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Right or Seemly?*

... for it is right and seemly so to do.

Anglican Book of Common Prayer

Abstract: This paper suggests that rights are best seen as being part of the description of a social state rather than as constituents of the mechanism by means of which society selects a social state. A theory of this kind is outlined in which a social state is modeled as an equilibrium in the game of life played by the citizens of a society.

1. The Good, the Right and the Seemly

Traditional moral theories can be loosely categorized into theories of the Good, the Right and the Seemly. Those who lean to the left emphasize the Good. Philosophers call them consequentialists. They maintain the existence of an *a priori* common good whose advancement takes priority over our own selfish concerns. Conservatives prefer theories of the Right. Philosophers call such theories deontological and see them as the natural opposition to the consequentialist theories of the left. Deontologists maintain the existence of natural rights, which it is our duty to respect regardless of the consequences. The right to private property is particularly cherished.

In a forthcoming book (Binmore 1996), I propose a theory of the Seemly, in which the moral rules or aspirations built into the social contract a society operates are seen as binding only by habit or custom. In spite of its eloquent defence by Hume, such a view has traditionally been unpopular among philosophers. Indeed, until recently, such naturalistic ethical theories have largely been treated with derision. However, the advent of game theory and evolutionary biology has been accompanied by signs that the tables are perhaps now to be turned.

Diogenes (Davenport 1976) remarked that he had seen Plato's cups and table, but had yet to see his plateness or tableness. Defenders of the Seemly feel much the same about the Platonism of traditional theories of the Good

* An expanded version of this paper will appear as Chapter 3 of *Just Playing: Game Theory and the Social Contract II*, to be published by MIT Press. The support of the ESRC Centre for Economic Learning and Social Evolution is gratefully acknowledged.

and the Right. Bentham (1987) described the idea that the Right is more than a human invention as “nonsense upon stilts”, and I am ready to apply the same epithet to similar ideas about the Good. But it does not follow from the fact that the Good and the Right do not exist as moral absolutes that the phenomena that led to their invention do not exist. Plateness and tableness are no less human inventions than the Good and the Right. Nevertheless, plates and tables do exist.

I believe, for example, that the forces of biological and social evolution have indeed equipped us with the capacity to make the interpersonal comparisons of well-being that a theory of the Good requires. But I am not prepared to treat this conclusion as axiomatic. Instead, we need to ask how and why such a phenomenon might have evolved. Similarly, I believe that the successful running of a society requires that we treat certain privileges as though they were inalienable and certain duties as though they were obligatory. However, I do not believe that the mechanisms that lead us to behave in this way are any different in principle to those that hold baboon societies together. But nobody suggests that baboons behave as they do because they have been gifted with some inborn notion of the Right.

Adopting a game-theoretic perspective allows one to see a social contract as an equilibrium in the game of life. Intuitions about the Good can then be recognized as being derived from the principles that have evolved for *selecting* an equilibrium when many alternatives are available. Intuitions about the Right can similarly be seen as being derived from the self-enforcing rules that have evolved for the purpose of *sustaining* an equilibrium. That is to say, game theory provides a framework within which one can reduce the Good and the Right to derivative notions within a theory of the Seemly.

As is appropriate in a symposium devoted to the modeling of rights within a social choice framework, this paper is devoted to the second of these two reductions: the reduction of the Right to the Seemly. Apologies are necessary for the brisk manner in which the necessary ideas from game theory are introduced. Readers who are not familiar with this material will find a less breathless account in chapter 2 of Binmore 1994.

2. Reciprocity

This paper models the citizens of a society as players who seek to maximize their payoffs in a fixed game of life.¹ Insofar as the citizens of such a society cooperate, it is because they can achieve larger individual payoffs by coordinating their strategy choices than by acting alone. I identify such

