

# *The Negotiator's Ethic: Fair Minded Self Interest*

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*In this paper the writer seeks to establish a basis for moral conduct in negotiations. By an examination of the process of negotiation the writer seeks to identify necessary elements and important aspects of a negotiation with which any proposed moral theory must deal. These aspects of the negotiation are analysed in terms of traditional moral approaches, and those theories are critically appraised as a basis for ethical decision making in negotiations. The conclusion reached is that traditional approaches are inadequate as such a basis.*

*The writer proceeds to attempt to identify a process which reconciles the subjective, egoistical basis of the negotiation with the more objective aspects of equality between negotiators. This is effected by the advocating of a process by which the validity of moral belief can be scrutinised. That process demands that the negotiator must view his/her conduct from an objective standpoint.*

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## **I INTRODUCTION**

Negotiation is an important aspect of our social structure and performs the important function of resolving conflicts and/or dividing resources amongst social members, be they individuals or groups. As with any important social institution, it is vital that negotiation operate in a fair and just manner, and that it efficiently fulfils its functions. In the case of negotiation the process can only be effective if the parties perceive the process as just. A belief in one of the negotiators that the process was unfair, in conduct or outcome, will undermine the negotiation and jeopardise agreement. Accordingly, mutually acceptable moral conduct is necessary in a negotiation to ensure that the negotiation is effective and the solution sustainable.

The negotiation is characterised by a number of moral paradoxes. On the one hand is the rational observation that each person is an autonomous individual, whereas on the other hand it is subjectively recognised that one's interests are legitimately paramount to oneself. Similarly the right to pursue one's self interest appears at odds with the expectation that one respects other persons. The reconciliation of the tensions between self and group, and subjective experience and objective judgement, are at the centre of determining a proper basis for moral conduct in negotiations.

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### A *Meta-ethics; Beyond Questions of Moral Conduct*

This paper stands apart from much of the current work on ethics in negotiations in that it poses the question, not of what acts are or are not acceptable, but rather on what basis can such a judgement be made. This paper seeks to answer a question more fundamental than whether it is right to lie or cheat. It asks what are the rules governing the process by which we answer such a question? Many studies have centred on aspects of lies and deception, outcome fairness, or descriptive studies of the ethical elements of negotiations. Such studies often make certain assumptions which, although apparently reasonable and sustainable, are put forward as ethical maxims without justification. Peters takes the view that lies and deception are *prima facie* immoral, apparently on the utilitarian ground that lies usually lead to an other than pareto-optimal outcome.<sup>1</sup> That view is taken without answering whether or not such an outcome is appropriately pursued. Thus the thesis of this paper centres around the rule setting process which negotiators are involved in rather than the traditional rule following which has concerned many commentators.

Other studies have comprehensively examined the types of conduct which will amount to a lie and proceeded on the basis that lies are wrong by their very nature in that they undermine the basis of human relations.<sup>2</sup> Those studies rely heavily on the thought of moral philosophers such as Kant and St Augustine without engaging in any critical appraisal of the substance of those views. This paper seeks to identify and examine some of the more common bases for moral belief, and subject them to scrutiny from a meta-ethical perspective. Similar studies on fairness in negotiations have examined the process in terms of procedural, substantive and distributive fairness. The common thread through much of that work is the advocating of a procedure which achieves a pareto-optimal outcome. That view accords closely with that of the highly questionable utilitarian approach propounded by philosophers of the nineteenth century.

Lax and Sebenius identify features which they maintain must be present in a negotiation for it to be fair<sup>3</sup> such as equality, voluntariness and reciprocity. However important questions go unasked and unanswered. Why should a negotiation be fair? And what exactly does fairness mean? Although it is widely maintained that fairness ought always to be pursued, this paper suggests that instances will arise where it is justifiable to engage in conduct which does not accord with such widely accepted ideas of fairness. The position that a fair outcome is one where interests are satisfied, or pareto-optimality is achieved, is often maintained on the basis of pragmatism, or intuitive response. This paper questions when a negotiator may actively pursue an end which is at odds with one's perception of fairness, or clearly leads to an inefficient division of resources.

Norton exhaustively examined the negotiation process and, by that examination, identified the existence of a bare minimum code of ethics that was adhered to by

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- 1 G M Peters, "The Use Of Lies In Negotiations" (1987)48 Ohio State LJ 1.
  - 2 S Bok, *Lying; Moral Choice in Private and Public Life*,(1978).
  - 3 D A Lax and J K Sebenius, "Three Ethical Issues in Negotiation" (1986) 39 Vanderbilt LR, 1387.

negotiators.<sup>4</sup> She maintained that such a code was necessary to the maintenance of the process of negotiation itself. The present paper is not concerned with such a descriptive approach. Rather it seeks to identify a prescriptive method of analysis by which a negotiator can conclude whether or not a proposed basis of action is ethically justifiable.

