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REPUDIATION OF AGREEMENTS

This is a paper about why some contracts ought, morally, to be repudiated. It is a sort of plea for repudiation -- a plea for using that topic as a way to address some persistent challenges to liberal political theory. Those challenges are to the moral effectiveness of consent and contract, and to the scope and variety of morally effective agreements. It may be worthwhile to say a few prefatory words about this general issue.

Liberals hold that people can create a wide range of moral and legal obligations for themselves merely by consenting to them, and that some fundamental rights and obligations arise only from the consent of the parties involved. Liberals differ among themselves, of course, about the scope of contractual obligations, the admissible varieties of them, and the connection between consent and political obligation. But one of our common central tenets is that people may justifiably choose dramatically different ways of life -- with dramatically different moral possibilities and requirements. The notions of choice, consent, promise and contract therefore have a central place in every liberal theory, whether it is a social contract theory or not.

Consent and contract have a prominent place in anti-liberal theories too, of course, in part because those theories argue for stringent limits on the scope of

contractual powers. Some reactionaries propose to move us away from contract back toward a social order based on status: child and parent; wife and husband; servant and master; creature and creator. Some conservatives propose to exclude important things permanently from contractual (re)negotiation: private property rights, for instance, or reproductive rights. And some theorists whose controlling concerns are with aggregate or communal values treat contracts as subject to perpetual reassessment in the light of public policy goals.

In short, arguments against the validity or bindingness of important sorts of agreements constitute the core of a compelling challenge to liberal theory. Mill notwithstanding, utilitarians subordinate all agreements to social welfare concerns; marxists argue that a wide range of ostensibly voluntary agreements are invalidated by oppressive or exploitative bargaining conditions; and there are piecemeal attempts (both from the left and the right) to increase the range of "blocked exchanges" -- that is, to add to the list of things one may not morally bind oneself or others to do, such as sell oneself into slavery. Liberals themselves sometimes join in this last endeavor; witness some of the arguments about the sale of human body parts, coercive offers, blackmail, product liability, consumer protection laws, socialized medicine, prostitution, and pornography.

All of those challenges are, it seems to me, tracable to the following line of thought. Complete freedom of contract is insupportable, for the obvious reason that (left to their own devices) some people will contract to violate the

rights of third parties (as in murder-for-hire contracts), or contract to do irreparable harm to the licit interests of third parties (as in some price-fixing agreements). Surely neither of those things is supportable, so we must either conclude that the offending contracts are illicit from the beginning, or that they are revocable. In either case, it is evident that the scope of contractual freedom is controlled by a superior principle -- an overriding concern for consequences, say, or a duty not to injure others. Further, even when there are no third-party interests to consider, the proper scope of contractual freedom is a deeply problematic issue. Force and fraud are typically barred; honest mistakes must be dealt with; unequal bargaining power raises an issue analogous to that of coercion; and unexpected events -- after the contract has been executed -- may make the contract impossible to perform, or unconscionably burdensome. Again we must decide whether to treat these contracts as void or revocable, and again it is plausible to think we will do so by appealing to a superior principle. All of this portrays agreements as subordinate to other deontological and telological concerns.

Now in one sense this line of thought is surely correct, and applicable, in turn, to every moral principle, virtue, goal, social arrangement or human act. In isolation, each may be seen as subject to constraints imposed by other considerations, and hence subordinate. (Even supreme moral principles operate only subject to limits imposed by time, place and human abilities.) It does no damage to agreements to see them as subordinate in that sense. But the line of thought just described, together with the cumulative effect of the

anti-liberal challenges to freedom of contract, suggests a very different sort of subordinate status for morally binding agreements. It suggests that agreements as such, and as opposed to other moral considerations, do not have a very large or fundamental role in moral, social or political theory; that however prominent they may be in practice, they are for the most part only mystifications of the factors which determine what ought, morally, to be done -- factors such as social welfare or natural rights. That suggestion, if true, would damage liberalism.

What I want to explore here are the conditions under which agreements may be justifiably repudiated -- on grounds which lie within the framework of what may loosely be called moral contract theory itself. (What I mean by 'moral contract theory' is the systematic and comprehensive account of morally effective or binding agreements, as defined below.) The motive of this essay is to see whether or not the notion of a morally effective or binding agreement, taken alone, is strong enough to meet most of the challenges I have described, and repudiation is presumably the toughest test case. In fact, as I shall define it, repudiation even appears to be conceptually inconsistent with the concept of a binding or "valid" agreement; the very paradigm of something which, if it is to be justified at all, must be justified by reference to principles superior to contractual ones. So if contract theory can itself give a coherent and convincing account of repudiation, we may plausibly suppose that it can eventually supply a similar account of many other problems raised by its critics. And liberalism may thus be defended against the charge that one of its

central tenets is in disarray.