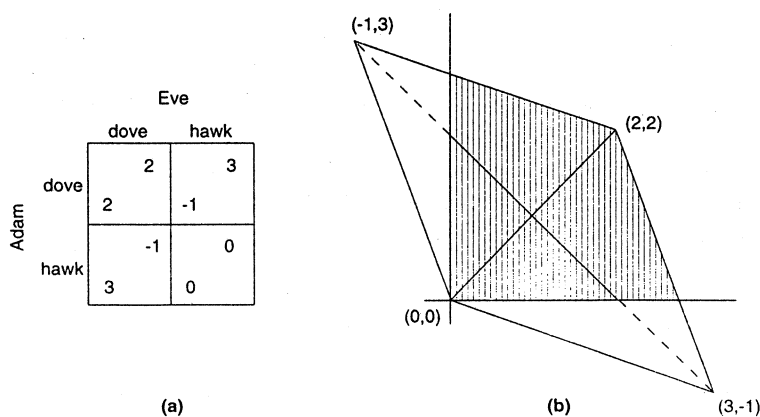
¹ This assertion is usually taken to mean that the players are narrowly selfish, but whether it is selfish or not to maximize your payoff depends on what your payoff happens to be.

a coordination arrangement—whether reached by direct negotiation or as a consequence of a long process of social evolution—with the society's social contract.

It is important to recognize that not all possible outcomes of the game of life are viable as social contracts. Unless a society has access to some external enforcement agency, a social contract must be self-policing. But the only self-policing social contracts are those that require the players to coordinate on an *equilibrium* of the game of life. Only at an equilibrium is it optimal for each player to honor the social contract provided that everybody else honors it also.

The one-shot Prisoners' Dilemma of Figure 1(a) is often thought to epitomize the problems that a theory of the social contract needs to solve. But the one-shot Prisoners' Dilemma has only one equilibrium—that in which each player uses the strongly dominant strategy *hawk* and receives a payoff of zero. If our game of life really were the one-shot Prisoners' Dilemma, we should therefore never have evolved as social animals. Although it still involves a heroic batch of simplifications, it makes much more sense to model the game of life as an indefinitely *repeated* game.

Figure 1
The Prisoners' Dilemma



It remains an equilibrium in an indefinitely repeated game if the players continue to use a Nash equilibrium of the one-shot game. In the indefinitely repeated Prisoners' Dilemma, it is therefore an equilibrium if Adam and Eve always play *hawk* every time the Prisoners' Dilemma is played. This equilibrium is commonly identified with the bleak state of nature that Hobbes (1986) proposed as the only alternative to an authoritarian social contract. However, many more Nash equilibria exist. The parallelogram of Figure 1(b)

shows all the pairs of per-game payoffs achievable in the indefinitely repeated Prisoners' Dilemma if the rates at which the two players discount time are sufficiently low. The folk theorem of repeated game theory (Binmore 1992) tells us that all outcomes in the shaded part of this parallelogram are available as equilibrium outcomes. In particular, Adam and Eve can choose any Pareto-efficient payoff pair that is a Pareto-improvement on the Hobbesian state of nature as their social contract.

The mechanism that supports such cooperative Nash equilibria in an indefinitely repeated game is *reciprocity*—as exemplified by the strategy TIT-FOR-TAT made famous by Axelrod's *Evolution of Cooperation* (1984). This strategy requires that a player begin by playing *dove* and continue by choosing whatever action the opponent chose last time. Since both defection and cooperation are reciprocated, an optimal response to TIT-FOR-TAT is to cooperate all the time. Because a player using TIT-FOR-TAT will never be the first to defect, two players who have chosen the TIT-FOR-TAT strategy will therefore always cooperate at every repetition of the Prisoners' Dilemma. Each will then be making a best reply to the strategy choice of the other. It follows that two TIT-FOR-TAT strategies constitute a Nash equilibrium for the indefinitely repeated Prisoners' Dilemma.

The realization that reciprocity is the mainspring of human sociality reaches at least as far back as Confucius, but a recognizably modern statement of its workings had to wait for David Hume. As Hume explains:

“... I learn to do service to another, without bearing him any real kindness, because I foresee, that he will return my service in expectation of another of the same kind, and in order to maintain the same correspondence of good offices with me and others. And accordingly, after I have serv'd him and he is in possession of the advantage arising from my action, he is induc'd to perform his part, as foreseeing the consequences of his refusal.” (Hume 1978, 521)

3. Rights in a Theory of the Seemly

The view I shall be defending in this paper is that the intuitions on which theories of the Right are founded are actually derived from the rules that we observe when coordinating on the equilibrium in the game of life that constitutes our social contract. If so, then such intuitions can be reduced to a system of relative rights and duties within a theory of the Seemly. In the words of Adam Smith:

“We do not originally approve or condemn particular actions because, upon examination, they appear to be agreeable or inconsistent with a certain general rule. The general rule, on the contrary, is formed

by finding from experience, that all actions of a certain kind ... are approved of or disapproved of." (Smith 1975, 160)

Since different societies operate different social contracts, citizens in different societies therefore face different limitations on the exercise of their personal freedom. Even in the same society, the rights and duties a citizen enjoys will vary as the social contract evolves over time in response to the vagaries of fortune and the efforts of reformers.