Unlike much of the current work on ethical dilemmas in negotiations, the instant work concentrates not so much on moral precepts and rules of conduct, but rather on the principles of meta-ethics which dictate the manner in which such precepts can be legitimately arrived at, held and followed. This is a shift in focus from the substantive rules of moral conduct to the imperatives of the process by which such rules are reached.

## II THE NEGOTIATION AND THE NEGOTIATOR

### A *The Problem with Negotiations*

Clearly negotiations do not have a monopoly on ethical dilemmas and opportunities for morally questionable conduct. However because of the structure and purpose of a negotiation such problems are more apparent than in everyday life. Ethical problems in the negotiation will relate to either the process itself (conduct) or the outcome.<sup>5</sup> Such problems will be questions regarding either the conduct or the outcome of the negotiation, i.e. what interests may be legitimately pursued and what conduct is acceptable in pursuing those interests. Unethical conduct in negotiation also falls into a number of identifiable classes: Lies, as the wilful saying of untrue things, are the most obvious type of misrepresentation. Because information is central to the resolution of disputes by agreement, actions manipulating information are most often brought under scrutiny. Other forms of deception such as bluffing, avoidance, half truth and hyperbole are, however, probably more frequent.<sup>6</sup> Such actions are primarily intended to disable one's counterpart by tailoring their comprehension of the facts to favour one's own purpose. Thus the deceiver thwarts accurate communication to misrepresent the factual situation to his/her own advantage. Abuses of power such as hard bargaining, threats and extortion are equally important areas of concern although less often identified as such. Betrayal of confidences or introducing irrelevancies are similarly areas of (un)ethical behaviour which often go unnoticed.

### B *The Negotiator as a Moral Agent*

In a negotiation the negotiator is actively involved in the ethical process. This occurs on two levels. Firstly and most obviously the negotiator recognises and uses ethical standards when deciding to act in the manner in which s/he does. As such the

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4 E H Norton, "Bargaining and the Ethic of Process", (1989) 64 NYULR, 493.

5 Dworkin and London "What is a Fair Agreement", (1989) 7 Mediation Quarterly, 3. The writers here identify these types of fairness as procedural or substantive respectively.

6 Peters, "The Use of Lies in Negotiation" (1987) 48 Ohio State LJ 1. Peters here examines closely the distinction between lies and other deception and concludes that the distinction is largely semantic.

negotiator is a standard user. Kohlberg (1981) identifies this sort of conduct as the second of three stages in moral development being the recognition of rules of acceptable conduct rather than obeying mandates out of pure prudence.<sup>7</sup> The negotiator, however, goes further and actively engages in determining and critically examining the basis for his/her own conduct. This equates to Kohlberg's third stage of moral development in that the negotiator is an active participant in the process of standard setting. Because, moral rules are constantly "under negotiation" themselves, the participation of the negotiator in the process of standard setting is a dynamic and ongoing one. A negotiator is a moral agent who has a voice which is rightly heard in the determination of what the rules governing that negotiator's mode of conduct ought to be.<sup>8</sup>

It is because a negotiator is a self aware individual who perceives it as his/her right to pursue his/her own ends that the negotiator is a player rather than a pawn in the moral game. A negotiator is (at least apparently) autonomous and self determinative. The negotiator holds his/herself responsible in both a moral and causative sense for the results of his/her actions. Due to this conception of moral responsibility, there falls on the negotiator not just a duty to follow rules, but also a duty to critically appraise the rules adopted.

The natural corollary to the negotiator's recognition of oneself as a moral agent is the recognition of one's counterpart. In a negotiation it is assumed by the parties that formal procedural equality will exist (even though substantive inequality may also exist). Accordingly the negotiator must recognise that his/her counterpart is, like his/herself a moral agent. This entails the recognition that the other negotiator will have his/her own interests, and that one's counterpart has a right to pursue those interests. The other negotiator will perceive his/herself as having a right to autonomy and self determination. The moral agency of a negotiator has a twofold effect. Firstly, the negotiator him/herself, is a rule setter, determining the basis for his/her own conduct. Secondly, the negotiator must recognise their counterpart as an autonomous person, who ought to be recognised as formally equal with his/herself, and therefore equally worthy of consideration when determining the course of moral actions.

