

## On the Morality of Contracts

It appears that contracts are to law what genes are to organic life. They are everywhere, and on face they are very simple, while in reality their complexity will keep you busy until they light that final match underneath you in the crematorium. Via a contract, two parties make an agreement of some sort. Practically speaking, almost every human contact every single day is subject to some sort of agreement, and therefore some sort of contract, either real or implied. That is, when I get on the bus in the morning, I don't have a signed piece of paper from the driver representing the bus company promising that I will be taken to the posted destination, but that agreement is clearly implied by the bus pulling up at my stop with the name of my destination on its window. On the other hand, when I hire someone to do repairs on my house, I almost always have a signed agreement clearly enumerating what they're going to do and how much I am going to pay for it. There are times when I hire someone to do a repair, however, and there is no signed contract in advance. But the same rules apply. Joe Fixit shows up and fixes it, and I pay him for the repairs; inherent in this arrangement is a trust that he is doing the fixing, charging me fairly for it, and that I will pay those charges.

All of this seems fairly straightforward, but it isn't. The thing is, as you imagine a paradigm of what a contract is, that agreement between two parties, you can go batty dreaming up examples that twist and turn the concept all over the place. If it is true that practically every single human contact every single day is subject to some sort of construable contractual agreement, then theoretically one could attempt to define almost all of life as a series of contracts, subject to contract law. And since the paradigm is simple but the practicalities are endlessly infinite, contract law—the analysis and practice and enforcement of contracts—must inevitably be some sort of seriously complex puppy. And it is.

Because the paradigm of a contract is simple to understand, and because we engage in contractual activities on a regular and constant basis, we don't need to be lawyers to have a basic understanding of what contracts are all about. Obviously, if we are participants in so many of them, we must at least be able to intuitively master their complexities, since we are doing so regularly, in all their different guises. Similarly, we may not know exactly how lungs work, but since we breathe on a regular basis, we can at least intuit the concept. The human brain is very good at figuring things out even when it doesn't literally understand them. We all navigate through life more or less successfully without having to be fully versed in psychology or physiology or sociology. Our instincts get us where we're going pretty well, for the most part. Our failures often tend not to be from lack of understanding of the mechanisms, but from a failure of the mechanisms. In other words, people are pretty good at living their lives: most of them do it almost every day.

So, contracts are, in a way, the DNA of all of our arrangements with one another, and we all tend to negotiate this arena successfully enough without giving it much thought. In political philosophy, we use the concept of a contract to understand our relationship with the State or Society or Government through which we conduct many of our affairs. We say that, as individuals, we have a tacit contract with our society. We agree to do certain

things, and our society (usually meaning our active body of government) agrees to do certain things, which is, needless to say, the basic definition of what a contract is. This concept, and the material explaining this concept, is an appropriate starting point for philosophy in Lincoln-Douglas because it is often germane to our resolutions which regularly compare and contrast the roles of the individual and society, especially when they are in conflict. That the material is easy to understand because it to some degree explains and expounds on what we know already, is an extra bonus when it comes to introducing such material to newcomers to the field.

So the concept of social contract as a starting point for political philosophy is both useful in LD and accessible by its very nature, because we already intuit much about contracts before we, literally, study contracts. Which makes this material at once accessible but at the same time dangerous. The problem is that, as we can intuit the basic paradigm of contract, we can also intuit flaws in various practical applications of the paradigm, or just as easily get lost in all the thorns of that particular legal briar patch. It is easy to base an analysis of justice on the social contract, and then make various claims about the nature of contracts that are either totally absurd on face, and easily intuited as such, or totally false in practice, and much harder to determine as such, to the same degree that if the claim is not false, it is hard to prove. That is, either we know in our guts that someone is making a true or false claim, or we have no idea and no way of knowing truth or falsity because we don't have the legal experience and training to figure it out. These are the two dangers of "running" contract arguments. You can trap yourself into a corner that no one will accept intuitively no matter what you say, or you can trap yourself into a corner of no one knowing in any way, shape or form *whether* to accept what you are saying. The result of the latter is, at least, a chance that an adjudicator will accept your position, but I have always maintained that the more complex an argument becomes, the less convincing it becomes, at least in oral presentation. So, running contract arguments may lead you into more trouble than you are willing to accept. Therefore, you need to be careful about what claims you make, and how you make them.

I would suggest, obviously, a simplicity of claim that would stand the test of intuition. The closer one stays to the basic paradigm of agreement between two parties, with little or no icing on the metaphorical cake, the better one is. One path that seems to me extremely dangerous is the path that claims that, inherently, all contracts are moral and proper. This is, at the very least, not intuitive. I would add that it is also not true, but I'm not willing at the moment to make the argument to support that claim. But intuitively? Yeah, because I just don't need to make that much of an argument. You might say that intuitive responses are somehow flawed, but much about philosophy and ethics is based on intuition (and rightly so if the literature on the intuitive moral sense holds up in the coming years). One thing that is inarguably based often on intuition is the granting of a win or loss in an LD round, and the assignment of points. So if you make an argument that is counterintuitive, and do nothing to clear up the counterintuitiveness, you could be in trouble. And, as I say, the claim that contracts are inherently moral or just is that kind of counterintuitive claim. As I said at the top, practically speaking, almost every human contact every single day is subject to some sort of agreement, and therefore some sort of contract, either real or implied. We are, as a result, all experts on the subject. And we

know, intuitively at the very least, that a contract to do something that is by some certifiable measure wrong, is not a moral contract. A contract to sell child pornography, for instance, is not inherently moral. A contract to kill someone for money is not inherently moral. A contract agreement to commit terrorist acts against civilians in order to extort money from a government is not inherently moral. The simple agreement of two parties on a contractual basis does not impart morality to the agreement. A promise is not a moral trump card, prioritized over all other moral concerns. Whether any claim of morality at any level can be made for a contract is open to discussion, but that claim that the nature of the contract is invisible in the weighing of its rightness or wrongness is not. And the point is, anyone before whom you try to make such an argument has a lifetime of intuitive disbelief working against you.

Of course, this doesn't stop people from making the argument. They will make it on the present topic, claiming that the bond between the US and its citizens is a moral connection trumping all other moral concerns. I'm not saying that bond is not important, and I'm not saying it's not meaningful. But if your definition of morality begins and ends with a promise to do something, I don't think your definition of morality is sufficient to the subject. And, perhaps more importantly in a round, I doubt if your judge will think so either.