From such a perspective, talk of inalienable or imprescriptible natural rights in the style of 1789 is just so much whistling in the wind. It is an unwelcome truth, but a truth nevertheless, that we possess only those rights that we are actually able to exercise—and history shows that we can be stripped of these very easily indeed. We retain what rights we have only because enough of us keep sufficient power in our collective hands that authoritarians are unable to take them away. I do not deny that the type of reformist propaganda which proceeds by asserting that some underprivileged group has a natural right to better treatment can sometimes be very effective. But we need to be cautious about the use of such rhetorical flourishes lest we convince our children that the price of freedom is not eternal vigilance.

3.1. How Should Rights Be Modeled?

Although the moral philosophy literature discusses rights and duties at enormous length, surprisingly few attempts seem to have been made to incorporate the notion of a right or a duty into a formal model of the type studied by economists.

Sen's (1970) proposed definition is the best known of the various attempts to formalize the notion of a right. His definition of a minimal right requires that each citizen be a dictator over at least one pair of social alternatives. For example, if Adam has a right to decide how he dresses, then he is a dictator over at least one pair of alternatives, a and b , which are identical except that Adam wears his figleaf in a but goes naked in b . This definition leads immediately to Sen's Paradox of the Paretian Liberal, which says that a society cannot simultaneously allow even the most minimal of rights to each citizen without violating the Pareto principle.

Sens' Paradox. This section abbreviates the account of Sen's Paradox given in Binmore 1994, 125. Readers familiar with the argument will wish to skip forward to the discussion of modeling rights as strategies that follows.

Everything that matters about Sen's Paradox can be expressed using a society that has only two citizens, Adam and Eve. Moreover, we need only consider the case in which the set S of social states among which they must make a communal choice contains only three alternatives, a , b and c .

The set \mathcal{P} consists of all possible preferences that an individual might hold over the given set S of social states. A social welfare function $F : \mathcal{P} \times \mathcal{P} \rightarrow \mathcal{P}$ then aggregates Adam and Eve's preference relations, \preceq_A and \preceq_E , and expresses the result as a communal preference $\preceq = F(\preceq_A, \preceq_E)$.

All preference relations \preceq in the set \mathcal{P} , whether they represent an individual or a communal preference, are assumed to be total and transitive. Sen (1970) also requires that the communal preference satisfy the Pareto principle: for all x and y , $x \preceq_A y$ and $x \preceq_E y$ implies $x \prec y$, unless both Adam and Eve happen to be indifferent between x and y .

For Sen (1970), a minimal requirement for Adam to have a right to exercise² is that there exist at least one pair, a and b , of social alternatives in the set S such that $a \prec_A b$ implies $a \preceq b$. For example, a and b might be complete descriptions of Adam and Eve's social arrangements that differ only in whether or not Adam wears his fig leaf.³ Eve may prefer that Adam be decently dressed in public, but if Adam has rights on such personal matters, Eve's views will not prevail in determining the communal preference.

Sen's Paradox is that a society organized in accordance with a social welfare function $F : \mathcal{P} \times \mathcal{P} \rightarrow \mathcal{P}$ that satisfies the Pareto principle cannot simultaneously allow both Adam and Eve any 'rights' at all. It is easy to see why. Suppose that Adam may exercise a right over a and b , while Eve may exercise a right over b and c .⁴ For the particular preferences $c \prec_A a \prec_A b$ and $b \prec_E c \prec_E a$, the communal preferences must then satisfy:

$$\begin{array}{ll} a \preceq b & \text{(because of Adam's right over } a \text{ and } b) \\ b \preceq c & \text{(because of Eve's right over } b \text{ and } c) \\ c \prec a & \text{(by the Pareto principle)} \end{array}$$

But the communal preference relation then satisfies $a \preceq b \preceq c \prec a$, and hence is intransitive. A contradiction has therefore been obtained.

