

THE Oracle

UNDERGRADUATE
PHILOSOPHICAL
REVIEW

ISSUE 16
SUMMER
22



PHILOSOPHIA
YORK UNIVERSITY





The Undergraduate Philosophy Review at York University

Issue 16 (Summer 2022)

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ACKNOWLEDGMENTS

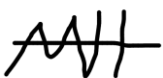
I would like to start by thanking the Department of Philosophy at York University. A big part of philosophy is about sharing. In supporting this journal, not only are you encouraging students by providing them with a medium to voice their opinions, but you're also adhering to that very fundamental and principal part of philosophy, *sharing*, that is. For all we know, this journal could be the spark that ignites the passion for philosophy for the next Jean-Paul Sartre. So, once again, thank you.

A huge thank you goes to this year's editorial staff. Adam Bruni, Lexi Bilous, Abraham Tenang, and Jasneet Butter, thank you for taking time of your summer to help bring this journal into life. All of you did an outstanding job. Moreover, thank you to everyone who submitted a paper to this journal. It takes a bit of courage to overcome the self-criticism that comes with doing something like this. Your courage is admirable, and it didn't go unnoticed. I encourage you to submit again for the subsequent years as we would love to read some of your new work!

I would like to extend my gratitude to Kameron Lee, the Club's president, for his ongoing support and for sharing his experience. I would not have been able to put this journal together without your guidance.

Lastly, to my father, thank you. I have come to understand the value of seeking knowledge through you, and this is something that I'm forever in debt for. Your wisdom is inspiring, so it's only fair that I find myself indulging in this discipline.

Sincerely,
Micheal Habib
Editor-in-Chief

A handwritten signature in black ink, appearing to be 'MH' with a horizontal line extending to the right.

LETTER FROM THE EDITOR (to the editor)

I've thought a lot about what to write in this section of the journal. I found myself blanking, only fragmented thoughts filled my mind. I quickly looked for inspiration in previous issues of The Oracle, hoping I would break the silence in my mind. But with no luck. I realized later that the problem was the title of this section itself. A "letter from the editor" implies that I'm trying to send a message to the reader(s) before they embark on this journey. I found this extremely difficult. One message to send the reader(s) off. A bit stressful if you ask me. So, instead, I thought I would write a letter to myself. And, in that, I found solace.

Allow your convictions, prejudices, and
habitual beliefs to be criticized.
Prepare yourself to be intrigued, shocked,
and amazed.
Digest, reason, and reflect.

In challenging the mind, we grow.
In defying the self, we overcome.

Now, repeat.

Sincerely,
Micheal Habib
Editor-in-Chief



The Maternal Body Bears Violence: A Feminist Contractarian Reply to Giubilini and Minerva

Stephanie Kwan

Edited by Adam Bruni

The Giubilini and Minerva article “After-birth Abortion: Why Should the Baby Live?” invites a feminist contractarian ethical position to defend their premises. Factoring in sociopolitical conditions that impact reproductive health, “After-birth Abortion” morally reflects on the lived experiences of women. Infanticide is then proposed as a response to structural inequalities that disproportionately burden childbearing individuals and the greater family unit. Objections outside of the feminist ethical lens attempt to disband these premises through *reductio ad absurdum*. Yet the maternal body absorbs absurd violence, therefore, absurd violent solutions must be considered when renegotiating the social contract for those harmed by reproductive inequality. I will establish that Giubilini and Minerva’s arguments are congruent with the goals of feminist ethics with the following content structure: (P1) and (P1.5) the feminization of poverty, (P2) justice through social contracts, (P3) a historical analysis of feminist agent-morality. I will demonstrate that the premises and the conclusion in “After-birth Abortion” are factually correct and defensible through feminist contractarianism. However, evaluating the technical structure of the premises leaves open the possibility that the argument may be invalid.

Assessment and Evaluation Through Feminist Contractarian Ethics, “After-birth Abortion” presents the following premises:

- (P1) Abortion is permissible when a fetus can potentially burden interested parties.
- (P1.5) Adoption is not an option because of potential burdens to interested parties.
- (P2) Both fetuses and newborns share equivalent moral status as non-persons.
- (P3) Both fetuses and newborns having the potential for personhood is morally irrelevant.
- (C4) Therefore, infanticide ought to be permissible on the same grounds as (P1).

I have rearranged the chronological order of the premises by situating (P1.5) in relation to (P1) due to resonant commonalities in the contents of the argument. Notably, (P1.5) follows after (P3) in the “After-birth Abortion” article prior to the conclusion. Both (P1) and (P1.5) describe the “social, psychological, economic” toll to which childbearing individuals are subjected (261). The mental distress of the mother is an invisible wound that requires moral reflection. However, presenting paradigmatic sufficient conditions for seeking ‘justifiable’ abortions inadvertently generates the category of ‘moral abortions’. To imply a category of ‘immoral’ abortions restricts the autonomy of certain women. The preamble is cognizant of the claim that all after-birth abortions should be permissible, regardless of the health of the fetus. A feminist contractarian would accept the utilitarian statement that foregrounds maternal interests above the prescribed ‘best interests’ of the fetus. This theoretical lens supports mutually advantageous relationships through non-coercive family planning. The source of coercion is not derived from the fetus, but rather the external societal structures that reinforce the feminization of poverty among mothers. (P1) is a widely accepted premise that holds factual accuracy. (P1.5) is evocative of the circumstances that precede (P1), although (P1.5) does not immediately appear relevant to the overall argument structure. Even if (P1.5) was false and that the adoption process was remarkably efficient, the coercive forces that burden the agents would still remain intact (P1). I also take note that the similarities between (P1) and (P1.5) poses disruptions in the typical deductive reasoning process, as the trajectory of the premises do not move from the general to the specific in the article itself. Both (P1) and (P1.5) contain widely accepted premises that outline the reasons why unwanted pregnancies harm women’s autonomy and wellbeing.

Assessing (P2) for factual accuracy is rather inconclusive, given that this premise is a departure from all mainstream decisive moment theories for personhood. (P2) additionally resists legal definitions, asserting that “merely being human is not in itself a reason for ascribing someone a right to life” (262). The legal parameters for personhood have been historically defined by male-dominated institutions. The institutions that

prescribe what is in ‘the best interest of the fetus’ also reinforce sex inequality. Feminist ethics disrupts these personhood paradigms by disavowing universalism, as suggested by the conclusion paragraph of the relevant (P2) section detailing that moral status is conferred onto the fetus by the mother. Feminist contractarianism is largely concerned with care work and the asymmetrical relational dynamics that implicate gendered exploitation. Rational agents could reasonably accept an asymmetrical social contract with a newborn, or a non-person, if ties of affection merit the multiplicity of burdens that (P1) outlines. If the interests of mothers and families are overridden by the interests of those who have yet to be born, then these asymmetric relations between the mother and the non-person become unjust.

The factual correctness of (P2) reintroduces ambiguity towards defining personhood, especially since this statement is not a widely accepted premise. Giubilini and Minerva concede that an entity which has the capability to perceive pain will have aims to avoid harm, yet they neglect to define which stage of mental development determines personhood. To accept that both entities are equivalent to one another in the context of harm invites the objection that a fetus and a newborn conceptualize pain differently. The conclusion relies heavily on (P2) requiring the reader’s conditional acceptance to follow through with Giubilini and Minerva’s claims. (P2) simply restates the research goal in the preamble: “we need to assess facts in order to decide whether the same arguments that apply to killing a human fetus can also be consistently applied to killing a newborn human” (261). (C4) remains structurally intact even if the reader rejects (P1.5), but rejecting (P2) breaks the chain of reasoning leading to the conclusion. (P2) is needed to ease the remainder of the premises into an appropriation of Rachel’s Equivalence Thesis: if I accept (P1), then infanticide ought to be morally permissible for the same reasons. The content of (P2) begs the question, coming dangerously close to rendering the premise invalid. Overall, the truth value in (P2) is inconclusive. Nonetheless, accepting that both fetuses and newborns are morally equal maintains a sound argument.

The premise in (P3) supports (P2), where (P2) is justifiable because Giubilini and Minerva argue that the potentiality for a biographical life is not a sufficient condition for a right to life. This premise defines the parameters of harm, claiming that non-persons cannot be harmed since it is not possible to harm “someone who does not exist” (262). A reasonable objection arises here that postulates the end goal of feminist ethics is the elimination of inequality among all subjects. Would it be a non-feminist stance for mothers to abort female fetuses and newborns, thereby harming their potential passage towards personhood? This objection activates a contradiction in action at the heart of feminist ethics in action. While the goals of this paper do not intend to resolve this paradox, Historically, liberation movements that strive towards an expansion of justice require in-group essentialism. The in-group coheres around a defined set of characteristics that excludes others. For instance, Western suffragettes organized for legal personhood and the expansion of voting rights solely for middle-class white women. This action does not necessarily condone that the suffragettes acted morally by reaffirming class stratification and white supremacy, since these liberation projects did create harm for members of the out-group. The practical applications of feminist ethical theory, unfortunately, has not stepped outside of this recurring pattern of harming the out-group through single-issue activism. I am simply stating an observation of feminist agent morality.

Regardless of the metaphysical status of personhood among fetuses, after-birth abortion delineates an in-group of mothers alongside their affected family unit who mobilize against an out-group of newborns and fetuses. As qualifiers for the in-group, The Hobbesian social contract presumes that like-minded partisans are i) reasonably bright, ii) self serving, and iii) of roughly equal ability and strength and are inclined to cooperate (Davis 00:18:16). If the out-group cannot meet any of the three Hobbesian criteria, then they cannot participate in the social contract. While they do have the potentiality to eventually enter the contract and become moral agents, “it is not possible to damage a newborn by preventing her from developing the potentiality to become a

person in the morally relevant sense” (262). (P3) is factually correct; rejecting (P3) threatens women’s autonomy as outlined in the widely accepted premise for (P1).

Conclusion

I will comment on the material implications discussed in “After-birth Abortion” from a cultural relativist perspective. The ill effects of China’s one-child policy instigated widespread female infanticide. In rural China, male children are preferred farm hands and are the traditional caretakers of aging parents. Another contemporary example would be the dowry system in India, where carceral solutions attempt to deter the practice of female infanticide. Both examples—the cultural practice of dowries or the absence of state-sponsored geriatric care—propose future harm for families. These respective societies participated in after-birth abortion long before the publication of this paper, and will continue to practice female infanticide without seeking permission from the ideas presented.