### III THE ELEMENTS OF A NEGOTIATION

#### A *The Pursuit of Ones' Self Interest: Moral Egoism*

The purpose of a negotiation is to resolve a conflict of interest between the parties. Central to the agreement to negotiate is the understanding that both parties are free to attempt to satisfy their own interests. If such a stance is unmitigated by any other considerations the negotiation would become a moral free for all constrained only by the fact that a negotiator's acts must be calculated to serve his/her interests.

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7 Kohlberg, *The Philosophy of Moral Development*, (San Francisco, Harper and Roe, 1981).

8 Gibson "The Ethical Basis of Mediation: Why Mediators need Philosophers", (1989) 7 *Mediation Quarterly* 41. Gibson argues for the need of mediators etc to ensure that the foundation of their moral belief is sound by actively scrutinising the same.

Such an approach equates closely to that of the moral egoist and need not be as unsophisticated as it may appear. Such a stance need not advocate ill considered actions aimed at immediate or purely hedonistic results. Actions based on rational self interest will often result in a short term loss in order to achieve some gain in the long term. Similarly the negotiator recognises that if everyone indulged in lying, bluffing, threatening etc then negotiation itself would be meaningless. Accordingly moral rules may be adopted to avoid a state of nature where no social ordering exists. Such an approach is paradoxical in so far as it will be in the egoists self interest to depart from the norm of obeying that authority, provided that everyone else adheres to the norm. Adam Smith, in his work, took the opposite approach and claimed that largely unregulated human conduct founded in egoism would in fact lead to the greatest good for the greatest number.<sup>9</sup> Such an approach is clearly questionable on empirical grounds particularly in the economic sphere. Within the negotiation conduct wholly unregulated except for the principle of egoism would almost certainly lead to highly disadvantageous results for weaker parties in many cases and a consequential inefficient distribution of resources.

If one does accept egoism as a sole basis for moral action one has the luxury of being able to act without regard to the interests of others or any other purported rights and duties. However, one must also recognise that everyone else ought to, and will, act in a similar manner. A further difficulty with ethical egoism is the inability to objectively assess actions. Consider an example where Frank and Julia are negotiating over the sale of Julia's car to Frank. Julia asks you whether she ought to lie about the mileage. Providing it is in Julia's self interest the answer must be yes. Frank then approaches you and asks whether it was right that Julia lied to him. Clearly it was not in his self interest so from his perspective Julia's action was wrong and your answer must be yes. Moral judgement under an egoistical analysis must be subjective and will therefore vary according to the subject.

Both in practice and in theory it can be seen that the unmitigated pursuit of ones self interest as a basis for proper moral conduct within a negotiation leaves much to be desired. Self interest however remains central to the process of negotiation and clearly there is an expectation that negotiators will pursue their own self interest. Such self interest need not be in the form of pure egoism. Rather, when considered along with the other elements of negotiation, such as personal autonomy and the right to self determination, self interest can be understood as an important motivating and determinative factor in moral thinking.

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9 Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776 (6th edition, London, Methuen, 1950).

*B Personal Preferences and Beliefs: Ethical Subjectivism*

Closely related to the idea that the negotiator is entitled and expected to pursue his/her self interest is the idea that the negotiator can have interests, beliefs and preferences; consider two people negotiating what flavour ice cream to buy at the supermarket, each recognises the others right to prefer chocolate to strawberry or vice versa. It is important to recognise that the existence of the preference does not depend on any factual or logical basis.

Thus it is legitimate for a negotiator to hold a preference which is at odds with that of his/her counterpart and indeed such is often the case in negotiations. The fact that one party places a greater value on a given resource than the other is expected and accepted in a negotiation. The identification of such differing preferences or interest can often lead to the satisfaction of both parties' preferences from a limited resource.

The holding of individual beliefs is equally apparent in a negotiation. The negotiator, as a moral agent, arrives at personal moral judgements. The factual and experiential basis of any moral conclusion reached will in every instance be unique to that actor. In a way similar to that in which only the eater knows how chocolate ice cream tastes to them, so also the negotiator faced with a moral question is the only one who perceives the moral environment from the standpoint of that moral agent. Although, unlike matters of taste, logic and reason can be applied to moral judgements to test for such things as consistency and accurate empirical foundation, such formal processes are empty in themselves. Thus one can object to a moral view that was based on incorrect factual assumptions (such as that human sacrifice will increase fertility) or on the basis of inconsistency (for example were the positions reversed a different view would be taken).