Like Sen's, Arrow's (1963) famous paradox requires at least two citizens and at least three alternative social states. Deriving Arrow's Paradox from Sen's is easy. When the Independence of Irrelevant Alternatives holds, there are no pairs of social states over which somebody does not have a right in the sense proposed by Sen (1970). Sen's Paradox tells us that it must be the *same* somebody for every pair of alternatives. This somebody is a dictator.⁵

² What follows is actually less than minimal. The natural condition is the stronger $a \prec_A b$ implies $a \prec b$. Of course, the paradox still holds if such a stronger definition is used.

³ With this example, I am trying to capture the prurient flavor of Sen's 1970 story of Lewd, Prude and a copy of *Lady Chatterley's Lover*.

⁴ A slightly more complicated argument is necessary if she exercises a right over c and some further alternative d .

⁵ If the somebody is Eve, then, for each x and y , the argument shows that $x \prec_E y$ implies $x \preceq y$. However, a contradiction follows from considering the possibility that $b \preceq_A a$ and $a \prec_E b$ and $a \sim b$. One may take $c \preceq_A a$ and $a \prec_E c$ so that $a \preceq c$; also $c \prec_A b$ and $c \prec_E b$ so that $c \prec b$. We then have that $a \sim b \preceq c \prec b \sim a$, and so the communal preference

Rights as strategies? Nozick (1974, 164) sees Sen's Paradox as reinforcing his view that a right can sensibly be interpreted as a "side constraint" to be satisfied *before* social choice considerations are invoked. Dworkin (1981) expresses the same thought when he categorizes rights as "trumps" that take priority over other considerations. Such an attitude to the nature of rights is consistent with the criticism that Gaertner, Pattanaik and Suzumura (1992) and Sugden (1985; 1986) direct at Sen for neglecting to take account of the fact that people should be able to exercise their rights *independently* of each other.⁶

I agree with Sen's critics that the language of social choice theory is too thin to capture the idea of a right adequately. Sugden (1985; 1986) seeks to enrich the available language by defining rights in terms of the strategies of a game. Spinoza's notion of a "natural right" is easily expressed in this manner. According to Spinoza, we have a natural right to take any action within our power. In particular:

"Everyone has by nature a right to act deceitfully, and to break his compacts, unless he be restrained by the hope of some greater good, or the fear of some greater evil." (Spinoza 1970, 200)

A natural right in Spinoza's sense can be identified with the requirement that a player be free to choose any strategy he likes in whatever game he is playing. However, the example of Rock-Scissors-Paper of Binmore (1994, 128) shows that the exercise of such natural rights is not even consistent with the existence of a transitive collective preference relation, let alone the Pareto principle. One therefore does not escape Sen's Paradox simply by adopting the language of game theory.

Rights as part of the description of a social state. Spinoza invented natural rights only to provide a suitably stark contrast between the Hobbesian brutality of his hypothetical state of nature and the civilized society that replaces it after a social contract has been agreed. But our intuitions about the nature of rights are not derived from such gedanken experiments. They derive from seeing how rights operate within the social contract that we currently operate. If I am anywhere near the mark in modeling a social contract as an equilibrium⁷ in a fixed game of life, an understanding of our intuitive idea of

is intransitive. Thus Eve is actually a dictator in the strong sense that, for each x and y , $x \prec_E y$ implies $x \prec y$.

⁶ See also Gibbard 1974, Hammond 1995, Pattanaik/Suzumura 1990, Riley 1989; 1990, Suzumura 1978, and Sen 1992. Hammond 1995 summarizes the literature and provides further references.

⁷ Like Hobbes before him and Hume after, Spinoza sees the need for the social contract that replaces the state of nature to incorporate incentive-compatibility requirements. As he puts it: "It is foolish to ask a man to keep his faith with us for ever, unless we also endeavor that the violation of the compact we enter into shall involve for the violator more harm than good." (Spinoza 1970, 204)

a right therefore has to be sought by studying the manner in which equilibria in the game of life are *sustained*.

Since social choice theory is concerned with the manner in which social alternatives are *selected*, it therefore provides a poor framework for discussing rights. In particular, we should not follow Nozick (1974) in thinking of rights as side-constraints on the set of social alternatives that need to be satisfied when a selection is made. We need rather to follow Pattanaik and Suzumura (1990) in seeing rights as part of the *description* of a social alternative, which is abstracted away when a social alternative is envisaged as a point in the feasible set from which a social choice theorist has to make a selection.