I do recognize that due to the brevity of “After-birth Abortion: Should the Baby Live?” premises such as (P1.5) could not be adequately explored. To restate my two-pronged approach, the after-birth abortion argument is defensible through feminist contractarianism. However, analyzing the technical framework of the argument reveals structural weaknesses. I do not want to outright deem the overall scope of the argument false, as I do not believe that the fallacy in (P2) or that (P1.5) being a general statement condemns the conclusion. The premises leading to the conclusion are factually correct, yet the structural integrity of the argument is invalid. Overall, the argument presented in “After-birth Abortion” is unsound, but I will emphasize that the paper’s contributions are nonetheless thought-provoking. Would a free society unburdened by coercive forces still permit after-birth abortion? If we wish to renegotiate for a fairer social contract that supports family planning, women’s autonomy, and basic needs, will we require after-birth abortions in order to arrive there?

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Neo-Carnapian Relativism and the Idea of Framework

Daniel Lewin

The Relativist Interpretation of Carnap

In “Carnap’s Metaontology”, Matti Eklund explores four plausible interpretations of Rudolf Carnap’s ontological position. I intend to provide a neo-Carnapian view on what he calls the “relativist” interpretation of Carnap. Eklund conceives of the relativist interpretation as a more radical extension of the “language pluralist” interpretation. Central to the language pluralist interpretation are the following claims: there are many possible languages, the meaning and therefore truth value of a single sentence can vary across languages, and the language we speak is just one possible language (Eklund 231). The major difference between the language pluralist interpretation and the relativist interpretation lies in two further claims. First, that linguistic frameworks¹ are not mere language fragments, in the sense that a framework is merely a fragmentary set of linguistic instruments (semantics, meanings, etc.) for engaging in a certain discourse, but rather are in some way perspectival insofar as they constitute our method of interpreting the world (Eklund 233). And second, that the proposition expressed by a given sentence is only true or false internal to some linguistic framework (Eklund 233). To summarize then, a neo-Carnapian relativist view roughly holds the following claims:

1. There are many possible linguistic frameworks.
2. The linguistic framework we operate within is just one possible linguistic framework.
3. Linguistic frameworks are in some sense perspectival.

¹ I use the terms linguistic framework and language equivalently.

4. A single semantically identical sentence can express various non-identical propositions across linguistic frameworks and therefore have different truth values across linguistic frameworks.
5. The truth value of an identical proposition can vary across linguistic frameworks.

My plan is to argue for propositions one through four by extending Donald Davidson's notions of "Prior theory" and "Passing theory" from his paper "A Nice Derangement of Epitaphs" to a notion of individual general linguistic frameworks and to place that notion in the context of a fluid aggregate conception of natural language. This allows me to distinguish between the de jure English language and the de facto natural English language. I model the latter as a fluid aggregate of points of linguistic similarity on which speakers broadly converge over time whereas the former is a reified representation of that aggregate. These points of linguistic convergence are in turn models of how various people speak and interpret as represented by their individual general linguistic frameworks. I hypothesize that if we measure the linguistic habits of a body of speakers and interpreters over repeated linguistic interactions and then model their similarity or dissimilarity over time, then what will emerge is a fluid aggregate of points of linguistic similarity or dissimilarity which models the convergent and divergent linguistic tendencies within a body of language users and thereby models the de facto natural language of those users.

Within this model I can properly develop a notion of framework sufficient for a neo-Carnapian relativist view and provide an account of linguistic communication despite the linguistic framework relativity entailed by my view. I will do so by discussing my notion of the tendency toward linguistic convergence among speakers and interpreters and how this tendency is an essentially pragmatic phenomenon. As the final condition for an adequate relativist view, I will discuss John Searle's arguments for the relativity of literal meaning and their application to relativizing truth and argue against the possibility of synonymous meanings between individual general linguistic frameworks. I will then

conclude with a discussion of the prospects for ontological inquiry and the application of my view to Fictionalist discourses.

Davidson and The Problem of Malapropisms

In his paper “A Nice Derangement of Epitaphs”, the anti-conventionalist² philosopher Donald Davidson utilizes the case of malapropisms to develop his notions of “Prior theory” and “Passing theory”. This was inspired by the problems generally posed by malapropisms³ to traditional conventionalist accounts of language, particularly their accounts of literal meaning. Davidson describes literal meaning as traditionally consisting of three principles⁴: that it is systematic, shared, and governed by learned regularities or conventions (Davidson 254). The first principle states that a competent speaker or interpreter must be able to interpret utterances based on the semantic properties of the components (words) of utterances and their structure, and that this necessarily requires systematic relations between the meanings of utterances (Davidson 254). The second principle, that literal meaning is shared, requires that regular and successful communication between speaker and interpreter depends on a shared method of interpretation based on the systematic relations described by the first principle (Davidson 254). The third principle, that literal meaning is governed by learned regularities or conventions, requires that the systematic linguistic competence of the speaker or interpreter be learned prior to acts of interpretation and that this systematic competence is conventional (Davidson 254).

In “Literal Meaning”, John Searle echoes this summary of orthodox opinion, saying: “The literal meaning of a sentence is entirely determined by the meanings of its component words... and the syntactical rules according to which these elements are combined” (Searle 207). Moreover, traditionally speaker meaning is sharply

² Anti-conventionalism in this context means support for the claim that linguistic conventions are sufficient but not necessary for language. This entails that it is logically possible to have a language without linguistic conventions.

³The misuse or distortion of a word or phrase. E.g., “Don’t put all your baskets in one egg” or “She’s an effluent senator”.

⁴ According to a conventionalist account.

distinguished from literal meaning though a speaker can mean what a sentence literally means (Searle 207). Most importantly, it is traditionally held that “The literal meaning of the sentence is the meaning it has independently of any context whatever” (Searle 208). This body of opinion implies that there is some acontextual space for the interpretation of sentences where the literal meaning of a sentence is determined only by its semantics which are governed by a systematic, shared, and conventional method of interpretation.

Davidson’s criticisms of the traditional conventionalist account are informed by his general case which concerns instances where the interpreter comes to an utterance with an interpretive theory in advance of the utterance which informs them of the meaning of a given arbitrary utterance of the speaker (Davidson 258). The speaker then utters something with the intention that it be interpreted in a particular way, and the expectation that the interpreter will conform to that intention (Davidson 258). However, the speaker’s intended interpretation is outside the scope of (or contradicted by) the interpreter’s theory for understanding utterances (Davidson 258). Despite this, the speaker is understood because the interpreter adjusts their theory to include the speaker’s intended interpretation (Davidson 258). The commonality across such cases is that communication succeeds, despite an insufficient interpretive theory in advance of the utterance, because of a change to the interpretive theory simultaneous with the utterance which produces a theory that accommodates the speaker’s intended meaning. Beyond the fact that such an accommodation is possible the speaker may reasonably expect such an accommodation from their interpreter. Generally, such instances are either instances of substitution, where an old word is given a new meaning or vice versa, or invention, where a new word with a new meaning is introduced.

The general case threatens the third principle, that first meanings are governed by learned conventions or regularities which entails both that the competence of speaker and interpreter is learned in advance of acts of interpretation and that this competence is conventional. The general case threatens this in two ways. First, according to the general case a competent interpreter can alter their interpretive theory simultaneous to an

utterance, if that utterance is outside the scope of, or contradictory to, their interpretive theory in advance of the utterance. This means that the theory must be capable of alteration simultaneous to the utterance through the attribution of new first meanings. If the third principle were correct, then such alterations should have been learned in advance or governed by conventions learned in advance. But they are not, and the interpreter is able to accommodate them anyway. Second, according to the general case a competent interpreter can add new proper names to their interpretive theory and there seems to be no general convention for adding new names in advance of their utterance (Davidson 259). For example, if my friend gives me the new nickname "Slowpoke" by saying "Catch up Slowpoke!", then I must add that into my interpretive theory by linking that new proper name to the cluster of descriptions which I associate with my own name. This is an addition I could not account for prior to my friend's teasing, and moreover there seems to be no rules for whatever name he can give me. This threatens the third principle because if it was correct then such additions must be capable of incorporation into my interpretive theory under rules given prior to the utterance. But they are not, as attested to by the many humorous and seemingly random nicknames my friend has given me over time. Therefore, the third principle is incorrect, and some mechanism is needed to account for how interpreters can alter their interpretive theories simultaneous to an utterance.

To remedy this Davidson introduces the crucial distinction between "Prior theories" and "Passing theories". Prior theories are how the interpreter is prepared to interpret an utterance of the speaker prior to the utterance and what the speaker believes to be the interpreter's prior theory (Davidson 260-1). Essentially, it describes all the assumptions the speaker and interpreter have towards each other which inform their linguistic interaction. This includes factors beyond the linguistic⁵ part of the speaker's and interpreter's linguistic competence such as assumptions about the intelligence or

⁵ Linguistic in the sense that the factors are beyond language in the sense of basic competency. For example, basic grammar is truly linguistic while knowing how to speak to someone of higher social standing is not truly linguistic.

social standing of the other party. Also, prior theories are audience specific because they depend on the relation between the speaker and the interpreter. So, the closest they come to generality is a prior theory aimed at an average speaker or interpreter of which nothing is known beyond their basic linguistic competence.

Passing theory is the theory that the speaker intends their interpreter to use and the theory that the interpreter uses to interpret the speaker's utterance (Davidson 260-1). For communication to be successful passing theories must converge with each other⁶. In every linguistic interaction both speaker and interpreter come with prior theories and form passing theories to facilitate successful communication. Moreover, passing theories are context-specific because they may or may not transfer knowledge from a particular occasion to another, and if they do then that range may be limited (Davidson 260-1). For example, if I pass by some teenagers and they tell me my outfit is "on fleek" and I correctly interpret that as slang for "stylish" then I have a successful passing theory. Suppose that I walk by a very inebriated person and my companion tells me that they are "on fleek" I might successfully interpret that as slang for some illicit drug. In the two prior examples the knowledge only generalizes to specific contexts. Sometimes it is for one use only, such as when a malapropism is uttered. On such occasions I simply construct a passing theory which interprets the malapropism into what I think the person intended to mean. For example, "Don't count your hatches before they've chickened." obviously was intended as "Don't count your chickens before they've hatched.". So, for that occasion I interpret it as such but that passing theory may not generalize to other occasions.

