

and do so without falling foul of the Categorical Imperative. Similarly, then, a person can consistently adopt principles of the kind 'Lie/break a promise/steal/cheat on taxes whenever the situation is this serious', provided the situation isn't *very often* that serious. The institutions survive, and so do the possibilities for making exceptions.

A third limitation appears if we consider the man mentioned above, who misapplies the Golden Rule, saying that he does not mind others refraining from benefiting him, provided he can be excused from benefiting them. Kant's only argument that he fails the Categorical Imperative test is that he *might* get into dire straits in which he needs the assistance of others. But this evidently invites the all-too-human rejoinder that he might not, and is willing to take the risk. He can will that nobody help anybody else, because he can gamble on staying self-sufficient.

**Ethics** Kant descends somewhat from the abstract heights of the Formula of Universal Law version of the Categorical Imperative. He argues in effect that the capacity of human beings to act in accordance with the imperative – the jewel within – is itself a thing of absolute, unconditional value. It is true, he thinks, that we can never be sure that we are acting from our sense of duty alone, since our motives are often mixed and often hidden from us. But at least we can set ourselves to do so. We can distance ourselves from our mundane desires and wishes, and set ourselves to act as duty requires. This capacity itself gives us our fundamental title to respect and self-respect. We are proud of our reasonings – in fact, whenever we offer reasons we are showing how much we respect reason in ourselves. So it deserves respect wherever it is found, that is, within all rational agents.

This argument (or something like it: the texts are dense) takes Kant to the Formula of Humanity: 'So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.' It is not, of course, easy to

see exactly what this involves, but the general idea of remembering to respect each other is clearly attractive, and perhaps more practicable than remembering to love each other. Whether we deserve respect purely because of our capacity to make laws to ourselves is a good deal less certain. Perhaps we deserve respect from each other insofar as we are like each other in a whole mass of ways. The raiding party bent on enslaving a rival group has forgotten a shared humanity, which includes a shared capacity to love, and suffer, and hope, and fear, and remember. It hasn't *only* forgotten that the victims can reason according to general rules.

Many people think Kant offers the best possible attempt to find Reasons, and therefore to justify ethics on the basis of reason alone. Since many people want such an attempt to succeed, and fear the result if it does not, there are major intellectual industries of trying to find ever more complicated interpretations of the approach that make it work. It might be doubted whether this does much service to Kant: he was a great democrat, and believed that the necessity of the Categorical Imperative was easily visible to any reasoning creature.

## 19. Contracts and discourse

Some writers think that a descendant of Kant's approach, often called 'contractarianism', gives us a powerful foundation for ethics, or at least for the large part of ethics that concerns our rights and duties to each other. One formula at the centre of recent work is this, due to the contemporary American philosopher T. M. Scanlon:

*an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.*

As in Kant, there is a concern for the universal, and a concern for reason. A slightly different version occurs in the 'discourse ethics' of

the contemporary German philosopher Jürgen Habermas. A norm of conduct has to be such that:

*all affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of everyone's interests (and the consequences are preferred to those of known alternative possibilities).*

Habermas's formulation is slightly more specific than Scanlon's. It retains a utilitarian flavour: the imagined conversation or contract is taking place between agents concerned for the satisfaction of everyone's interests. They sound to have the greatest happiness of the greatest number in their sights. By contrast, the first formula, Scanlon's version, is unspecific over what counts as 'reasonable rejection'. Suppose, for instance, we are discussing whether to organize our society on capitalist principles or more communitarian or socialist principles. Is a participant allowed to reject a proposal on the grounds that it leads to large inequalities of wealth? Or is she allowed only to voice some restricted range of reasons – such as the thought that the proposal would injure her personal interests? And in either case, are these reasons really Reasons, as Kant thought?

These questions suggest a limit to the contractarian approach. It seems that the participants in these conversations need to come with some set of values already in place. These are the things that they are prepared to offer and to accept as reasons. If the discourse were taking place between people who in advance accepted biased reasonings, then that is what would come out of the conversation. Suppose, to take the usual example, they believe that women's interests intrinsically matter less than men's, and suppose the culture has got the women to accept this. Then, of course, a set of principles coming from the 'unforced' agreement will be inequalitarian in just that respect. But then it sounds as though we need to put egalitarian ideals, ideals of liberty, or of what counts as legitimate interest or a right, *into* the conversation at some point, in order to get them *out* at another. We also need to outlaw some other

kinds of value, such as the asymmetric valuation of men and women, or a generalized phobia of people of a certain type, or a religious conception of the priority of particular ways of life. So the fear arises that the talk of discourse and contract gets short-circuited. It just disguises the real source of values, which must lie elsewhere.