I. Definition of the Problem

Since repudiation is a rather neglected topic, it will be worthwhile to define some terms which can then be used to give a reasonably precise meaning to what I will call the problem of repudiation. Where possible, I will follow settled legal usage, since that is the area in which some of the needed distinctions have been most carefully worked out. But at some points I will have to resort to convenient stipulations. Even contract lawyers have been rather reticent about repudiation, and of course my topic is not the law of contract but the moral theory that ought to lie behind it.

First, let us distinguish repudiation from other forms of revocation. Following legal usage, let us say that repudiation is a unilateral act which nullifies a previously valid, nonvoidable contract or promise. It is unilateral in the sense that it is done without securing the consent of all of the parties to the agreement, but is rather done by (or on behalf of) only some of the parties involved. And acts of repudiation are directed to previously valid, nonvoidable contracts or agreements, for obvious reasons: "Contracts" which are already void through some defect in their making, such as force or fraud, are not in need of revocation at all; and contracts which are from the beginning unilaterally voidable, such as marriages performed while the parties are drunk or under duress, are not in need of any further mechanism for revocation. So we shall speak of repudiating contracts or agreements only if they are valid

and nonvoidable, and the problem of repudiation, at this stage, may be defined as the problem of deciding when such contracts may be unilaterally revoked. Now we need some discussion of the concept of a valid contract or agreement.

Let us say that a contract or agreement is valid just in case the promises involved in it are licit, genuine, and voluntary. A licit promise is one in which a person offers to do or be something (morally or legally) permissible. A genuine promise is one which is meant as such by people acting voluntarily XXXXXXXXXXXXXXXXXXXX), and licit ones. This leaves open the possibility that we may wish to apply an "objective" standard to the interpretation of the promises -- and thus to the substance of the contract. And it leaves out altogether the notion of constructive or quasi-contracts. But it is broadly enough stated to capture both unilateral and bilateral contracts, enforceable and unenforceable ones.

Let us say that an agreement is legally effective if it creates a legally enforceable requirement on future conduct. Not all agreements are legally effective, of course. Some are too trivial to create an enforceable claim, others are illegal, and still others are superfluous. (My promise not to steal your wallet, for example, does nothing to change what is legally required of me. It is superfluous.)

The concept of a morally effective agreement may be defined in an analogous way: A agreement is morally effective if it creates a moral

requirement on future conduct -- where a moral requirement, unlike a value or an ideal, is something that one is blameworthy for not fulfilling. Again, not every agreement is morally effective. Some are frivolous, and we are not to be blamed for failing to carry them out. ("I'll never say never again." Agreed.) Others are immoral, and we would be blamed if we did carry them out. Still others are morally superfluous. (If I have a natural duty to care for my infant child, our agreement that I do so adds nothing to what is morally required of me.)

These notions of legal and moral effectiveness raise the possibility that there might be valid but ineffective agreements. And if validity here is defined defeasibly, as anything that is not invalid, then that is evidently correct. Frivolous agreements would be examples. Repudiation, however, is not much of a moral or legal problem in the case of valid but ineffective agreements, so I propose to exclude them.

The problem of repudiation, then, as I define it here, is this: When is it morally justifiable to revoke, preemptorily, the requirements for future conduct created by legally or morally effective agreements? When, in brief, is repudiation justifiable? And the sort of answer I am looking for is one implicit in liberal ideas about promising in general. I do not want to contruct, for example, an anti-liberal utilitarian answer to the question if I can avoid it. I've come to help liberalism, not to help bury it.

I.

A central tenet of liberal moral theory is that people can create moral obligations for themselves, and fair distributions, through their voluntary, express agreements with each other. (Plain agreements.) Liberals differ about the scope of that principle, and about how firmly bound we can be by less-than-plain aggreements -- ones that are less than than fully voluntary, or fully explicit, or fully agreed to -- or other sorts of arrangements. If only plain agreements are admissible, but their scope is wide enough to include voluntary slavery, for example, then we have something between anarchism and libertarianism. If the range of admissible plain agreements is severely restricted (particularly with regard to health, welfare and economic activity), and quasi-contractual sources of obligation are permitted, then we have a liberal version of welfarism.