⁶ In each speech transaction both speakers arrive with prior theories about how to interpret each other. A prior theory, for the reasons outlined above, is insufficient for interpretation. Hence the construction of a passing theory is necessary for successful interpretation. Successful interpretation constitutes the passing theories of both speakers converging. Such a convergence simply means that what I think you mean very much resembles, it converges with, what you think you mean and therefore I can understand you and communicate successfully.

An Account of Individual General Linguistic Frameworks

Thus far I have been carried by Davidson, now I will walk. My proposal is to extend his notions of Passing theories and Prior theories by placing them within the notion of an individual general linguistic framework. The general framework as a concept is necessary to organize the various prior theories an individual may have towards other speakers and interpreters into a coherent account of individual linguistic competence. For example, my general framework is a linguistic framework for speaking and interpreting English, and my prior theories about various speakers and interpreters are all substantially informed by that general framework⁷. But these prior theories do not emerge *ex nihilo* and depend on other linguistic resources that generalize across prior theories such as knowledge of general English grammar. Thus, the notion of a general framework provides the necessary connection between the general linguistic resources that allow language users to construct various prior theories across linguistic interactions over time. The individual general linguistic framework is therefore necessary to provide sufficient linguistic resources to construct a prior theory, and a prior theory is necessary but not sufficient for a passing theory. Therefore, a general framework is necessary but not sufficient for a passing theory. The main advantage of individual general linguistic frameworks is that they ground passing theories as contextual modifications which override the prior theory and general framework while being substantially informed by them.

My introduction of individual general linguistic frameworks and a fluid aggregate model of natural language is my attempt to reimagine the third principle, that literal meaning is governed by rules or customs learned in advance of the interpretation of utterances⁸. To reiterate, I hypothesize that if we compare the individual general

⁷ Some may wonder which comes first: the general linguistic framework or the prior theory? Assuming that language is learned by repeated linguistic interactions, and that in the first instance there is neither a general linguistic framework or prior theory, then the two must be simultaneous because the first instance both provides some basics linguistic resources for the general framework and resources for constructing a prior theory.

⁸ On a traditional conventional account, which Davidson rejects.

linguistic frameworks of a sufficient body of speakers and interpreters across repeated linguistic interactions, then what will emerge is a cluster of greatly overlapping or similar points between those individual general linguistic frameworks. I call the individual points within the cluster *points of mass linguistic convergence*. These points are those areas where the frameworks of many people substantially converge in the sense that there is a high degree of similarity among many language users. These areas of convergence thus signify de facto linguistic custom among speakers and interpreters of a natural language at a given time. This view models natural language as a fluid aggregate where natural language is substantially composed of points of mass linguistic convergence between individual general linguistic frameworks which provide necessary but not sufficient grounds for interpretation by encouraging convergent tendencies in interpretation, leading to more frequently appropriate prior theories and convergent passing theories (in the sense that the former encourage convergent passing theories by providing accurate information and the latter converge with other passing theories for successful interpretation).

On my account the notion of a language on the traditional account is therefore a mistake which misidentifies an abstract representation of natural language, though well-informed by broad persistent points of mass linguistic convergence, as the natural language itself. This abstraction is what I call de jure language. Thus, the de jure English language is a socially constructed abstract representation of de facto natural English. Its function is to systematize and rationalize language so that institutions such as dictionaries and schools can encourage linguistic conformity for various ends. The mistake of the conventionalist account is to reify that abstraction as if it really was the de facto natural language instead of a representation of it. But the de facto natural language is a fluid aggregate of individual general linguistic frameworks and even that aggregate is itself a representation of those fundamental individual general linguistic frameworks. Hence when a speaker refers to the conventional literal meaning of a sentence, they are

at least partly referring to their prior knowledge of that reified abstract representation of natural language, of *de jure* language.

In summary, Prior theories and Passing theories are audience specific interpretive theories of which the former is prior formed prior to interpretation and the latter is former simultaneous to interpretation to facilitate successful communication. However, Prior theories and Passing theories have insufficient grounding in general linguistic resources for their own construction or to provide a general account of linguistic competence. Thus, I introduce the notion of an individual general linguistic framework to resolve these difficulties. From there I use this notion to develop an account of natural language as a fluid aggregate of points of mass linguistic convergence between the individual general linguistic frameworks of language users. On this account our individual linguistic frameworks develop and change over time and the aggregation of those individual frameworks allow us to understand natural language as an ever-evolving cluster of points of mass linguistic convergence formed by those developments. Therefore, it is true that there are many possible linguistic frameworks of which our present linguistic framework is merely one possible framework.

How are Individual General Linguistic Frameworks Perspectival?

It now remains to show how individual general linguistic frameworks are perspectival. I argue that the degree to which an individual general linguistic framework is perspectival largely depends on what is included in that framework. Remember, the general framework cannot be a Prior theory because Prior theories are audience specific assumptions, but it must necessarily inform those Prior theories. Moreover, the general framework, as the basis of a given Prior theory, is what is occasionally mediately modified by a Passing theory. On that basis, what must constitute the general framework? It must include the following: a basic grammar with rules for modification and extension, an individual's vocabulary, core strategies for linguistic formation (basically equivalent to our usual style of speech), strategies for exceptional cases (new words, etc.), and perhaps general assumptions about other speakers. Altogether, this

picture of an individual's linguistic framework is highly individualized because it is dependent on the experiences which have contributed to the development of that general framework across linguistic interactions over time such as their conception of the meaning associated with a given word. This is intuitively plausible because, quite simply, everyone speaks differently and has different experiences. Moreover, this causal model is advantageous because it allows us to connect the impact of social factors into our model of linguistic competence.

To use an analogy as an example, many Christians believe in Christ but how many believe precisely the same thing when they say "Christ"? If the murky depths of theology are any indication, there are many Christians and many different interpretations of Christ within that Christian tradition. And these interpretations often have many social, historical, and linguistic causes which vary across time and place. This shows how many individual general linguistic frameworks can all accommodate the same word and yet have significantly non-identical meanings for that word as influenced by various causal factors. Therefore, insofar as the individual general linguistic framework is the product of a causal chain of experiences formed over time across linguistic interactions, it is perspectival because no two individuals have an identical causal chain of experiences which result in an identical linguistic framework. A necessary consequence of this view is that the same individual will have a different general linguistic framework at different times because of the causal effect of linguistic interactions. This means that as we live and gain in experience our linguistic framework develops with across linguistic interactions resulting in, hopefully, an ever-improving general linguistic framework. Indeed, my linguistic framework at twelve was not the same as mine at twenty-two nor will it be the same at fifty. Our linguistic frameworks grow through our experiences of linguistic interaction over time and therefore they are perspectival.

Relativizing Sentence Meaning and Sentence Truth

The next challenge is to show how a single semantically identical sentence can express various non-identical propositions across linguistic frameworks and therefore

have different truth values across linguistic frameworks. Suppose that there are two ontologists: Glaucon the Platonist and Thrasymachus the Nominalist. According to my theory they both have individual general linguistic frameworks. Assume that in their respective frameworks there are the semantic resources to utter things such as “There are numbers”. Both ontologists have a general framework dependent Prior theory for interpreting each others’ utterances into their own respective individual linguistic frameworks. Suppose that Glaucon the Platonist says, “There are numbers”. For the Platonist, this sentence expresses a proposition about numbers as mind independent entities under a Platonic theory which is dependent on his linguistic framework. Now suppose that Thrasymachus the Nominalist, having realized the utility of numbers, believes in a nominalized theory of mathematics, and utters “There are numbers”. For our Nominalist, this sentence expresses a proposition about numbers as entities under a Nominalist theory of mathematics which is dependent on his general framework. Both sentences are identical semantically, but they express different propositions because the speaker’s general framework conceptualizes numbers within a nominalist theory. Further suppose that Thrasymachus the Nominalist has retracted his former position and totally excludes numbers from his ontology. If he were to say “There are numbers” it would, according to his new general framework, be trivially false because such entities simply do not exist within his general framework insofar as it includes his ontological beliefs. Therefore, the sentence “There are numbers” can express various propositions across individual general linguistic frameworks and therefore differ in truth value across individual general linguistic frameworks. Therefore, a single semantically identical sentence can express various non-identical propositions across linguistic frameworks and therefore have different truth values across linguistic frameworks.

Relativizing Propositional Truth and The Problem of Synonymy

The next challenge is to show that a single sentence, when expressing the same proposition, can differ in truth value across different frameworks. However, this phrasing is problematic because it assumes that there can be synonymous propositions

between linguistic frameworks such that they can express the same proposition which in turn assumes that there are linguistic framework independent propositions. But a relativist theory must attack the assumption that there are linguistic framework independent propositions. This is because for a theory of linguistic framework relativity to succeed it must not allow propositions to have synonymous meanings between linguistic frameworks because that would imply that the proposition has a meaning which is external to and independent of linguistic frameworks. The challenge here is to explain why propositions cannot have synonymous meanings between linguistic frameworks. This is so because propositional meaning is totally dependent on the individual linguistic frameworks⁹ of the participants (speaker and interpreter) within a linguistic interaction. This is because speaker and interpreter meaning are ultimately products of linguistic competence as modelled within individual general linguistic frameworks which are in turn the causal products of linguistic interactions and experience over time. And since no one has an identical framework, it follows that no one can express propositions with synonymous meanings. However, by denying that propositions can have synonymous meanings between linguistic frameworks I am not denying the possibility of communication. It is still very possible through sufficient linguistic convergence during linguistic interactions, which is enabled by Prior theories and Passing theories as informed by the individual general linguistic frameworks of the participants.

The framework dependency of meanings that I am describing is a type of contextual dependency. John Searle in "Literal Meaning", raises some important arguments that are favourable to my view. Searle argues that "for a large number of cases the notion of the literal meaning of a sentence only has application relative to a set of background assumptions... and... these background assumptions are not all and could not all be realized in the semantic structure of the sentence" (Searle 210). This is because each sentence is only intelligible against background assumptions that dictates its

⁹ And its subcomponents and dependents such as Prior theories and Passing theories

application (Searle 211-212). But those assumptions call in other assumptions without any limiting principle (Searle 214-216). Therefore, such assumptions could not all be specified within the sentence.