The most famous proposal of this general kind in the literature is due to John Rawls, whose hugely influential book *A Theory of Justice* has dominated this branch of moral and political philosophy ever since it appeared in 1971. Rawls applies the device of a contract only to the business of finding overall principles of justice for the ordering of society. And he carefully restricts the range of considerations his contractors can advance. He imagines them having to find the overall principles from behind a 'veil of ignorance'. This means that they aren't to know which social role they might end up occupying. The idea is that if you don't know whether you will end up rich or poor, male or female, boss or worker, you will bend your mind to adopting principles of justice between each group. It is rather like cutting a cake and not knowing which bit you will end up with: a procedure that enforces a fair distribution. Rawls in fact calls his conception 'justice as fairness'.

His contractors are also not allowed to bring specific values to the conversation. They can, however, bring care about the basic things virtually all human beings care about for themselves: safety, security of possession, the satisfaction of basic needs, a basis for self-respect. Rawls argues that what they would or should agree to, under those circumstances, is, not surprisingly, a constitution that guarantees a lot of liberties. But it is also one that regulates the economy, although subject to the protection of those liberties (you would not be allowed to trade free speech for extra wealth, for example). It regulates the economy in the interests of the least well off. It is not a free-market state, nor a purely egalitarian or communist state. It most closely resembles the democratic socialist countries of Western Europe, with their substantial 'welfare floors'.

#### Foundations

However, it is more radical ('left') than them, since even after a welfare floor has been established, those least well off can make claims to further redistribution of resources. They can go on doing that until the point at which their demands damage the economy sufficiently that the whole cake diminishes, because people have insufficient incentive to work, so that the plight of the worst off becomes worse. The priority of the social and economic order, in other words, is to maximize the minimum.

However attractive some may find the Rawlsian vision of society, it is once more doubtful whether the idea of a contract is doing the work. It sounds rather as if he is describing the kind of society that certain kinds of person would prefer. These are persons who are not attached to a particular view about the good life, except that they are jealous about their liberties, and who are highly 'risk averse'. This means that they fear coming at the bottom of an unequal economic order more than they prize the rewards of an economy that allows the rich to get richer, but treats the poorest rather worse. Perhaps many of us are like that, although there are plenty of people prepared to gamble freedoms for economic advantage, or to gamble security against opportunity. Again, the apparatus of a contract seems to be short-circuited, and we are left only with the preferences and values with which we entered. They are civilized, attractive, cautious, and even quite widely shared preferences, but no more.

Yet there is something attractive as well about the image of ethics emerging from the procedures necessary to find a common point of view. The conversations we are imagining are cooperative attempts to find joint solutions to common problems. The ambition is that we can give a procedural foundation to ethics. Ethical principles are those that would be agreed upon in any reasonable cooperative procedure for coming to one mind about our conduct.

## 20. The common point of view

Usually when a great philosopher, such as Kant, overreaches himself, or seems to do so, we can suspect that there is something true in the offing. In fact, something true was already prominent among the philosophers in the generation preceding Kant.

Let us return to the business of giving and receiving reasons for action, or for attitudes in general. This is an activity that is necessary to us in society. But it is also an activity that seems to require a presupposition. The presupposition is that what I advance as a reason, a reason from my point of view, *can* be appreciated from *your* point of view. If this were not so, conversation about practical matters would seem to be reduced to one side saying 'Me, me, me', and the other side saying the same. There would then be no possibility of each side *sharing* an understanding of the situation, or coming to a *common point of view* on the factors in virtue of which something is to be done. To achieve cooperation, we need to pursue the issue jointly, to end up 'in one mind' about the solution. Hume put this by saying,

*When a man denominates another his enemy, his rival, his antagonist, his adversary, he is understood to speak the language of self-love, and to express sentiments peculiar to himself, and arising from his particular circumstances and situation. But when he bestows on any man the epithets of vicious or odious or depraved, he then speaks another language, and expresses sentiments in which, he expects, all his audience are to concur with him. He must here therefore depart from his private and particular situation, and must choose a point of view common to him with others.*

Our practices of reasoning, then, require us to speak this 'other language'. If I expect the world to join with me in condemning someone, I cannot just say that he is my enemy. I have to engage the passions of others by painting him as vicious or odious or depraved: hateful in general.