I do not intend to explore the infinite variety of liberalism. I want rather to outline three principles that express its central tenet about plain agreements. (My statement of the principles will be brief, rough, and not tied to any particular theorist. But there will be echoes, throughout, of things that can be found in Locke and Rousseau, at least.)

1) First, what might be called the autonomy principle is a cluster of ideas along the following lines: No one has any natural authority over anyone else. We are not under any moral obligation to do what others demand just because it is they who demand it. Moreover, a demand backed by power does not

constitute authority. Others may have the might to extract obedience, but that does not give them the right to do so. And as long as we fulfill whatever natural duties we have toward others -- duties of restraint, for example, and duties of care -- we are morally free to live the lives we choose. Beyond the bounds of our natural duties, others do not have the right to use us, against our will, for their own ends; nor do they have the right to force us to do things for our own good. Moral agents are autonomous in that sense.

2) Second, what might be called the refusal principle may be stated this way: If you refuse to participate in a given enterprise, and you refuse to accept its benefits, then it cannot justifiably impose obligations on you, and any unwanted burden that falls on you from that enterprise is unjustifiable. Your refusal to participate and to accept the benefits is sufficient to establish the unjustifiability of the obligations and burdens it imposes.

3) Third, what might be called the consent principle is this: If you agree to participate in a cooperative enterprise, and you agree to the rules of that enterprise -- rules that impose obligations and distribute benefits and burdens on participants -- then any obligation, benefit, or burden that might fall on you as a result of the enterprise is justifiable. Your agreement to the rules that impose the obligations is a sufficient condition of their justifiability. Your agreement to the rules that determine your share of burdens and benefits is a sufficient condition of the justifiability of that share.

4) Finally, what might be called the closure principle may be stated this

way: No obligation is justifiable unless its being so follows from one or more of the preceding principles, and no benefit or burden is justifiable unless its being so follows from those principles. Beyond the bounds of whatever natural duties we may have, we are autonomous moral agents who control the extent of our obligations, benefits and burdens by consenting or refusing to consent to them. Consent is a necessary condition for the justifiability of such obligations, benefits and burdens.

I take it that the theoretical tasks for contractarians, with respect to those crudely stated principles, would be roughly these three: First, we must give a prima facie justification for the controlling idea that runs through all four principles -- that moral agents are autonomous beings whose consent and refusal are morally effective. (By `morally effective' I mean sufficient to constitute or block the justification of obligations and distributive shares.) I will not address that first task here. I will simply assume, for the purpose of argument, that this controlling idea of contract theory is initially plausible.

The second task for contract theory, as I conceive the enterprise, is more to the point here. It is to fit these four principles together so that they form a coherent set, and so that they cover the terrain we want a theory of obligation and distributive justice to cover. And it is clear that the four principles will have to be significantly revised to accomplish that. The notion of consent will have to be elaborated to deal with cases of coercion and fraud, expanded (or not) to cover cases of implied and tacit consent, or even treated metaphorically -- as it is in hypothetical contract theory. And the more the notion of effective

consent expands, the more the notion of effective refusal is likely to shrink. Perhaps the closure principle will have to be abandoned altogether, so that contract becomes only one of several sources of obligation. And if the class of natural duties turns out to be very large, then there may be very little room left for the sort of autonomous maneuvering that is the leading idea of the consent and refusal principles. At any rate, this task of fitting the four principles together is likely to involve making considerable revisions in each of them. These revisions will be prompted by objections that arise within contract theory itself -- objections about the intelligibility, scope, and coherence of the four principles.

The third task for contractarians (the one that Macleod's paper addresses most explicitly) is to deal with objections from outside the theory, as it were -- objections about the tolerability of the obligations and distributive shares that contract theory is likely to ratify. Dealing with these objections may involve making further revisions to the four principles. The task of revision in this third stage may appear, as it does to Macleod, to be especially precarious. For it may appear that in this case contract theorists are making ad hoc adjustments to silence critics, or to quiet their own doubts, and that those adjustments have no basis in contractarian principles as such.

I will argue, however, that careful attention to the second theoretical task I mentioned -- the task of fitting the four principles together -- presents a different picture of the third. This is so, I believe, because most of the third-stage objections -- at least the ones Macleod raises -- can be recast and

answered as second-stage objections. The argument is as follows.