If moral rules are wholly subjective in foundation then even though objections on logical or factual grounds can be overcome it is still highly possible that disagreement on such moral questions will still exist between individuals. This is in contrast to the approach that moral rules are discernable precepts applying logical processes to known facts of the natural world. Subjectivism on the other hand rejects the idea that moral principles are qualities of the natural world (ie discernable empirical fact). Rather they are products of human experience, are dynamic and continually being negotiated.

To the negotiator a subjectivist stance certainly has its attractions. We obviously believe that our own moral rules are the correct ones. Subjectivism verifies this by saying that the mere holding of such a belief means that those rules are correct. Pure subjectivism, however, unchecked by logical moral discourse enables a moral pluralism that is unworkable. This arises from the fact that no action can be questioned except on the ground that it contravened the actor's personal moral beliefs. Thus if a conflict of values arises the only real discussion that the negotiators may engage in is an exchange of feeling or belief in respect of the act in question. Subjectivism rejects any outside criteria as a basis for the establishment of moral belief. Thus one may object to continual deceit by a negotiating counterpart on apparently strong logical grounds; it undermines the whole process, it may reduce the availability of beneficial outcomes and it impedes efficient communication. If however the other party still maintains his/her

belief, logical objections are no compelling basis to show such a belief to be ill founded. The mere holding of the belief is foundation enough.

On the subjectivist analysis, ridiculous or atrocious beliefs are unquestionable. Even if valid logical criticisms of such belief are made, the holder of the viewpoint may conceivably maintain the belief without foundation. Whilst criticism may be made on logical grounds, pure subjectivism advocates that moral judgement is wholly independent of logic. The problem of incoherence in subjectivism (where different individuals may hold inconsistent but apparently mutually true beliefs about a single act) is problematic.<sup>10</sup> This is compounded by the fact that inconsistent moral beliefs may be held by a single moral actor. This problem is compounded in the situation where negotiator lies and cheats in a negotiation believing it justified (and therefore making it justified) whose beliefs are then changed. The result is the acts which were right become wrong. Not only is there inconsistency between individuals but also there can be inconsistency within one person in respect of a particular act. Subjectivism alone is clearly an inadequate basis for moral conduct. However the recognition that the raw material of moral rules is human experience and belief, is invaluable.

In a negotiation the negotiators are faced with moral dilemmas and the resources upon which they must draw to resolve those dilemmas are fundamentally personal experience, belief and feeling. When such matters are considered within the constraints imposed by reason, and the needs of the negotiating process itself, the result is a justifiable and legitimate moral position. Such a stance will inevitably lead to some pluralism between individuals as the subjective preferences and beliefs of the moral agents will differ. This problem is however minimised by the procedural/logical constraints which will almost invariably mean that the decision reached will be acceptable to other parties.

### C *The Negotiator as Self Determining: Autonomy*

Any person entering into a negotiation does so on the understanding that s/he will be able to freely decide whether to reach an agreement without impediment. Such a view is similarly central to much liberal thinking. That is to say that it is a widely held belief that individuals ought to be free to determine the course of their lives as autonomous actors not effected or constrained unjustly. In the negotiation such autonomy is vital. Without it the core feature of voluntary agreement upon which the negotiation depends is removed and the process becomes meaningless. People enter into negotiations to retain autonomy rather than submit to the decision making power of some other authority.

If a negotiator recognises his/her right to autonomy then clearly to be consistent s/he must recognise an identical right in his/her counterpart. Such a view leads to the conclusion that one's actions ought not encroach on another's ability to be self

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10 Moore, *Ethics*, (London, 1912). Moore, in this work first forwarded the criticism of incoherence against subjectivism.

determinative. This view comes very close to the Rawlsian<sup>11</sup> maxim of individuals being accorded the maximum liberty compatible with an equal amount of liberty for others. Under such an approach the determination of actions and beliefs by factors outside of the actors control (heteronomy) would be avoided.<sup>12</sup>

The concept of autonomy can be seen as founded in the work of Immanuel Kant who developed a theory of rule based ethics around principles of autonomy and respect for persons. Although respect for persons is closely related to that of autonomy it is not identical. It demands recognition of the fact that each person is a conscious, self interested agent. Kant's ideas are useful in considering negotiations because both autonomy and the recognition of ones counterpart as a self interested agent are foundation stones of our conception of the negotiation process. This conclusion is arrived at due to the fact that every one is indeed self aware and has his/her own wants and desires therefore no basis exists for the elevation of one person (be it oneself or not) above any other.