This argument is much more damning for abstract entities because unlike Searle's "cat on the mat" they are intangibles nestled within linguistic assumptions. For those assumptions to be applied they must be within the interpreter and, even if they are partially non-linguistic, must be located within the interpreter's individual general linguistic framework or some dependent interpretive theory. If "the cat is on the mat" is only literally meaningful relative to a set of indefinite and variable background assumptions, then it is implausible that loaded abstract entities such as "God" or "numbers" are literally meaningful independent of any individual linguistic framework. Therefore, it is highly probable that theoretically loaded abstract entities such as "God" or "numbers" are only literally meaningful relative to a set of theoretical background assumptions and linguistic resources. If so, then those background assumptions and linguistic resources are mediately or immediately localized within some individual general linguistic framework which differs from other individual general linguistic frameworks and itself over time.

Therefore, the propositional truth of a sentence can differ across individual general linguistic frameworks because the framework provides the background assumptions and linguistic resources which render the proposition meaningful and provide the truth-conditions for its application. Therefore, such propositions are only true or false relative to some individual general linguistic framework. However, due to my denial of the synonymy of meanings between linguistic frameworks I can only maintain that semantically identical propositions vary in truth-value across frameworks. This is because if by "identical proposition" I imply synonymy of meaning between identical propositions then my arguments would entail that there are no identical propositions. This would be too far, so I restrict my criterion for an "identical proposition" to semantic identity. In conclusion, the truth value of an identical proposition can vary across

linguistic frameworks due to the framework relativity of propositional meaning and the impossibility of synonymous propositions between linguistic frameworks.

Conclusions and Prospects for Fictionalist Discourse

Given this theory, what are the prospects of ontology generally and what application does this have for Fictionalist discourses? On my account the criteria of theory choice in ontology becomes external utility and internal consistency because the abstract objects under discussion are treated as mind-dependent entities through the linguistic framework dependency of their meanings. Thus, discourse between ontologists about the status of entities such as numbers is not a dispute over reality as such but rather a dispute over the consistency of such entities internal to linguistic frameworks, the external utility of such entities, and the convergence between linguistic frameworks. Therefore, the best ontological theory will maximize internal consistency within its linguistic framework, external utility, and convergence of meaning between different frameworks. In simpler terms, is it compatible with other entities, is it useful for acting in the world, and can others successfully communicate about it?

This is like the criteria for evaluating fictional discourses: what external purposes does it satisfy, is it internally consistent, and can others understand it? It thus lends itself well to Fictionalist views which aim to resolve the problems entailed by discussing fictional objects on a Quinean ontology. Under such an ontology, fictional talk would entail the existence of such entities which poses serious problems. However, using the notion of individual general linguistic frameworks we can describe such objects as existing as mind-dependent entities or beliefs which are interpreted through a Prior theory or framework component. Thus, inter-subjective fictional entities such as “Santa Claus” or “the inherent value of money” really consist in points of mass linguistic convergence between the relevant Prior theories or framework components of a body of language users. Furthermore, truth-claims about such entities can now be seen for what they are: arguments about the degree or content of the points of mass linguistic convergence which constitute those entities. Moreover, the notions of Prior Theory and

Passing theory can now explain how individual communication can eventually lead to changes in the character of these entities over time as changes in the character of the points of mass linguistic convergence which constitute those inter-subjective entities.

Lastly, this account of fictional objects lends itself well to preface Fictionalist views. For example, for those Fictionalists interested in the application of context to fictional games this theory provides a platform for describing that game-related competency as a subcomponent of the individual general linguistic framework, with Prior theories as the prefacing context and Passing theories as the act of using linguistic competency to construct convergent interpretations to correctly participate in such games. Another advantage for Fictionalists is that the problems of object-fictional claims like “Sherlock Holmes was a detective” implying a real Sherlock Holmes resolve themselves as ultimately referring to things that only exist within linguistic frameworks mediated by contextual assumptions rather than real language independent entities. Therefore, this resolves the problem of fictional entities by placing them as mind-dependent and linguistic framework dependent entities of a less demanding ontological status. Thus, insofar as such things exist, they exist within that linguistic dependency and not in the challenging language independent sense implied by ontologists such as Quine. It is my hope that this neo-Carnapian relativist view can provide a valid attempt at an alternative ontological stance.

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Is Death Really All That Personal?

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Edited by Lexi Bilous

When discussing MAiD, the legal-moral definition of morality is often left ambiguous. In this paper, I argue that personal autonomy is a useful concept in bioethics and MAiD by exploring the underlying tension between two accounts of autonomy: one rule-utilitarian, and one deontological. Despite some tensions between these two normative ethical theories, I argue that both deontology and rule-utilitarianism would find the current legislation in Canada regarding MAiD justifiable. After outlining these theories, I will consider arguments put forth on this topic by Beauchamp, Hooker, and Velleman. Finally, I will respond to a counterargument from the view that claims MAiD cannot be endorsed by rule-based ethical theories.

Before discussing the relevant tensions between rule-utilitarianism and deontology, it is important to define some key terms regarding MAiD. First, voluntary euthanasia pertains to the idea that one voluntarily seeks assistance in dying, whether self-inflicted or administered by a physician. Active euthanasia refers to the actions of actively administering medication (by oneself or a physician) to end one's life. Finally, passive euthanasia entails intentionally letting one die by means of withholding treatments. MAiD or, Medical Assistance in Dying, is the term that the Canadian legislature has given to the practice of legalized physician-sanctioned euthanasia.

Seeing as legislation is, in its essence, a series of rules put forth and enforced by the government and elected officials, it naturally follows that rule-oriented philosophical moral theories such as rule-utilitarianism and deontology would have a considerable opinion on this topic. Under rule-utilitarianism, it is believed that individual acts of murder, promise-breaking, etcetera, can be wrong even when they produce more good than harm in that instance, unlike act-utilitarianism. Additionally, this branch of utilitarianism tries to maximize individual utility through a set of generally internalized rules--that is, utility as accepted by the general majority. Deontology refers to ethics as it

pertains to rules, meaning the merit of something being good or bad must conform to a set of rules rather than based on the consequences of an action.

In the article *Against the Right to Die* by J. David Velleman, it is argued that the term autonomy is central to deontological beliefs and should be used in the scope of which it is defined by Kant (2020). Kant states that autonomy is to be bound by one's own will, and not of any other. Velleman argues that the question of assisted suicide should be balanced against the Kantian notion of dignity, stating that morality expects us to respect the dignity of each person (Velleman, 2020). Velleman believes, then, that there are cases where dignity can justify suicide – suicide as respect for one's person, one's self-regard (Velleman, 2020). Specifically, Velleman emphasizes the importance to remember that the true virtue of a person is their rational nature in connection with their autonomy, making it inappropriate to make or implement decisions for another person unless it is unavoidable.

A rule-utilitarian approach to the importance of autonomy and its associated rights is used to conclude that individual autonomy in MAiD could have enormous benefits for said person, according to Brad Hooker in his article *Rule-Utilitarianism and Euthanasia* (2014). This is supported by Hooker's definition of autonomy, which is defined in simpler terms than the Kantian version. Hooker defines autonomy in vague terms, yet commonly accepted by society: to have control over one's own life (Hooker, 2014). Namely, he argues that the practice of voluntary euthanasia exists to increase personal autonomy. Furthermore, the rule-utilitarian view does not rely solely on the concept of increased pleasure or well-being, as in traditional utilitarianism, where the pleasure or pain stemming from a certain decision renders it right or wrong (Hooker, 2014). Instead, autonomy can take precedence over the aforementioned concepts of pleasure, and actions can be based around the maximizing of personal autonomy as maximizing utility.

Velleman and Hooker both agree that autonomy is a focal point of the discussion on MAiD. Thus, I draw on the distinction that free will and one's right to make their own decisions regarding the quality and continuation of their life do justify a right to MAiD.

It is often agreed that one should have control over themselves and their own decisions, meaning that reasonable active or passive requests for MAiD or denials of treatment are taken seriously and protected by law. The term 'reasonable' is relevant in this application because in law it is necessary to establish the reasonable limits to which law is applied. Similarly, in ethics, many issues either fall or rise on the idea that it is reasonable within a specific moral context. In both cases, personal autonomy does justify a right to MAiD insofar as the restrictions and benefits that are laid out are within the legislation, as summarized below.

My main disagreement with the articles cited above is that both assume that when the person of authority (either the patient or an authorized individual) chooses euthanasia for the patient, it occurs almost instantaneously. This thereby allows opportunities for guilt or doubt to arise from what could be argued is an act of impulse, which would cause harm after the fact. Within the Canadian legislation, however, there are necessary mental and physical examinations that are mandatory before the patient is permitted to access MAiD. The individual is also required to write a letter with at least two witness signatures, and wait for at least ten days to reflect upon, and solidify or change their decision. Moreover, if any form of indication of refusal is shown at any time leading up to the MAiD procedure's execution, it will not proceed. This enforces both of the moral normative views of autonomy, as it allows full control over the situation, even in circumstances where the patient decides to stop the procedure. As proof of the desired autonomy that we crave as individuals, it was reported in Canada that reasons for exercising the right to request MAiD included "inadequate control of pain," which was cited in 53.9 percent of cases, followed by "loss of dignity" in 53.3 percent of cases (Canada, 2020). With autonomy and dignity being deciding factors in the majority of Canadian's minds for this course of action, the results prove that the justification for assisted suicide is in general internalization, as well as in individual cases. For these reasons, personal autonomy is indeed respected morally and legally through the MAiD

legislation, negating the arguments that one would have guilt or doubts about their decision to continue with the official procedure.

The common denominator between Hooker and Velleman is that, although the request or refusal for MAiD is morally acceptable, none of them are able to condone it as a policy. Philosopher Beauchamp also speaks about the issues of autonomy and morality around physician-assisted deaths, where it can be morally permissible but not endorsable as a matter of law. I find this quite striking, as Beauchamp himself admits that if one does not help an individual in their right to euthanasia, it may “cause them harm, indignity, or despair” (Beauchamp, 2020). Beauchamp goes on to say that the key argument surrounds justifiable actions, where killing is wrong when it causes unjustifiable harm to an individual. Beauchamp thus agrees with Hooker and Velleman that the benefit of physician-assisted death is on a situational basis.