Similar problems arise when a right is seen as a pure strategy in a game. It seems to me that our intuitions about rights depend in an important way on the opportunities for reciprocity that become available when the game of life has a repeated structure. However, when the extensive form of a game is replaced by its strategic form, we can no longer study the manner in which rights and duties manifest themselves during the play of the game through the interaction of the pure strategies chosen by Adam and Eve. Just as we need to look inside the black box that represents a social alternative to find where rights are hiding in a social choice framework, so we need to look inside the black boxes that represent the pure strategies in an equilibrium profile to find where rights are hiding in a game-theoretic framework.

In summary, one can sensibly discuss how to *select* a social contract within the abstract frameworks that I am dismissing as inadequate for the purpose of talking about rights. However, the idea of a right belongs—not in a discussion of how social contracts are selected—but in a discussion of how they are *sustained*.

3.2. Rules for Sustaining an Equilibrium

This section takes for granted that rights and duties are determined by the social contract operated by a particular society. In particular, a player's *duty* simply lies in never deviating from the equilibrium path specified by the social contract. The custom of doing one's duty then survives because those who evade their obligation to honor the social contract suffer sufficient disapproval or punishment to make the deviation unattractive. I shall say that one has a *right* to take an action if and only if one does not have a duty to refrain from it.⁸

⁸ It is important not to forget that a social contract is an equilibrium in the game of life. It therefore respects the realities of power. It follows that there is no point in saying that a tree has a right not to be cut down, nor that the generations to come have a right to be left a fair share of the world's resources. A tree or an unborn human is powerless and hence cannot be a player in the game of life. Animals, babies, the senile and the mentally ill are only marginally less helpless. However, it does not follow that a social contract will neglect

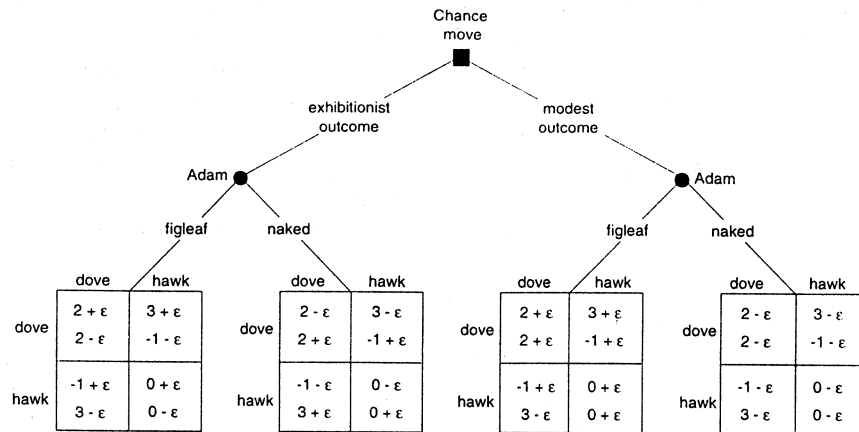
In simple cases, to identify a right action with an equilibrium action trivializes the notion of a right, since the set of actions amongst which a player is free to choose after fulfilling his obligations may then contain only one element. In seeking to exercise his rights, a player will then be left with Hobson's choice. Suppose, for example, that the game of life is the indefinitely repeated Prisoners' Dilemma, and the social contract being operated calls for Adam and Eve to use the GRIM strategy. This strategy requires that a player always cooperate by playing *dove* as long as the opponent reciprocates, but that he switch permanently to *hawk* if the opponent ever cheats on the implicit deal.⁹ With the GRIM social contract, Adam has a duty to choose the action *dove* unless Eve has previously deviated by playing *hawk*. In the latter case, Adam has a duty to punish Eve by always choosing *hawk*. After doing his duty, there is then no room left for any discretion in the exercise of his rights.