This theory of ethics is not naive and it does not demand that one act altruistically or promote the interests of others above one's own. Thus in the negotiation process competitive negotiation is not necessarily wrong as it is likely that the competitive negotiator is acting in a manner in which he/she would be happy to be treated were the roles reversed. However the situation may be different where the negotiator bullies the counterpart into agreement, as clearly the negotiator would not wish to be treated in such a manner. The idea that one ought to recognise that other parties have preferences accords with the useful negotiation technique of identifying the interests of the other party.<sup>13</sup> The mere recognition of those interests or preferences however will not give them any legitimacy or place any burden on the negotiator to necessarily fulfil those interests. The only duty placed on the negotiator is the recognition that the counterpart does have certain interests and the duty to act only in a manner which s/he would similarly consider appropriate were the positions reversed.

By considering the results were the moral basis of a proposed course of action universally adopted, the maintenance of morals necessary to society is ensured. The negotiator who is considering whether to lie in a given circumstance must in doing so accept that if it is right for him/her it must be right for everyone else in similar circumstances. This does not however mean that the individual circumstances of a negotiator cannot give rise to considerations sufficient to alter a moral conclusion. Thus when a negotiator considers whether it is proper to lie the question is not are lies

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11 Rawls, *A Theory of Justice*, Belnap Press, Harvard, 1971.

12 The importance of autonomy was particularly stressed by Kant in *Groundwork for the Metaphysic of Morals*, (London Hutchinson, 1953). Also central to Kant were the concepts of respect for persons and the categorical imperative. These are dealt with in part III C and D herein.

13 This is the course advocated by Fisher and Ury, *Getting to Yes*, (Hutchinson, Auckland, 1981) and other writers of the principle based school. No hint is given by those writers as to the basis on which they support such an approach.



universally acceptable but rather is it universally acceptable for everyone to lie in a situation materially identical to this one.

The maintenance of principles of respect for persons and autonomy as sacrosanct and standing on their own will lead to certain problems. Kant, in his theory, maintains such principles to be moral rules. In fact they are no more than observations of logic and fact within which moral judgements are made. Similarly, maintaining, as Kant did, that persons cannot be used as mere means to an end can cause difficulties. Thus a human life cannot be sacrificed in any circumstance (even where the loss of one life would save many). It is problematic that such an approach, whilst attempting to preserve a principle (eg the sanctity of human life) end up derogating from it.<sup>14</sup>

This approach assumes that although environmental factors may differ and be taken into account all people are equal and ought to be treated the same. Such a viewpoint may be criticised. People are not necessarily all equal. People's perceptions of the world differ greatly. In a sense it may be said that each individual occupies his/her own self contained moral universe to which no one else can have access. If one does recognise the inherent subjective nature of an individual's perception of the world then it appears impossible to expect others to respect the personhood of others or autonomy as they are unable to truly consider these matters in an objective manner. Consider the situation where a person is negotiating for the purchase of a car. This particular person desires this car above all things. In considering whether s/he ought to engage in dishonest conduct s/he may come to the conclusion that it is right that anyone who desires a thing as much as they desire this car is justified in lying. S/he may conclude that the maxim in respect of respect for persons is maintained because were the positions reversed they would accept the appropriateness of being lied to in such circumstances. Of course a different person in the same situation may arrive at entirely different conclusions. Such an analysis seems to dismiss any suggestion that universal rules can be deduced in any situation and the results will be the same regardless of the identity of the actors. This does not however mean that Kant's ideas are not useful in moral analysis. It simply means that appropriate moral conduct may differ between persons notwithstanding that the same system of moral reasoning has been applied.

A system of moral reasoning based on the precepts advocated by Kant is useful for the negotiator even with its apparent shortcomings. The concept of respect for persons if adhered to will ensure that the golden rule of, "do unto others only that which you would have done to yourself", is adhered to. The recognition in an empathetic sense that one's counterpart has interests and desires that s/he wishes to fulfil will ensure that acts in a negotiation are acceptable at least to the actor. The maxim of autonomy is at the core of the negotiation process and respect for it will ensure that the parties to a negotiation do in fact resolve the issues between them according to their own free will

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14 Luban in his article "Bargaining and Compromise: Recent work on Negotiation and Informal Justice" (1985) 14 *Philosophy and Public Affairs* 397, identifies the conflict between honouring and promoting a principle and labels it 'the paradox of compromise'.

and not in accordance with some supervening factor brought into play by one or other of the negotiators.