The consensus between Beauchamp, Hooker, and Velleman is that some circumstances may allow for physician-assisted deaths, however, legitimizing it as a legal right might result in an abuse of legislation, leading to negative long-term effects in society, even if it can be found morally permissible in some cases. However, the point of euthanasia as defined by the Canadian legal system is to aid in circumstances of irreversible and gruesome pain. This addresses the issue posed by these philosophers, as it fulfills autonomous and rational patient decisions, and signifies the end of the pain that families and suffering patients are faced with. Therefore, the use of client background information, such as their mental and physical abilities, together with consideration of the patients’ autonomy all support the fact that the Canadian legal system’s legislation on MAiD is morally permissible. There exist many safeguards in the entire process of MAiD to prevent this exact worry that is extended by all three philosophers.

One main counterargument used by all three philosophers when contesting the point of legalization; the MAiD procedure might fall victim to the ‘slippery slope fallacy.’ This is to say that MAiD sets a dangerous precedent going forward for individuals who may become victims of unjustified harm due to the increased use of euthanasia, which

may increase the possibility of abuse of the procedure by external individuals who wish to end the life of someone in the position of being able to accept MAiD. I disagree that MAiD falls victims to this fallacy, as the legislation that has been put in place does not leave enough 'wiggle room' for abuse, which is to unjustifiably end another's life prematurely. For argument's sake, if there ever are deaths where an individual has fallen victim to this abuse, there is an available legal action that the individual's family could take if the death was found to go against the individual's wishes. Although it might sound morally troubling, the rare instance where such a rare circumstance might come into play (and there is no guarantee that it will at all) does not outweigh the benefits that MAiD provides to those suffering in exercising their autonomy.

As a final note, this argument of legislative abuse does not take into consideration that someone having malicious intent and motivation to end a life can find many other ways to go about doing it, likely with fewer ramifications. I say this because, when one has taken on the decision of ending another's life on their behalf, there is a process in which a patient or an authorized person's identification needs to be confirmed and written consent is given. All of these occur in the very public setting of a hospital. While there might be a common perception that it seems like this would be an easy death to 'pull off,' I disagree--no intentional death is an easy one to 'pull off' unless there was previous malicious intent present in the person. Perhaps it is possible in a rare circumstance, such as a long-term comatose patient with an heir that has become greedy and is tempted to end this person's life to acquire their estate. Nevertheless, if someone would be okay with intentionally ending another's life prematurely and causing them harm, it is not the presence of MAiD that is at fault, but the person. To assume that MAiD is at fault is the same as to assume that a vehicle is at fault for a collision, rather than the irresponsible driver.

In conclusion, the Canadian legalization of MAiD is not only morally permissible but serves as an aid to the patient, allowing them to have a final opportunity to utilize their personal autonomy and maintain their dignity. The moral and legal frameworks

support each other well and offer solace to individuals with irremediable and grievous conditions. With many of these individuals confined to hospital beds, the knowledge that their suffering will cease when MAiD is performed brings comfort to themselves and their families in their final moments.

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Physicalism and Experience

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Edited by Abraham Tenang

Chalmers' Dualism

In "Facing Up to The Problem of Consciousness" (1995), David Chalmers argues that the existence of consciousness, by which he means experience (the term I will use hereafter), makes physicalism impossible and forces us to conclude that experience is a fundamental property of the world and some form of dualism is true. In his view, there is an explanatory gap between the physical and the experiential, and experience must be fundamental. He begins his argument by distinguishing the easy problem(s) of consciousness and the hard problem of consciousness. The easy problems consist of scientific problems, i.e., those that scientific methods can solve. This category includes questions such as what differentiates being awake from being asleep, our ability to access and report on our internal states, etc. These problems deal fundamentally with how we behave externally. Therefore, we can answer these questions by observing behaviour, developing predictive, testable theories which explain the observed behaviour and conducting experiments which test the predictions made by the available theories. In this case, the theories are talking about mechanisms which perform functions, and the phenomena being explained are the functions being performed, so there is no problem in explanation. Furthermore, it is easy to give physical answers to these functions, as one merely has to explain how physical bodies can perform them. Therefore, physically-based functional solutions to these problems are manageable. (Chalmers, 1995)

On the other hand, the hard problem is how physical states give rise to experiences. Given all we know about biology, psychology, and neuroscience, it seems evident that physical states cause experiential states. However, it's difficult to see how this could be the case, as they seem to be fundamentally different, which may imply they can't interact, let alone be the same. In Chalmers' view, we may be able to provide all the solutions to the easy questions of consciousness without solving the hard problem. The

solutions to the easy problems merely describe, explain and predict various observable behaviours conducted by human beings, their relations to each other and their relations to the biological states of the body. However, because none of the things these theoretical solutions describe are experiential or mention experience, it is logically possible that they could be entirely true of, and thoroughly carried out by, a system without experience. In other words, because it is logically possible that the physical can exist without the experiential, it cannot entail the experiential by itself. As a result, there is a further question of how and why experience arises. For that reason, Chalmers says that any theory that attempts to explain experience purely in terms of answers to the easy, behavioural/functional problems, i.e., in physical terms, will fail due to a logical, explanatory gap between functions and experiences. (Chalmers, 1995)

There are several ways Chalmers says theorists who make explanations in physical, practical terms deal with "consciousness," all of which he argues are unable to address the hard problem adequately. The first method he describes identifies "consciousness" as something non-experiential, defined in functional terms and gives a scientific, or science-based, explanation of it. After this explanation is complete, however, the theorist(s) will claim their account of consciousness has explained the experience. Chalmers accuses Dennett of this fallacy, among others. Another strategy, which Chalmers thinks is valid, is to say that how the experience relates to physical states is too difficult, at least for now, and to focus exclusively on the easy problems. A third approach, which Chalmers finds unreasonable, is to deny the phenomenon of experience in some way. One way this is done is to say that anything not externally observable is not genuinely real and doesn't need to be accounted for. Consequently, since we can directly observe experience internally and never externally, it should be discarded. Others will say experience exists, but only if the experience is equated with some functional qualities, such as accessing internal states. Chalmers argues these approaches are fundamentally flawed because experience is something to be explained and so can't be discarded. Another method, similar to the first, explains human behaviour and functions, i.e.,

answers to the "easy problems," and says that this thoroughly explains experience without dealing with *how* it explains the experience. In other words, it is taken for granted that solving the easy problems solves the hard problem. (Chalmers, 1995)

Due to the explanatory gap between physical, functional theories and experiential phenomena and the resulting failure of such theories to explain the experience, Chalmers argues we need an "extra ingredient" in our explanation of experience. This ingredient cannot be anything physical or a function carried out by a biological system because, as Chalmers argued, the experience cannot be entailed by the biological, so reductionist explanations fail. Therefore, since experience cannot be reduced to other qualities, it must be taken as fundamental, meaning it isn't explained in terms of anything more basic but is one of the world's basic properties. Chalmers thus concludes that any adequate explanation of experience must posit it as fundamental and lay out a set of fundamental laws which explain its causal relationships. These laws explain how experiences causally interact with other basic properties like extension and mass. Any such theory which is adequately worked out will tell us how experience arises out of the physical world and what relations of dependence exist between experience and matter. Since this theory postulates fundamental properties other than physical ones, he concludes that it constitutes a form of dualism. (Chalmers, 1995)

Dennett's Objections to Chalmers

In "Facing Backwards on the Problem of Consciousness" (1996), Daniel Dennett responds to Chalmers' objections to physicalism and reductionism by arguing that solving all of the "easy problems" of consciousness amounts to solving the "hard problem." Chalmers and Dennett agree that explaining things such as reproduction, development, growth, self-repair, etc., constitutes an explanation of life because life is nothing other than these phenomena. Consequently, if someone argued that a different theory of life was needed above and beyond a view of these processes, they would be making a conceptual error in thinking life was anything other than reproduction, self-repair, etc. Dennett argues that this is analogous to the relationship between physical

functions and experience. In his view, to hold that giving explanations of physical functions, bodily processes, and behaviour doesn't tell us how these things give rise to or explain the experience is to make the same sort of conceptual error because experience is nothing other than these physical functions, bodily processes and behaviours. To support this, Dennett asks us to imagine what our experience would be in the absence of these functional, causal properties. In his view, this would mean subtracting our delight and dismay at different things, concentration and distraction, inability to hold less than a few things in our minds at a time, etc. In other words, we would have to remove everything that made us act or feel. Dennett concludes that it is impossible to imagine such an experience, so without these functions, there is no experience. Therefore, experience is not over and above these functions and is reducible. And if it is, Chalmers must be positing something over and above our everyday experiences and human functions, which he has no reason to do. (Dennett, 1996)

Dennett's mistakes and the fundamentality of experience

There are several problems with Dennett's response to Chalmers, the first of which is that he misrepresents Chalmers' concept of the "easy problems." As explained above, Chalmers calls the "easy problems" of consciousness those questions of explaining only phenomena directly observable "from the outside," such as behaviours and biological states, and argues that explaining those things does not entail an explanation of experience. However, when Dennett is asking us to imagine our experience without functions and performance of functions - which he takes to be the solutions to the easy problems - he includes qualities such as delight, dismay and "unnameable sinking feelings of foreboding" (1996), which are themselves experiential and not directly observable "from the outside." Therefore, Dennett includes in the "easy problems" precisely those things Chalmers excludes from the category and is misrepresenting him. As explained above, in Chalmers' view, it is exactly because the easy problems do not require an explanation which involves an experience that their solution cannot entail a solution to the hard problem. (Chalmers, 1995; Dennett, 1996)

Dennett would respond to this criticism by saying that, as he has argued in his previous work, an explanation of biological functioning and behaviour must take into account experience because experience serves an analytical, functional role in the system. Similarly, he would also say that if your explanation of experience doesn't discuss its functions, you don't explain experience at all. Chalmers would respond by saying that, from a purely theoretical point of view, you can postulate mechanisms that perform those functions and do not involve experience. While it may be the case that the mechanism which performs those functions is experiential and that part of the experiential quality involves analysis, etc., it is at least hypothetically possible for those analytical, functional roles to be played by something non-experiential because insofar as they are analytical, functional, behaviour-producing. So, they do not logically entail experience. After all, computers can perform analytical, functional, behaviour-producing roles, and it is not apparent that they have experience. Even the human body does many things which perform similar functions without involving experience, such as making our hearts beat. Fundamentally, these analytical, functional, behaviour-producing roles are defined entirely in non-experiential terms and do not need experiential explanatory factors. This is important because the tricky question is ultimately about how things which can be wholly described in non-experiential terms relate to experiential qualities, given a lack of logical entailment. And if Dennett is genuinely committed to reductionist physicalism, he must support the position that experiential attributes can be explained wholly in non-experiential terms. Therefore if he includes experience in his explanation of functions and uses functions to experience, he fails to address the problem. (Dennett, 1996)

However, the most profound problem with Dennett's objection is that it ultimately has no relevance to the explanatory gap argument on the best possible interpretation. This interpretation argues that experience is conceptually basic and must be metaphysically fundamental. It begins with an analysis of metaphysical reducibility. If one thing, A, is metaphysically reducible to another thing, B, this means A is nothing more than an arrangement of B. In other words, if B is "put together" in the right way,

given certain known truths about B and its rules, it constitutes A and explains all of A's properties. Therefore, the metaphysical reducibility of A to B implies a full explanation of A in terms of B. To illustrate, take the example of the reduction of water to chemicals. In this case, we explain how the correct chemicals, hydrogen and oxygen, must be arranged so that they are bonded together correctly, with two hydrogen atoms bonded to one oxygen atom. We can use other truths we know about chemistry to fully explain water's properties. Consequently, we conclude there is nothing more to water than two hydrogen atoms and one oxygen atom bonded together.