The notion of a right only becomes significant in games of life with more structure. A case discussed extensively in the literature concerns the right to choose what clothes one wears. Should Adam have the right to decide whether he goes naked or wears a figleaf? The Fashionwise Prisoners' Dilemma of Figure 2 shows how to graft this problem onto the regular Prisoners' Dilemma. A small positive number ϵ is added or subtracted to Eve's payoffs to indicate that she always prefers that Adam cover his nakedness in public. However, Adam's preferences vary. A chance move decides whether Adam prefers to wear a figleaf or go naked today by adding or subtracting ϵ to his payoffs, depending on what he wears. After observing the outcome of the chance move, Adam decides whether to wear a figleaf or go naked. Then the Prisoners' Dilemma is played.

the interests of the powerless. For example, those players in the game of life who care about the environment have a love of trees built into their personal preferences. But even when no players at all care about the fate of the helpless, a social contract need not throw them on the scrapheap. Binmore 1994, 73, gives a simple example of a social contract with overlapping generations in which the elderly are helpless cripples unloved by anyone, but who nevertheless fare as well as their younger compatriots. They are not helped because they have a *right* to be helped. They are helped because those who are actually playing the game have a *duty* to care for their elders—a duty that is enforced by other players in the game. For those who wish to live in a caring society, I believe it to be a dangerous mistake to allow sentiment to blur this point. There is no point in talking about rights without simultaneously discussing their concurrent duties. One then cannot evade the nub of the matter: namely, how are these duties enforced?

⁹ The GRIM strategy is less realistic than TIT-FOT-TAT in being utterly unforgiving—a deviant opponent being punished for ever no matter what evidence of remorse his later play may demonstrate. However, I prefer to use the GRIM strategy, since a pair of GRIM strategies constitutes a subgame-perfect equilibrium of the indefinitely repeated Prisoners' Dilemma (provided the players' discount factors are not too small). Although a pair of TIT-FOR-TAT strategies is a Nash equilibrium of the game, it is not a subgame-perfect equilibrium.

Figure 2
The Fashionwise Prisoners' Dilemma



It is easy to write down two social contracts for the indefinitely repeated Fashionwise Prisoners' Dilemma. In the first, both players use the GRIM strategy without any reference to the manner in which Adam is dressed. In the second social contract, Eve plans to administer the same grim punishment if Adam leaves off his figleaf as she would apply if he were ever to play *hawk*. He reciprocates by planning to switch to *hawk* should he ever forget himself by appearing naked in public.

In the first social contract, Adam has a duty never to play *hawk* unless Eve does so first, but he has a right to dress as he chooses. In the second social contract, Adam has a duty never to play *hawk* nor to appear naked. When it comes to the exercise of his rights in this second case, his choice therefore reduces to wearing a figleaf or wearing a naked.

3.3. Moral Responsibility

Traditional theories of distributive justice differ as to the criteria to be applied in determining who gets what. We are variously told that Adam's share of the social cake should be determined by his need, his worth, his merit or his work.¹⁰ For example, in respect of the last of these alternatives, the Bible tells us that a laborer is worthy of his hire. Aesop has the story of the ant and the grasshopper. Plato's *Republic* even tells us that someone who can no longer work loses the right to live.

It seems to me that all such traditional theories have something valuable to say about how rewards and punishments are determined by our current social

¹⁰ Vlastos 1992 discusses how such intangibles as worth or merit are to be distinguished.

contract. Each theory has its own domain of application. For example, social benefits are supposedly determined by need, and Nobel prizes by merit. But none of the theories is adequate as a universal explanation of how we currently assign blame or desert. Nor is the claim that a utopian society would settle on one of the theories to the exclusion of the others often strongly pressed. I take this fact as a tacit acceptance of the need to look for a radically different type of theory—one that is not anchored in the practices or prejudices of a particular society or subsociety at some particular period in its history, but which explicitly recognizes that blame and desert are relative concepts that often vary sharply as we move from one social contract to another.

I suggest that to attribute *blame* to a player in the game of life is operationally equivalent to identifying him as an appropriate target for punishment within a particular social contract. To attribute *desert* to a player is to identify him as a suitable target for reward.

When the GRIM social contract is employed in the indefinitely repeated Prisoners' Dilemma, a player will is therefore deemed to be worthy of blame if he deviates from equilibrium play, and deserving of credit if he doesn't. His reward in the latter case is that his opponent continues to play *dove*. His punishment if he deviates consists in his opponent playing *hawk* at all later times.