An approach based wholly on the principles of autonomy and respect for persons is inadequate on two related grounds. Firstly the principles themselves are contentless being no more than statements of logically deduced fact. Therefore in isolation the approach is useless in that it has no human component. The second criticism is that it fails to recognise the subjective non rational content in moral judgements. At best the Kantian approach can test a moral stance but cannot supply the moral judgement to be tested.

#### *D Formal Equality: Universalism*

Pervading the discussion so far has been the assumption of equality between the parties. In negotiation practice it is clear that a kind of equality is presumed by the negotiators. The equality presumed is one of a formal or structural kind rather than a substantive kind. That is to say a negotiator recognises that there may exist a power, information or wealth imbalance however that imbalance exists within a framework of equal rights. The most important right for a negotiator is probably the right to agree or not to agree. Along with that right exist rights to represent ones case, ask for concessions and to participate in the negotiation generally. It is in this sense that a party to a negotiation expects to be treated as an equal.

Such formal equality is useless in isolation. We all know that an illiterate pauper has as much right to sue a tortfeasor as an affluent company and as such is equal within the framework of the justice system in this regard. This again leads one to the conclusion that a system or process alone is an inadequate basis for an ethical system. Rather the content needs to be supplied by the moral actors themselves. The concept of equality is important if subjective moral judgements are to be utilised in moral thinking in order to ensure consistency of moral actors. At its bare minimum, universalism dictates that a moral actor in propounding a moral belief cannot do so only for him/herself, but must also maintain that such an action would be justified for any other person in a materially identical situation. That is to say that a moral actor must maintain that a moral principle upon which action is based is universally applicable. Universalism may however be reconciled with the practical subjectivism of moral belief. In subjectivist thinking it has been suggested that moral judgements are in fact no more than a statement of belief or feeling. The emotive/subjective argument is that morals do not form part of our natural world and cannot be tested, verified or subjected to logical criticism.

The dilemma is, although we recognise that logic and rationality do play an important part in moral discourse people hold conflicting moral beliefs notwithstanding that they are in agreement on the facts of the matter. People must, in their moral beliefs at least, be internally consistent even if not in agreement with others. It is important to recognise that people do hold diverse moral beliefs on non rational grounds; however, this does not mean that such beliefs are exempt from rational scrutiny and cannot be criticised on a logical basis. Introducing the concept of universalism means that whenever an individual advocates a moral rule s/he may only do so if he/she accepts that

the universal adoption of such a rule would be acceptable. Thus although the negotiator may maintain that it is morally acceptable to bully. Such a belief is only legitimately maintainable so long as the individual is consistent, ie were s/he in the position of the bullied then the belief would still be maintained.

This stance recognises that the beliefs themselves may be irreducible in so far as when one says cheating is wrong it may not be possible to further reduce or define what it is for something to be wrong. This also accepts that there are elements of a moral judgement that are emotive or subjective expressions. The central concept by which such beliefs are legitimised is universalism. The idea that whatever moral rule is advocated one must accept oneself and all others to be subject to it. Such a position is no more than a prohibition on logical inconsistency. As such one is prohibited from saying "you ought not lie but I may" or "I may bully to get what I want but you may not bully me on the same grounds".

This aspect of universalism in a moral theory ensures that an actor places as much value on the rights of others as his/her own. The recognition that moral rules must be treated as universally applicable even if singly held means that a person may never judge others except on the basis s/he judges his/herself. Implicit in the concept of universalism is the idea of the equality of people in so far as it recognises that modes of conduct are decided, not with reference to egoistical or entirely subjective factors, but rather on the presumption that the basis for such conduct is reached regardless of the identity of the actors.

In the negotiation if such a philosophy is adopted it does not guarantee that the participants will act in a manner which is morally consistent with each other, although each must recognise that it would be appropriate for the other to adopt their mode of conduct. Whilst actors could conceivably hold inconsistent moral beliefs, each must, to be consistent, believe that it would be permissible for the other negotiator to act on similar moral grounds as s/he act. In actual fact the incidence of such inconsistencies is likely to be minimal because of the fact that human belief in such situations will differ relatively little. The imposition of a logical process, founded in universalism and recognising autonomy and respect for persons, over the fundamentally subjective foundations of moral discourse ensures that not only will people act in an ethically acceptable manner but also that social institutions like negotiations will be preserved.

#### **IV THE NEGOTIATORS ETHICS: FAIR MINDED SELF INTEREST**

In part III of this paper various aspects of the negotiation process and human nature were examined in terms of certain ethical theories. What is apparent from that examination is that one cannot view any aspect of a negotiation as the sole determining factor in deciding by what moral rules such a process ought to be governed. Like human nature, the negotiation has many facets, each of which are interdependent on the other.