To explain something, the explanatory factors must necessitate the explanandum (the thing being explained), which itself requires conceptual reducibility of the explanandum to the explanatory factors. This is because for an explanation to be complete, the explanatory factors must fully entail what is being explained, as any explanation which didn't account for all the properties of what is being described would by definition not be a full explanation. Consequently, the explanation and all the explanatory factors must contain everything about what is being explained. As such, we must be able to reduce the explanandum to the explanatory factors conceptually. Therefore, since metaphysical reducibility implies full explanation, which means conceptual reducibility, metaphysical reducibility suggests conceptual reducibility.

Experience cannot be defined in purely non-experiential terms. At its core, our concept of experience is defined by feeling, the "what it's like" -ness, as it were. When we talk about an organism or a mental state's experiential qualities, we are talking about how it feels to be that organism or to have that mental state. In other words, the defining quality of experience is the experience itself. Therefore, if we define experience purely through non-experiential factors, like the causal roles it has in our behaviour, or through the analytical roles it plays, we lose the qualities of feeling, and it ceases to be experienced. Therefore, reductionism must be false since reductionism takes experience to be metaphysically reducible to non-experiential factors and implies that experience is conceptually reducible to non-experiential elements. Instead, the experience must be

metaphysically fundamental, as Chalmers (1995) says. As such, whether or not an explanation of our functional properties needs to involve experience or whether or not Dennett (or anyone else) can imagine the experience without the causal relationships that surround them is irrelevant. The falsity of reductionism is a logical necessity following the conceptual independence of experience.

Dennett would object to this line of reasoning by denying that experience cannot be conceptually reduced to anything else, i.e., he would say it is possible to reduce experience to non-experiential concepts (Dennett, 1996). For Dennett to hold this position, he will have to say that experience is not the defining quality of experience, in the sense that there are more basic concepts which define experience. If this is true, there must be some other quality which defines experience, by virtue of which we would be able to fully explain and understand what it means to feel and experience something. Perhaps he will say analysis of a certain sophistication is this quality. Whatever quality he picks, he will need to show not only that absolutely everything we understand about experience, including the "what it's like" -ness, follows from it, but that this quality will be able to pick out experience with perfect accuracy, i.e., it will be able to pick out experience and only experience. Only then will we be able to say that this quality, at least under certain conditions, is identical to experience. The burden of proof is on him to provide this quality and show it can be used in this way.

A second possible objection to this argument would be that non-experiential explanatory factors can, logically entail experience. As neuroscience and psychology show us, vision is not merely a passive process in which we pick up information. Instead, the brain actively interprets information; our vision reflects this. (McCann et al., 2021) Therefore, it's clear that the analytic processes performed by our nervous system lead directly to our experiential states. We can therefore conclude, based merely on states of the brain (obtained perhaps by brain scans) and our knowledge of the nervous system and the laws which govern it,

that it has all the properties of experience. This attempted defence of reductionism does not succeed. On the one hand, if our knowledge of the nervous system and the laws which govern it includes claims which involve experience, such as "if the brain is in such and such a state, it is having such and such an experience," then experience is not being reduced to non-experiential factors and the explanation is not genuinely reductionist. While it is true that neuroscience and psychology can tell us that brain states lead to experiential states, they are not committed to the total absence of experiential factors in their explanation, as reductionism is. On the other hand, if the explanatory factors contain nothing about experience, only the interpretation it reflects, the description provides us only an account of this interpretation, not the experience.

Another possible objection would be that explanation doesn't necessarily involve entailment because many explanations only involve establishing the probability of something, not the logical necessity of entailment. For instance, when we explain why someone becomes addicted to a drug such as heroin, we can cite factors like poverty, social marginalization, peer pressure, exposure to the drug, etc. while also holding that not every single person who has some or all of these pressures becomes an addict. While I agree that explanation does not always require that the explanatory factors logically necessitate the outcome, there is still entailment in some sense. In the case of the heroin addict, when we explain their addiction, we are not only appealing to the factors such as poverty and peer pressure but also our knowledge that such things increase the probability of heroin addiction. Given that, while the person is not guaranteed to become a heroin addict, it is logically entailed that they will have a higher probability of heroin addiction. In other words, the outcome isn't entailed, but the probability itself is. Only this broader sense of entailment is required for the above argument.

Chalmers' mistakes and non-reductive physicalism

While Chalmers is correct to argue that experience is fundamental, he is mistaken that this forces us to abandon physicalism and embrace some form of dualism. Chalmers seems to take it as evidence that if the experience is not explicable wholly in terms of the

properties traditionally ascribed to matter, it must not be physical and that we must posit some non-physical property or entity to explain it. However, this is not the case. The capacity to have experiences under certain conditions may be one of the matter's fundamental properties. Other basic properties of matter, such as mass, extension, and motion, are not reducible to each other. As such, there may very well be more properties of matter, also not reducible to the others, which we weren't aware of or weren't aware were material, such as the capacity to have experiences. This view, which posits the capacity for experience as a fundamental property of matter, is preferable to dualist explanations because it poses fewer essential metaphysical entities and achieves more simplicity with the same explanatory power.

It may be objected that this merely amounts to property dualism. However, property dualism maintains that experience is non-physical, despite being a property held by matter. But why should we conclude this? If the other fundamental properties of matter are not reducible and are all still equally "physical," why would experience be any less physical? What non-arbitrary reason could there be to say some of the basic properties of matter are physical and others are not? If this metaphysics is correct, the only thing tying experience to non-physicality is our history of thinking of it as such. And our history of ignorance is no grounds for metaphysical conclusions. Furthermore, the electrical charge was not always part of our conception of the physical world, and we don't conclude based on the existence of electrical charge that matter has "physical" and "non-physical" properties. Why do the same for experience (or the capacity for experience)? I see no reason to believe there is anything to being a physical property beyond a property of matter.

Conclusion

Here I have argued for a non-reductionist physicalism. I began with a summary of Chalmers' arguments for the fundamentality of experience and against physicalism, along with an overview of a response by Dennett. I then responded to Dennett, arguing

in favour of the view of experience as fundamental. Lastly, I argued that even if we make the experience fundamental, we shouldn't thereby conclude that physicalism is false.

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They Don't Really Care About Us: The Virtuous Agent and Efficient Breach

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The relationship between law and morality is a rich and complicated topic. Seana Shiffrin¹ argues that contract law and promissory morality diverge in some significant ways. Given the divergence, there is a question of how an agent ought to navigate areas of tension between the norms of contract law and the norms of promissory morality. Shiffrin argues that when tensions are problematic for an agent to cultivate moral virtues, contract law should at least carve out a space for the virtuous agent's flourishing. This is the foundation that this paper builds on.

The boundaries of this paper are fixed by the current state of contract law and common-sense notions of morality; as such, we will put aside justificatory questions of private law and metaethics. To further clarify, this paper does not take a stance on which mode of analysis of law is the most convincing for tackling these issues in contract law. While I focus on the "moral" approach outlined by Shiffrin, the aim of my paper here (contrary to Shiffrin) is not to undermine, for one, an economic analysis of contract law. Further, I should stipulate that I am not trying to expound any particular substantive normative theory, and I do my best to stay neutral of these discussions and focus just on the structures of normativity.

In this paper, I will first contextualize the discussion by offering a brief background of the debate and laying out the issues Shiffrin begins to address. To narrow this further, I focus on Shiffrin's views on efficient breach and on how conceptions of promissory morality relate to the norms of contract law. Next, I turn to an objection put

¹ S Shiffrin, "The Divergence of Contract and Promise" (2007) 120 Harvard L Rev.

forth by Barbara Fried² and subsequently try to understand Shiffrin's argument in a more charitable light. I then turn to Steven Shavell³ and his attempt at vindicating efficient breach. I argue that Shiffrin's argument against efficient breach, with some slight modifications, can survive the critiques of Fried and Shavell. Both Fried and Shavell offer rigorous challenges which push Shiffrin's general argument forward. More specifically, insofar as contract law, the cogency of Shiffrin's view of promissory morality requires a further elaboration of the nature and structure of promises.

The Context of the Efficient Breach Debate

The stage of this discussion occurs within the debate between two extremes: "reflectivists," who think the law ought to reflect moral norms; and "separatists," who think law and morality can be divorced without much problem. Shiffrin purports to have an intermediate, "accommodationist" view, which generally claims that contract law ought to track morality at some points. The accommodationist view can be carved out in a number of ways. Specific to Shiffrin is the view that contract law ought to minimally "accommodate the needs of moral agency even if it need not or should not enforce morality directly."⁴ Morality is needed as far as it promotes the virtuous agent's flourishing.

Shiffrin argues that a virtuous agent cannot consistently hold the belief that a promise can be binding and the belief that breaching the promise can be morally justified on the grounds of mere economic welfare.⁵ The "virtuous agent" is not fully defined by Shiffrin, and the use of the term relies on common sense notions of morality. The term is a placeholder for an agent who cares about morality and strives to conform their actions

² B Fried, "What's Morality Got To Do With It?" (2009) 120 Harvard L Rev.

³ S Shavell, "Why Breach of Contract May Not Be Immoral Given the Incompleteness of Contracts" (2009)

⁴ S Shiffrin, "Could Breach of Contract Be Immoral?" (2009) 107 Michigan L Rev.