II.

The objections Macleod raises are objections to the consent principle. They fall into three broad categories: problems about forced consent; problems about ignorance; and problems about attitudes. These broad categories include even more objections than Macleod mentions, and all of them suggest that we need to place some constraints on what will count as effective consent. But they all can be answered in the course of fitting the four principles together, without hybridizing contract theory with alien principles.

To see how that might work, consider: It will not damage the purity of contract theory to impose, on the consent principle, constraints derived from the autonomy principle, or from appeals to natural duty. We do this, for example, when we refuse to recognize the bindingness of suicide pacts, or murder-for-hire contracts, or the obligations imposed by membership in a criminal organization. These constraints on effective consent do not come from competing principles of obligation or distributive justice, and do not turn contract theory into a hybrid. They limit its scope, but do not transmute it.

Furthermore, these constraints can in principle be very numerous and severe. A Kantian interpretation of the autonomy principle, for example, would presumably require that the parties to a contract treat each other as ends in themselves and not merely as means. If so, then depending on how we read that formulation of the moral law, it might be a very severe constraint -- ruling

out the moral effectiveness of consent in all sorts of enterprises in which the parties are merely using one another instrumentally. Prostitution comes to mind here, and bribery, and many of the hard bargains that Macleod mentions -- bargains in which, even if the parties are equal in power, risk aversion and so on, they nonetheless use each other merely as means to self-satisfaction. If in doing so they violate the moral law, their consent to the arrangement will not be sufficient to establish the justice or fairness of the burdens and benefits they thus acquire. Similarly for other doctrines about natural duties. The more extensive those duties are, the more constrained the consent and refusal principles will be, on contractarian grounds alone.

Now what about the specific constraints that interest Macleod -- that is, no coercion, adequate information, equal astuteness, equal bargaining power, and similar attitudes toward bargaining? They are proposed as responses to certain objections that can be levied against the consent principle.

One source of such objections concerns cases of forced consent. Macleod concedes that some of these can be handled from inside contract theory, but it will help my exposition if I explain why I agree with him. The category of forced consent includes all sorts of coercion -- physical force, intimidation, threats of harm. But it also includes cases that the lawyers call contracts of adhesion -- take-it-or-leave-it offers in which no negotiation about the terms is permitted by the vendor, and no alternative vendor is available. If, in such a case, the item being offered is a practical necessity for the buyers -- an offer they cannot refuse -- then there too we may say that consent is forced.

Moreover, there is a further set of cases in which consent appears to be forced by an especially compelling offer -- what is sometimes called a coercive offer. Standard examples include the inducements offered to prisoners to participate in dangerous or unpleasant medical experiments -- inducements that are effective in getting consent only because the prisoners are in such reduced circumstances, and because there is an implicit connection between participation and better treatment or early release. In such cases we may also want to say that consent is forced.

Now supposing that contract theorists want to revise the consent principle to exclude such cases, on what grounds might they do so? One approach is to claim that forced consent is no consent at all. But as Macleod intimates, that leads to some conceptual difficulties. If we take that route we have to hold that prisoners who are delighted to take a coercive offer, or people who are eager to accept a take-it-or-leave-it way out of a desperate situation, or victims who are willing to do anything their tormenters ask, have not genuinely consented to do what they have apparently agreed to do. And that is a needlessly awkward result. All that contract theorists need to establish, here, is that forced consent is not morally effective. They do not need to assert that it is not genuine consent. And they can establish the ineffectiveness of forced consent by invoking the refusal principle.

Consider again the governing idea of contract theory, as I conceive it here. It is the idea that people have joint control of the extent of their obligations and distributive shares. Beyond the bounds of our natural duties, we are

autonomous agents whose unilateral refusal or mutual consent to a given arrangement is morally effective. This idea presupposes both that we be able to refuse and be able to consent. Without the ability to refuse, and refuse unilaterally, we lack control over the extent of our obligations and burdens. We are at the mercy of circumstance or people who wish to impose their will on us. Similarly, unless we are able to consent we lack control. So what is wrong with forced consent is not that consent is lacking but that the ability to refuse is lacking. On contractarian grounds alone, if people are unable to refuse, then no matter how willingly or eagerly they consent, they will not have had the kind of control over the arrangement that the theory insists they must have if their consent is to be morally effective. The refusal principle constrains morally effective consent to cases where consent is unforced.