Thus, although there is a tension between the negotiators right to act in his/her self interest and the expectation that the counterpart will be treated as equal, such tensions

are not irreconcilable. It is the thesis of this paper that when taken together the social facts and logical constraints of the negotiation process give rise to a particular acceptable mode of moral conduct. This is not to say that there exists a discernible set of moral dictates by which a negotiator can guide his/her conduct. Rather it can be seen that an acceptable process exists by which the negotiator can consider and examine the proposed actions, beliefs and preferences and conclude whether or not they are legitimately held or can be legitimately pursued. This analysis of moral discourse in negotiations as containing two distinct elements rests in the understanding and reconciliation of those two elements which are fundamentally subjectivism and universalism. This paper proposes that reconciliation is achieved by the identification of those concepts with the substance and process of a negotiation respectively.

#### A *Subjectivism: The Substance of Moral Belief*

This paper has examined some of the traditional approaches of moral theory. Amongst those egoism, and subjectivism have in common a recognition of and emphasis on the irreducible beliefs and desires of the individual, either as a legitimate sole ground for moral action or as a relevant factor. The holding of moral beliefs and preferences is a fact with which any moral theory must deal. Moral life is by nature a subjective experience and the desires of an individual cannot necessarily be rationalised as right or wrong in his/herself. The egoistic impulse to seek to satisfy one's desires is similarly an aspect of our subjective experience. A moral belief arises when an individual decides whether or not an interest ought to be satisfied by the adoption of a certain action, or at all. Whether the preference of the moral actor is legitimate, or the proposed action can legitimately be taken is a question of logic.

#### B *Universalism: Ensuring Consistency in Subjective Belief*

Whilst the holding of subjective interests, beliefs and preferences are beyond the scope of objective criticism, whether those interests can be legitimately pursued, beliefs legitimately acted upon, and preferences legitimately satisfied, can be examined. The reason being that, whilst the holding of those viewpoints is a subjective matter, the realisation of those viewpoints into the world has an objective result and can justifiably be subject to objective scrutiny. Once the matter is recognised as one affecting others, certain observations can be made. Firstly, every individual is clearly in the same position. Each can be said to hold interests, preferences, beliefs, etc. It is therefore fair to say that there exists no logical grounds for placing one individual before another in the satisfaction of those preferences and interests. When married with the subjective facts examined above the conclusion one arrives at is that there exists no logical grounds for an individual to act in a manner that s/he would not find acceptable were another individual to act that manner towards him/her.<sup>15</sup>

The concept of universalism can be taken further by insisting that moral actors view their position, not only from their subjective viewpoint, but also must ask the question

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15 These conclusions are fundamentally an application of Hare's universal prescriptivism to the negotiation process.

whether they would concur with the action were the positions reversed. Thus one cannot maintain a moral position on the comfortable ground that it is to ones advantage to do so, but one must have regard for the viewpoint of others as they are logically equal to oneself.

It is by this process-oriented universalism that the moral actor can test whether s/he may legitimately pursue an interest or act on a moral belief. Whilst it is not accepted that one can deduce moral maxims by the adoption of logical rules (as Kant advocated), one can legitimately examine moral conduct and belief, and criticise it if it is inconsistent with the subjective beliefs of the actor. It is important to note that this approach remains, in essence subjective. This is because the judgment of the actor (on whether he/she would endorse the universal adoption of the basis of the action) is still subjective judgement of that actor, albeit subject to logical constraints. The result is that a negotiator may conceivably hold the legitimate belief that it is justifiable to use extortion in negotiations. This may be the case, provided that the individual would continue to hold that belief, were s/he the person subjected to extortion.

### C *The Problem of Pluralism*

Because the approach advocated recognises that moral beliefs are founded in subjectivism, and that those subjectively held beliefs can legitimately differ, it is conceivable that individuals could hold vastly disparate moral views which, under the proposed analysis, are both justified. This is a form of the criticism aimed at pure subjectivism, which alleges that because of this pluralism, moral discourse becomes meaningless.<sup>16</sup> Such a situation could conceivably result in a situation of total amoralism or moral nihilism. The objection is fundamentally that if morals are unique to individuals, and being subjective, cannot be objectively discussed, this must render any discourse on the matter as useless, therefore, no truly objective moral standards can exist. Such an objection may well be sustainable against pure subjectivism, where moral judgements are held to have no objective content. However, such an objection is not sustainable in respect of the moral theory here proposed. The criticism may be rejected on two grounds.