Such an approach to blame and desert recalls a major fallacy that critics of modern utility theory seem unable to avoid. Modern theorists do not say that Eve chooses *a* rather than *b* because the utility of *a* exceeds that of *b*. The utility of *a* is chosen to be greater than the utility of *b* because it is known that Eve always chooses *a* rather than *b*. Similarly, according to my account of blame and desert, Eve is not punished *because* she is to blame. She is held to be to blame *because* the social contract being operated requires that she be punished.

In spite of the various aphorisms that recognize the need we feel to hate those whom we have injured, traditionalists find it hard to believe that anyone might be serious in proposing that the causal chain taken for granted by folk psychology needs to be reversed. How can it be possible to talk about just punishment in the absence of a prior understanding of the nature of moral responsibility? Without such a prior understanding, is it not inevitable that we shall find ourselves blaming or rewarding people for things over which they have no control?

But our current social contract *already* institutionalizes the practice of blaming people for things that are outside their control. This is not to say that the level of punishment we administer to a defaulter is *never* determined by the extent to which he was in control of the events leading up to his crime. On the contrary, such cases are clearly the norm, because an efficient social contract will not call for penalties to be inflicted when the circumstances

under which the crime was committed are such that there is no need to deter others from imitating the deed. If it can be demonstrated that Abel's death at the hand of Cain was accidental by pointing to the immediate cause of the crime, we do not need to follow the practice of our Saxon predecessors by holding Cain to blame and demanding the payment of *weregeld*.¹¹ But when the causal chain is uncertain, our social contract needs to be ruthless. All of us, for example, are held to be guilty until proved innocent when it comes to paying tax.

Some of the legal examples are even more blatant. Consider the doctrine that ignorance of the law is no excuse. It is clear why this doctrine is necessary. If the prosecution had to prove that the accused knew each letter of the law he had broken, everybody would plead ignorance nearly all the time and the legal system would collapse. Even more difficult for the traditional view are the examples multiplied in Nagel's *Moral Luck* (1979).¹² These include the doctrine that the seriousness of a crime is determined by the consequences for the victim. But the extent of the damage suffered by a victim is often largely outside the criminal's control. For example, a mugger may hit two marks equally hard, but he will only be tried for murder if one of them happens to have an unusually thin skull. Nearer to home, how many of us have escaped ruin and imprisonment as a consequence of negligent driving only because we happen not to have hurt anybody?

At the social level, we routinely inflict the most exquisite psychological tortures on our fellows for being ugly, boring, clumsy, or lacking in charm. Those of us who think of ourselves as intellectuals are relentless in the humiliations we heap on the stupid and uneducated. In former times, bastards were reviled. Skin-color and sex still provide ammunition for those unable to come up with other reasons why they are entitled to inflict injury on others. I find it particularly revealing that people excuse themselves from taking an interest in street people by calling them schizos.¹³

Such examples would seem to refute the claim that the principle on which our social contract works is that punishments are determined according to some *a priori* notion of moral responsibility. Presumably, people hang on to this idea because they believe that taking a more realistic attitude to the attribution of blame and desert will lead to the collapse of our moral institutions. But our prisons are *already* full of youngsters from deprived backgrounds whom everyone agrees 'never had a chance'. All that will change

¹¹ A practice that perhaps had more to do with providing insurance for the victim's dependants than punishing the culprit.

¹² Originally written in reply to a work of the same name by Bernard Williams 1981.

¹³ We blame schizophrenics for their genetic inheritance because we do not plan to help them. Once it has become accepted that schizos are fit objects for blame, it then becomes possible to devalue anyone else whom it is convenient to throw on the scrapheap by calling them a schizo as well.

if we stop pretending that they had the same 'free choice' as youngsters from privileged backgrounds is that we will stop kidding ourselves. The conclusion will certainly not be that criminals from the ghettos will be set at large because 'they couldn't help it'. They have to be punished for the same reason that we quarantine those suffering from dangerous diseases. A social contract that does not discourage the spread of criminal or antisocial memes will not survive.

4. Conclusion

This paper can only offer the flavor of the type of theory defended at greater length in Binmore 1994 and 1996. It ignores, for example, various philosophical questions about modeling free will in a game-theoretic context raised by the preceding section. However, I hope it is at least adequate to show that a coherent case can be made for viewing rights and duties as being embodied in the system of rules that we use when coordinating on the equilibrium in the game of life that constitutes our social contract.

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