More to the point, there need not be any egalitarian principle implied in this revision of consent. Contract theory need not require that the parties be in equal bargaining positions. It is sufficient, for the purpose of ruling out forced consent, to require that each party be able to refuse, and as Macleod himself points out, it is clear enough that people with vastly unequal resources can make unobjectionable agreements. For one thing the party with superior bargaining power may choose not to press the advantage. What counts, here, for contract theory, are the circumstances of each case. If I have the ability to refuse in a given case -- even if that ability remains intact only because of the restraint of the other party -- I cannot claim that my consent in that case is forced, and thereby morally ineffective. To deny this -- to say that there

cannot be morally effective agreements between unequals -- would be to invalidate an enormous range of evidently benign transactions, from renting a room in a hotel to agreements between parents and children. I do not see how that could be defended, and certainly contract theorists are not required to accept anything like it in order to rule out forced consent. Of course, it might be argued that it is just naive, as a general policy, to rely on the restraint of the powerful to preserve our ability to refuse. And on that basis an egalitarian distribution of power-producing resources might be recommended. But that is quite a separate matter. The issue here is whether we can rule out forced consent on contract principles alone. I have argued that we can -- that the refusal principle constrains consent in a way that answers these objections about forced consent.

Another class of objections concerns cases of ignorance. Included here are cases in which the parties simply lack relevant and available information, as well as cases in which they lack astuteness, or the ability to make sound predictions about probable outcomes, and sound judgments about the relation of those outcomes to their future interests. Sometimes this ignorance is due to unusual deficiencies or neglect in the parties themselves. At other times it may be due to deception or fraud. And at still other times it may simply indicate the limits of human knowing ability as such. Whatever the cause, Macleod concedes that some of these cases can be handled from inside contract theory. If I do not know what I am putting my name to, then I am not consenting to it at all, but rather to something else -- something I imagine it to

be. So in those cases the consent principle does not need further constraint, it merely needs to be applied. That will entail a good deal of argument about how much knowledge we must have before we can effectively consent, but it should be noted that those arguments will not involve egalitarian principles of distribution. As Macleod again points out, it is not necessary for the parties to be equally knowledgeable, nor is it sufficient that they be. If I know the consequences for my own interests, and you know the consequences for everyone's, but in fact that inequality makes no difference to the outcome (because we would have struck the very same bargain had we had equal knowledge), then surely my consent is effective, even though we are unequal. So equal knowledge is not a necessary condition. Nor is it sufficient. A group of children may be equally knowledgeable, but yet so ignorant of the consequences of the agreements they make to each other that we hold those agreements to be morally ineffective.

The same line of argument can be extended to what Macleod calls astuteness -- the ability to make use of information to predict and evaluate possible outcomes. Again, it is not an equality condition that we want to insist upon. That would be neither necessary nor sufficient to handle the objection here. That objection, like the one about bargaining power, is answered adequately by a "no harm no foul" rule. The inequality in astuteness is not the issue. The issue is whether that inequality makes a difference in what we think we are agreeing to.

A similar response, from inside contract theory, can be made to a third

important class of objections. That class concerns cases in which one party to an agreement takes advantage of the other -- not by force or fraud, but by virtue of calling on certain attitudes or traits of character with regard to risk, pain, change, novelty, and what Macleod calls hard bargaining. (I do not mean that list to be exhaustive.) The idea here is that a person who is timid, fearful, or gentle can be at a disadvantage in a confrontation with an aggressive, risk-taking, hard-bargaining type; that a person who has a high tolerance for pain or change can take advantage of it in negotiations with people who are unusually sensitive to pain or stressed by change; and so on. (Notice that the blade cuts both ways: the helpless, fearful and timid person can sometimes use those traits to disconcert and manipulate the hard-nosed bargainer.) I do not think these cases pose any special problem for contract theorists. We can analyze them, too, in terms of the consent and refusal principles. The high pressure salesman who rattles me so badly that I cannot think clearly has compromised my ability to consent, since I cannot perceive clearly what it is that I am putting my name to. The helpless, pathetic, timid colleague obscures my judgment by evoking my sentimentality. The bold, fearless friend rushes me into situations in such a way that I am unable to refuse. The way we deal with many of these cases is by insisting on a sort of cooling-off period before the agreement becomes binding. This gives the disadvantaged party the time to think, the time to get up the nerve to refuse, and so on. But again, there is no egalitarian principle at work. What is at stake is the ability to consent or refuse. If, on reflection, the timid person still chooses to go along with the

bold one rather than refuse, then on contractarian grounds the agreement should be binding. To hold otherwise -- to hold that people must have similar attitudes toward bargaining -- would again be to invalidate a very wide range of benign transactions.