Firstly, the risk of great moral diversity is small. Whilst such a moral stance can permit fanatical beliefs (so long as they are consistently held) the actual occurrence of such beliefs will be rare. Thus, whilst it is correct that under this "universal subjectivism" it is valid for a negotiator to deceive his/her counterpart provided s/he would consider such conduct acceptable were the positions reversed, the actual incidence of such beliefs will be rare indeed. The fact that under this approach, it is not legitimate for an actor to claim some privilege over and above another individual, means that by and large moral beliefs will be similarly held.

The second ground upon which such a criticism might be rejected is based in the fact that this paper does not propose a wholly subjectively based system of moral belief.

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<sup>16</sup> These criticisms of subjectivism were first propounded by Moore in *Ethics*, (London, 1912).

Because the legitimacy of the pursuit of interests or acting on beliefs can be objectively scrutinised on the basis of the principles of equality and autonomy, moral discourse becomes a meaningful exchange. Whilst any discussion will of necessity refer only to the process by which the moral conclusion was reached, this does not detract from the fact that moral judgements can still be identified as wrongly or rightly founded.

Moral argument, then becomes an argument about the process or system of moral belief rather than about the beliefs themselves. However, simply because the objective aspect of a moral judgement concerns process rather than substance, does not mean that moral discourse is meaningless. The fact is that criticism of behaviour as right or wrong can still be made on the grounds of an illogically held belief. Thus whilst an element of pluralism may exist in the beliefs themselves this does not lead to moral nihilism because an objective standard against which such beliefs can be tested exists. That objective standard is the logical consistency, and therefore justifiable maintaining, of the moral beliefs.

#### *D The Criticism of Contentlessness*

One of the criticisms of any moral theory which has its base in a logical process is that, as merely a process, is that it can give no content to moral belief. Such a statement is true of the proposed system only in so far as it cannot give any objective, universal moral statements. This, it is argued, is not a criticism at all. The approach here proposed accepts that moral substance cannot be obtained from rational deduction, but is a product of subjective experience. Accordingly no universal rules can exist, other than mere structural or logical rules. However the absence of objective moral dictates does not mean that such dictates can not exist in an other than objective manner.

Moral discourse is rendered meaningful by the acknowledged subjective content of moral belief. Whilst it is fair to say that this means that moral judgement may differ between individuals, this does not detract from the fact that substantial moral beliefs, which can be seen as wrongly or rightly held, do exist. It is by this subjective content that this approach differs from that of thinkers, like Kant, who proposed a logical system or process alone as the basis for moral belief.

## V CONCLUSION

This paper commenced with an examination of the negotiation and its participants and identified the aspects of the process which gave rise to some of the problems examined. The negotiation was recognised as a process by which self interested parties attempted to satisfy their respective interests by agreement. Because the outcome of that process can be altered depending on how the parties act, the question of how parties ought to act becomes very important. Many of the moral approaches discussed in the paper are useful in emphasising important aspects of the negotiation process. However it is clear that an atomic approach which adopts a single ethical theory emphasising one aspect of the negotiation and does not deal with all aspects of the negotiation cannot provide an adequate basis for moral thought. The negotiator is a subjective, egoistical actor, having unique interests and seeking particular outcomes. It is because of this that

moral judgement and beliefs will differ between individuals. The element of subjectivism in moral belief means that it is not some eternal constant, but rather a product of environment and circumstance. Fundamentally, moral reality is a result of human interaction and is changeable within that context.

Moral belief can be seen as dynamic, and the results of a process which deals with the raw material of subjective belief and preference of individuals. The recognition of objective criteria within the negotiation process leads to the conclusion that there exist rules by which moral discourse is to be conducted. By the introduction of Universalism, as an objective constraint on the pure subjectivism of moral belief, rules of the process of moral thought are arrived at. Thus ethical imperatives are not the traditionally thought substantive rules of conduct, but rather imperatives about how those rules of conduct are arrived at.

Those imperatives of moral discourse dictate that one cannot legitimately adhere to a moral belief or act in a manner that one would consider inappropriate for another (eg ones counterpart), to adhere to or act. This relatively simple principle is based in the idea that each negotiator must be morally consistent and can have no logical ground for suggesting that special rules attach to them. Accordingly, each negotiator ought to be treated equally at least in a formal or procedural sense. Such a view may perhaps be traced back to the old adage of "do unto others as you would have them do unto you."

