreover, in the system of socialized medicine government is the supreme authority since it has the control of resources and important management decisions related to health (care) system.