Now of course there is a deep problem here for contract theory. No matter how astute we are, we will sometimes make mistakes, and wind up with results we did not foresee. Under what conditions should we be held to the agreements that produced those results? Here we come to what I think lies behind the objections Macleod has posed. It is not that contract theory, on its own principles, is unable to place multiple conditions on consent -- conditions about forced consent, and ignorance, and hard bargaining. As we've seen, this can be done in the effort to accomplish the second task that contract theorists face -- the task of fitting the four principles of contract theory together. But what I think lies behind all of this, in Macleod's argument, is the recognition that even under the most heavily constrained agreements things can still turn out so badly for people that we want to let them out of the deals they have made; we want to say, in those cases, that their previous consent is no longer morally effective. The clearest cases here involve radical and unforeseeable changes in the circumstances of the parties to a bargain -- changes that make existing contracts utterly crushing in their impact on one or both parties. This sort of situation confronts contractarians pointedly with the third task I mentioned -- that of defending their theory against criticisms that come from competing theories of obligation and distributive justice, and from

pretheoretical ideas about fairness that run counter to contractarian results. The question is whether contractarians will be forced, at this third stage, into hybridizing their theory with unacknowledged egalitarian principles.

I do not think they will be. Macleod's argument has already shown that equality (in astuteness and so on) is neither a necessary nor a sufficient condition for achieving the desired results. We cannot rely on egalitarian bargaining conditions to produce results that are unobjectionable to egalitarian political theory or to all of our pretheoretical ideas of fairness. Nor are such conditions necessary to get unobjectionable results. So it is hard to see why a careful contractarian would reach for such conditions as a way out of any of the difficulties Macleod has posed. And if we look carefully at the objections at issue here, I think we can see that contract theory has a way of dealing with them -- a way that does not involve appealing to egalitarian principles. That way is a direct appeal to the controlling idea of contract theory -- the idea that moral agents are autonomous beings who control their obligations, burdens and benefits.

What is it, after all, that worries us about the way things might turn out if people are always held to the agreements they make? Is it that some people are likely to wind up with a lot less than others, through no fault of their own? Is it that some people are likely to be trapped in arrangements that make them miserable? Is it that even when the losers are to blame for their own predicaments, sometimes they wind up with so little that we cannot countenance the result? Well, yes and no. Yes, those are cases that concern

us. But no, they do not concern us (as contract theorists) merely because they involve inequalities or misery. After all, I may lose in a freely chosen, procedurally fair, low stakes poker game and be utterly miserable about the result -- for days, perhaps, because I am such a bad loser. But that is surely not sufficient reason to force a redistribution of the winnings. (For one thing that would probably not erase my misery.) The crux of the issue here is not our recognition that contracts can lead to inequalities and misery. The crux is rather our recognition that even heavily constrained contracts can lead to results that defeat the underlying commitment of contract theory itself -- the commitment to autonomy.

Contracts can sometimes leave us with obligations we can discharge only at the expense of our autonomy itself; burdens so heavy that carrying them keeps us in perpetual debt to the point that we lose the ability to assume or refuse further obligations and benefits. When that happens -- when we no longer have the ability to discharge the obligations we have assumed so that afterwards we can assume or refuse new arrangements -- then our autonomy has been compromised. And surely it is not plausible to interpret the autonomy principle in a way that allows it to be inadvertently self-defeating. Some contract theorists may want to allow people to sign away their autonomy voluntarily (e.g., by selling themselves into slavery). That is a separate and contestable issue. But I assume that no contract theorist wants autonomy to be inadvertently self- eliminating.

So we will want to adopt a further set of constraints on consent -- constraints

that allow us to repudiate agreements whose unforeseen results compromise an agent's autonomy. That presents contract theorists with a very challenging problem. Damage to autonomy is usually a matter of degree, and often hard to assess. So rules about repudiation will be difficult to construct. But I think it is clear enough that contract theorists need not appeal to alien distributive principles in order to construct those rules.

Macleod has identified a trap for unwary contractarians, and I for one (even as an impersonator) am grateful to him for doing so. All I have argued is that the trap is avoidable. We needn't import egalitarian principles in order to get around it.