⁵ *Supra* note 1, at 731.

to what morality requires. Reminiscent of Aristotelian ethics, the virtuous agent's wellbeing and general flourishing in life is inextricably tethered to morality, so any constraints on their capacity to adhere to moral requirements is also a constraint on their ability to live a good life. How Shiffrin defines the content of the moral requirements and whether there can be good justifications for such constraints are points I will return to later.

The best example in contract law in illuminating this problematic tension between law and morality is efficient breach. The basic idea of efficient breach is that it is sometimes cheaper to pay expectation damages than performing under a contract. Shiffrin parses out two definitions. The "strong" view of efficient breach takes something like a consequentialist approach in that efficient breach is morally justified because it promotes social welfare through economic welfare.⁶ The "weak" view of efficient breach drops the moral claim and opens the possibility of efficient breach being morally wrong. However, efficient breach might be justified within contract law—generating completely distinct reasons from moral reasons⁷—because it "facilitates efficient economic transactions."⁸ In support of efficient breach, agents should be encouraged to breach when yielding net economic gain, so "punitive damages must be foregone in order to make breach, and thereby a more efficient system of exchange, more likely."⁹ If the moral agent believes that (all things considered) breach is morally wrong, the economic reasons are not "a sufficient, or even a partial, contributory justification for the law's content."¹⁰

At times, Shiffrin seems to be responding to the separatists' views. One famous formulation is that a promise to perform (under promissory morality) becomes a promise to perform or pay expectation damages (under contract law). Although we might think

⁶ *Ibid* at 730.

⁷ *Ibid* at 732.

⁸ *Ibid* at 730.

⁹ *Ibid* at 732.

¹⁰ *Ibid* at 731.

that in the world of promissory morality that the breaking of promises is obviously immoral, the norms of contract law are of a different species. In entering into a contractual relationship, parties leave their promissory norms at the door and enter into the world of contractual norms. Contractual norms signal to parties that performance is fungible (unlike promissory norms) and can be substituted for economic value. Contractual norms are not promissory norms, and breaches of contract are not the breaking of promises. Since contractual norms are divorced from promissory norms, it would be a category error to bring moral intuitions from the moral realm into the legal realm.

Shiffrin challenges the assumption that contract law can be divorced from the actual practices we engage in. As some economic analyses of contract law purport, the divorce between contract law and morality assumes that the parties involved are rational maximizers who only seek economic incentives. It is possible to think that in the context of contract law, the norms of promises are transformed into economic norms. In the same way a token of gratitude is representative of something more than its market price, perhaps the way to respect people is through money. The costs of breach, some economists argue, is already included in the price. Is there truly no moral duty to perform “because the contract did not explicitly specify that performance should proceed even were A to receive a significantly superior offer for A's goods?”¹¹ Shiffrin notes the asymmetry of allowing the seller can unilaterally shift the burden of finding a substitute while the buyer cannot compel the seller to do anything. This is too far removed from how we operate, especially when we pursue moral ends over economics ends. Expectation damages fall short of what morality requires. Shiffrin argues the internal inconsistency of this separatist approach by taking a Kantian approach: she writes, “if this were the universalized response, then agreements would never be made. The same is not true if performance were the universalized response to a promise to perform.”¹²

¹¹ *Supra* note 4, at 1562.

¹² *Ibid* at 1565.

Agreements on this view because an institution that is insensitive to our morality is fundamentally unstable and “could not flourish or perform its function.”¹³

It is important to take note of exactly what Shiffrin is arguing. Shiffrin does not argue that the justification of efficient breach is wrong because it is morally wrong, or that it does not line up with our promissory norms—this would be some version of the reflectivists’ view. Rather, what Shiffrin argues is that the good moral agent cannot consistently endorse efficient breach in their moral lives in a way to promote “the flourishing of just institutions and cultures.”¹⁴ Shiffrin is supposedly neutral towards the moral substance of efficient breach but finds problems with the moral scope insofar as it leaves no space to “accommodate” the good moral agent living their good moral lives.

Fried’s Deflationary Challenge

Fried’s challenge to Shiffrin’s argument is that efficient breach is not a moral wrong or contrary to morality, so there is no real problem for the virtuous agent in contract law permitting efficient breach. A look at Fried’s critique, regardless of its success, has the upshot of clarifying the problem Shiffrin outlines. It would be pointless to move onto the premise that efficient breach undercuts the virtuous agent’s wellbeing if we cannot first establish that efficient breach is morally problematic. If efficient breach has nothing to do with morality, then there is no **issue** (issue,) and the argument collapses.

The target of Fried’s objection is a *reductio* type illustration by Shiffrin of what formation looks like on a permissive view of efficient breach:¹⁵

¹³ *Ibid* at 1566.

¹⁴ *Supra* note 1, at 733.

¹⁵ Another interesting point that Fried highlights is the knowledge of the parties and the specifics of what they are agreeing to when they form the contract. Fried gives the example of a carpenter hired and a contract lacking specifications of performance standards and remedies. Does the individual understand that failure of the carpenter to meet her specifications gives her only expectation damages, which are further limited by Hadley rule (i.e. the

*"I solemnly promise to X but I may fail to do so if something better comes along; moreover, if it does, you can only expect X's market value from me, although you may need to enlist the help of others to pry it out of my clenched fist. Further, let us now declare that should I fail, it will not be the sort of thing deserving of moral reprobation so long as eventually you are made whole monetarily. Moreover, it is not the sort of thing you may be upset with me over or view as showing my bad character."*¹⁶ Fried thinks that this illustration is supposed to show the absurdity of efficient breach when it is translated into the language of promissory morality. To Fried, Shiffrin's issue with efficient breach is that the promise underlying the contract is not really a promise at all because it diverges too much from promissory morality. In other words, whatever threshold there is for something to count as a promise, this vague and ambiguous forecasting of one's actions has not met it. Yet we are supposed to call this an enforceable contract? Fried responds sympathetically in acknowledging that this does not fit with promissory morality, but adds that this does not fit with contract law either. In contract law, illusory promises are not considered enforceable contracts for much of the same reasons as promissory morality—that is, there is no promise to suffice as good consideration, so no enforceable contract has been formed. To Fried, this illustration is misleading at best.

By and large, Fried has problems with the rhetoric employed by Shiffrin. The illustration can be reformulated in a way which is acceptable in both contract law and promissory morality: "I'm thinking I'll probably do X, but I have to see what all my options are."¹⁷ Fried suggests that the discomforts would disappear if Shiffrin phrased things differently. For instance, "breaching for a price" says more to a separate moral judgment about the character of the promisor than anything about the morality of the promise; that is, what is morally wrong about the illustration is the "jerkiness" of the

inability to collect for hard-to-quantify losses)? This is a procedural problem about "when should apparent consent to stated and implied terms be treated as binding?" See *supra* note 2, at 56.

¹⁶ *Supra* note 1, at 728-9.

¹⁷ *Supra* note 2, at 58.

promisor and “that for no good reason he feels impelled to taunt the promisee with the limited nature of his commitment.”¹⁸ To Fried, there is no divergence between promissory morality and contract law, as Shiffrin suggests, and whatever problems are left are really just run-of-the-mill procedural problems (*viz.* formation and interpretation). These procedural difficulties are morally neutral, so, concludes Fried, there is no real tension with contract law and promissory morality.

Framed as a problem of contract formation, it is natural to think that this has little or nothing to do with morality. However, I think Fried’s objections relies on a very narrow understanding of the illustration. The illustration should not be understood in relation to sophisticated parties drawing up sophisticated contracts, as Fried’s counterexamples suggest.¹⁹ There is indeed nothing or morally wrong (barring conflicts with public policy issues) with contracts planning for some contingencies of possible breach and building them into the terms.²⁰ It is a mistake to that Shiffrin’s argument is directed towards breaching *per se* being morally objectionable; rather, what Shiffrin argues is that only a small subset of breach is morally objectionable.

The more charitable way to understand Shiffrin’s illustration is that it points out the absurdity of how efficient breach is supposed to be understood when parties making promises fail to specify or foresee breach. This is a subtle point and it is not clear cut, so I should note that this may not be Shiffrin’s actual views. In any case, a stronger argument emerges if we think of the small subset of cases where a party deliberately shirks the moral responsibility of the promise and hides behind the veil of contract law justifications for efficient breach. For example, if I promise to sell you my poodle and instead sell it to somebody else, I have broken my promise to you, even if I pay you expectation damages. I could provide you with a justification of my actions to the tune of efficient transactions,

¹⁸ *Supra* note 2, at 60.

¹⁹ *Supra* note 2, at 58.

²⁰ It is unclear what kinds of promissory norms are generated in these kinds of contracts. One explanation might be that promissory norms are quite thin and only require that we do not deviate from our agreements.

the fungibility of poodles, and the egoistic rational maximizer; however, I have still broken a promise. I did not say that, to echo Fried, "I'm thinking I'll probably sell you the poodle, but I have to see what all my options are." Maybe if I did, you might accept my contract law justification. But Shiffrin's illustration is directed towards the small number of scenarios where parties have failed to plan for breach. Shiffrin's hyperbolic language tries to show that contract law justifications for efficient breach are absurd justifications when operationalized in promissory morality.

It is not difficult to see how employing contract law justifications for breaking promises invokes reactions of moral indignation. As Fried suggests, we might condemn such smarmy characters for their "jerkiness," but this is not to say that we accept their contract law justification of "breaching for a price," as if they have a legitimate justification, and they are being sore winners. Rather, we do not accept their justification and the source of the condemnation is their inappropriate use of contract law justification where a promissory morality justification is appropriate.

A question arises at this point: Why are we so worried about the subset of cases of breach that are morally problematic? If they are so few and infrequent, does it really matter for the virtuous agent? These are the kinds of questions addressed in the next section. In brief, the small set of problematic cases infect the legitimacy of contract law because it puts unfair barriers on the virtuous moral agent. If the virtuous agent must not break promises, then parts of contract law are practically inaccessible for the virtuous agent. As we will see, Shavell suggests that we might reinterpret the problematic cases in a way that it is not morally objectionable.

Shavell's Reformulation of Efficient Breach

The previous section showed that Shiffrin's argument is not (as Fried suggests) merely rhetorical or an issue with formation. Fried helped clarify that most cases of efficient breach are not problematic, yet there are a small number of problematic efficient breach scenarios. Put this way, a plausible way to accommodate the moral agent is by

arguing that contract law transforms promissory norms in a way that is morally acceptable.

