

Trespassing and reflective equilibrium

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Abstract. In this paper, I present an objection to the reflective equilibrium method based on land purchases and trespassing. I then propose a solution, which involves a change to how we regard the method.

I wish to object to a method used in moral philosophy, but I shall present part of my example before introducing the method. I say, “my example,” but it is largely taken from others (Hart 1973: 546-547; Nozick 1974: 53). A person owns a house. A wealthy person buys all the land around this house. The wealthy person then considers what rules should apply to their neighbour when he leaves his house. The wealthy person has judgments, such as “I should not let this neighbour step on this piece of land unsupervised, because it is too important,” and “I should not let this neighbour step on this other piece of land unsupervised, because it is too important.” She has many other judgments of this form.¹

Then she reads about the reflective equilibrium method (see Rawls 1999). She is to devise a simple principle, or set of principles, which entails her specific judgments. So she devises the simple principle “This neighbour should not leave their house unsupervised.” It entails almost all her judgments. But there is a narrow complicated path which the wealthy person judges is not so important. By means of that path, the neighbour can leave their house and exit the wealthy person’s land unsupervised. But the simple principle does not entail the

¹ I do not wish to say that the behaviour of the wealthy person is more typical of females, by the way.

judgment “This path is not so important, so the neighbour can leave their house and exit my land by means of it unsupervised.”

Now if her simple principle does not entail most of her judgments, she needs to revise the principle (or abandon it in favour of another one). But if it entails most of her judgments, then the reflective equilibrium method allows for two things: revise the simple principle in the hope of achieving total entailment (or abandon it for this end, which I am not counting as a separate option); or get rid of an isolated judgment that does not fit (or isolated set of judgments). So she decides to get rid of the judgment “This narrow path on my land is not so important, so the neighbour can leave their house and exit my land by means of it unsupervised.”

This may seem to be an all-too-neat and far-fetched example, but my impression is that the emphasis on simplicity and the option of abandoning a judgment in some circumstances will mean this: if we can recover the raw data of moral judgments, there are sometimes options for an individual but they are lost through application of the method. Instead there is a simple prohibition or other command. And this simple prohibition or other command is somehow a problem. In our case, the resultant moral philosophy says that the neighbour cannot leave their house unsupervised!

However, I can see a response to this objection about the cost of simplicity. The response is that one keeps a list of judgments entered into the reflective equilibrium procedure and one regards the results of the procedure, if any specific judgments are abandoned, as a convenient way of summarizing the information contained in the list. But convenience is at the cost of some information loss. If a major problem arises with the simple principles we have decided on, we go back to the list and that hopefully enables us to find solutions where we were stuck. But that

probably means that a constitution enshrining the principles is not really *the* constitution – it is a toy constitution, a convenient device of summary and communication – and under sufficient pressure one is handed a very long book of specific judgments and example cases. One does not either enforce the toy constitution, as if it were real, or else say that the real constitution must be suspended, leaving us in a lawless state. One sets aside the toy constitution and turns to the long list.

References

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