Perhaps contract law is not entirely divorced from promissory morality; rather it reshapes (as we have already seen in the separatists' argument) promissory morality and expresses them in a different way. This is the thread that Shavell picks up on. To summarize Shavell, contract law can accommodate the virtuous agent by filling in terms so that they are no longer morally objectionable. The way to go about filling in terms is by looking closely at the counterfactual of what parties would have agreed to if they foresaw the breach. For Shavell, when contractual terms do not explicitly address the breach, the way to interpret the promise is that parties would have permitted the breach if they had considered it. The fact that both parties did not foresee breach and remained silent does not imply that the parties believed breach was immoral. Shiffrin is not so convinced by Shavell's approach. Shiffrin questions whether there "is a moral duty to perform only if the parties would have explicitly agreed to perform had they squarely faced the contingency that is the occasion for the breach."²¹ Promissory norms are not mapped onto contracts in the way Shavell describes. There needs to be more explanation as to why absent explicit agreement "we should invoke the apparatus of hypothetical contractarianism."²² There are certainly some implied rules in the norms of promise keeping, too. If I miss a promise to meet you because of an emergency, you excuse me. It is possible that this contingency is built into the promise, but it would be odd to include the *deliberate* breaking of a promise. Silence might not imply that the parties believe breached to be immoral but using this silence towards an inference that parties permit breach is to take a mile from a given inch. Consider the example of shoplifting policies:

"[A] vendor may adjust her prices given the predicted rate of shoplifting at her store and the expected payout of insurance. As theft rises her prices may rise. However reasonable, that does

²¹ *Supra* note 3, at 1560.

²² *Supra* note 3, at 1561.

*not mean that she consents to the theft or its possibility. Nor does it mean that consumers who buy the goods at those prices consent to the thievery or to pay on behalf of the thieves. They may understand that everyone must shoulder the burden imposed by thieves and, in effect, pay the thieves' way, but finding that remedy reasonable does not amount to (and should not amount to) consenting to the activity giving rise to the remedial reaction."*²³

It is certainly *possible* to imagine that a vendor is indifferent to shoplifting because there are mechanisms in place to level out the expected economic loss. But this seems to imagine the vendor as cold, calculating, and amoral. The point becomes clearer if we imagine that, say, the payout of insurance netted slightly more than the loss of the theft. Would the vendor encourage theft? Would the non-shoplifting consumer shouldering some of these costs be insouciant towards the vendor encouraging theft to make a profit? Certainly not. Perhaps contracts ought to be responsive to the belief that there is a "special premium on performance."²⁴

As Shavell correctly identifies, much of this discussion turns on individual moral beliefs and what is deemed to be an acceptable practice. However, Shavell makes the unique move of approaching this as an empirical question. Rather than pumping intuitions or engaging in conceptual analysis, Shavell opts for a "limited survey" and appeals to "a recent study by psychologists" to validate his claims about individuals' moral beliefs on breach.²⁵ The problem with this move, I think, is that the question about what beliefs are acceptable for parties for counterfactual contract agreements are not apt for the experimental approach. This is not to say that this methodology is completely irrelevant or that his survey is a complete disaster—it is indeed important to assess the norms of the public for justifying coercive law. Rather, the question here is what reasons contract law *ought to* endorse, and this separates from the question of what reasons

²³ S Shiffrin, "Must I Mean What You Think I Should Have Said?" (2012) 98:1 Virginia L Rev 175.

²⁴ *Supra* note 4, at 1566-7.

²⁵ *Supra* note 3, at 1579.

individuals *in fact* endorse.²⁶ Should contract law prioritize promissory morality over economic efficiency? If so, where does it derive its normative force? Shavell seems to suggest that the normative grounds are the practical reasons held by everyone (*e.g.* it is in everybody's interest to reasonably accommodate economic efficiencies), and supports this claim with empirical data to show that people in fact hold these practical reasons. But questions of justification cannot be answered by looking at what individuals already believe.

The issue of conflating the justificatory question with a descriptive one becomes clear if we imagine a dissenter. If a dissenter claims that the counterfactual agreement is not what they agree to and that the breach is still unfair, then it is difficult on Shavell's view to see what justification can be given to the dissenter. Even if the majority of people believed that breaching was in fact what they would have agreed to if they had foreseen it, it does not lend any support for the dissenter. It seems Shavell would be forced to call this dissenter unreasonable, and their irrationality can be coercively overridden. This is problematic because the methodology leads to self-defeating result. The law does not function to impose the will of the majority and trump individual rights as soon as they do not fit with the majority's beliefs. The question of justifying coercive law must be answered in the abstract. Let us now take stock of the argument brewing behind the scenes.

1. Contract law ought to reasonably accommodate the flourishing of virtuous agents.
2. There are a (small) number of efficient breach scenarios which promote morally objectionable actions.
3. Virtuous agents cannot flourish under laws which promote any morally objectionable actions.

Therefore, contract law cannot permit efficient breach.

²⁶ This is a familiar problem made famous by David Hume and is often called the "is-ought" problem.

I take the first premise for granted given the limits of this paper. This paper thus far has focused mostly on the second premise. We learned from Fried that the number of efficient breach scenarios that are morally objectionable is a lot smaller than we might have initially thought. The small number of problematic scenarios cannot be easily excised or transformed in the way Shavell has suggested. At this point, one might question the first premise, especially as it relates to the second premise: in what sense is the permission of a small number of problematic scenarios an unreasonable accommodation?²⁷ The answer is that I take it that, in morally objectionable efficient breach scenarios, the virtuous agent has a disadvantage to somebody who is willing to act contrary to morality; in effect, the virtuous agent is being punished for acting in accordance with morality.²⁸ If this disadvantage cannot be justified (which is what I think), then it does not matter if it is a small or large number of scenarios. A similar issue might be raised with the third premise—namely, is it true that the virtuous agent cannot flourish because of a small number of scenarios? This depends on one's ethical views.²⁹

In the last stretch, I will try to sketch the ethical structure needed to support the argument above. My aim is to tease out some of the ethical positions that have been in the background of this paper. I want to suggest that a consequentialist ethics is not suited for this particular argument, but I raise some challenges that other normative ethical views might face.

²⁷ Shiffrin's answer is that the virtuous agent cannot consistently hold the belief that a promise can be binding and the belief that breaching the promise can be morally justified on the grounds of economic welfare. It is not spelled out exactly how she comes to the view that these are inconsistent beliefs, but I take it that this is connected to her view of morality. See *supra* note 1, at 731.

²⁸ Note that the law does not command agents to contravene morality, but merely permits efficient breach. But the suggestion that the law "promotes" breaching behavior is a subtler move. If breaking promises is understood as contravening morally objectionable, then laws which promote breaking promises also promotes something morally objectionable. The virtuous agent presumably cannot engage in breaching behavior whereas others can and narrows the options when engaging in contractual practices. They are faced with the dilemma of facing a market disadvantage in contracts or engaging in immoral behavior. It seems in either case, their wellbeing is undermined.

²⁹ The combined contentiousness of the second and third premises admittedly lead to worries about the cogency of the argument as a whole.

The Ingredients for the Morality of Promises

In defining a morality of promises, it is useful to look at what kind of normative force of morality is supposed to have in our practical deliberation. Put differently, we have a plurality of reasons for actions at any given moment (legal reasons, moral reasons, prudential reasons, etc.) and some reasons are weightier than others. For instance, reasons to keep my promise of meeting you at the café might outweigh competing reasons to indulge in a nap at home. In these terms, for Shiffrin, moral reasons seem to have a special overriding status in that it overrides other competing reasons—their “overridingness” quality is what defines the reasons as “moral”. I understand Shiffrin to be taking a view that moral reasons override all other reasons; so a part of what makes moral reasons “moral” is their elevated normative status. In contrast, Shavell might be thought of as more aligned with a consequentialist decision procedure whereby what is “moral” is the result of weighing competing practical reasons; on this view, whatever is the most pressing reason is “moral,” because it best satisfies some particular set of ends.

Some economic theorists have presented accounts of contract law that are amoral. Shiffrin is correct to think that such views of law are impoverished, but it having morality regulate laws can also lead to deficiencies. Shiffrin may go a bit too far with the idea of a virtuous agent.³⁰ Contract law does not need to make room for the moral saint; rather, it needs to make room for the morally decent person. Contract law certainly needs to capture dimensions of moral responsibility and blame.³¹ As Fried suggests, there might be a more attenuated approach to incorporating morality into contract law which shows deference to other policy concerns.³²

³⁰ Shiffrin argues elsewhere that the traditional doctrine of expectation damages needs to be replaced for specific performance and punitive damages. This also is supposed to flow from what morality requires of us.

³¹ As some philosophers suggest, the locus of responsibility is tethered to the idea that one has the power of choice and ability to do otherwise.

³² And Fried would argue that the current state of contract law already does this, for instance, through its conscionability doctrine.

We therefore need an account of how to understand contract law within an ethical system. Some legal theorists have defended a rights-based account of contracts. They usually start with the idea that everybody deserves respect as free and equal persons simply in virtue of being human. This involves equal respect for autonomy and people can recruit others to help pursue their goals. On the rights-based view, promises are understood as an exchange of rights. Coercively taking a right by breach is unacceptable, and they can appeal to enforce the promise through coercive means to reinstate the right. This is certainly very convincing, but to imply some revisionist takes on current doctrines in contract law.

Another (I think) plausible starting point could be to take a closer look at the normative structure of intimate relationships and special obligations. The starting point would be the relation instead of the individual (and individual rights). Underscoring the relational aspect of promises can arrive at the reciprocal respect between parties while maintaining the flexibility of negotiating the norms of the relationship. For example, Aristotle's view of friendship can be a useful model for understanding contracts—specifically, the wellbeing of parties becomes conjoined, and there emerges a resultant mutual flourishing. Friendships, like contracts, generate special obligations that are often idiosyncratic to the parties.

Conclusion

This paper has argued in line with Shiffrin against efficient breach. It is still possible to argue against any one of the premises or challenge the argument's jurisprudential assumptions. Nothing has been said about the nature of contracts within a polity or the nature of promises within morality. In saying this I do not mean to imply that progress is impossible without first addressing these fundamental questions. Shiffrin provides a strong argument for the role morality plays in the normative underpinnings of contract law. By way of modest suggestion, a fruitful direction for further investigation is a comparison between promissory norms between strangers and promissory norms between intimates. This may shed light on why we take performance to be so special.

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