Moral Contractualism

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Abstract

This article provides a critical introduction to contractualism as a moral or ethical theory, that is, as a theory of the rightness and wrongness of individual conduct – focusing specifically on the influential ‘Kantian’ version of contractualism due to T. M. Scanlon. I begin by elucidating the key features of Scanlon’s contractualism: justifiability to others; reasonable rejectability; the individualist restriction; and mutual recognition. I then turn to discuss both its appeal and the main objections that have been raised to it – objections concerning our duties to the cognitively limited and impaired, aggregation, demandingness, normativity and explanatory adequacy. I conclude by mentioning some contractualist alternatives to Scanlon’s theory.

Moral contractualism¹ is the idea that the rightness and wrongness of our conduct is somehow to be understood in terms of some kind of actual or hypothetical agreement.² This vague idea can be developed in many different ways. In this article, I am going to focus mainly on the extremely influential version advanced by T. M. Scanlon in his 1998 book, *What we Owe to Each Other*. Scanlon’s book has generated enormous scholarly interest. Arguably, it has done for moral contractualism what John Rawls’ *A Theory of Justice* did for political contractualism, putting it squarely onto the contemporary philosophical map. It is therefore well worth our close attention. After giving a brief characterisation of Scanlon’s theory (Section 1) and saying something about its appeal (Section 2), I shall turn to a consideration of five important objections that have been raised to it (Section 3). I shall conclude by considering where this leaves us with respect to moral contractualism in general (Section 4).

1. Scanlon’s Contractualism

Scanlon’s contractualism is a version of the ‘Kantian’ model of contractualism, according to which morality is based on a hypothetical agreement undertaken from a common standpoint and governed by a moral ideal of mutual respect among free and equal persons.³ Central to Scanlon’s version of Kantian contractualism is a notion that he calls ‘justifiability to others’. As he puts it, ‘thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject’ (5).

What does it mean to say that someone could ‘reasonably reject’ a principle? It means, in the first instance, that she has a reasonable complaint to the principle. Complaints to a principle are reasonable only if they are based on good reasons to object to the principle in question. Scanlon’s account of the considerations that can constitute good reasons to accept and reject principles is explicitly pluralist. One important kind of reason for reasonable acceptance and rejection of principles concerns the effects the principles have on the individuals’ well-being (136–41). So, for example, the fact that a principle would

result in my incurring a great loss in well-being provides me with a reason to reject it. But many other considerations can also give us reasons to accept and reject principles, such as the fact that they would permit us to be treated unfairly, or that they would undermine our freedom or autonomy, and so on.

More particularly, the complaint must be, not merely reasonable, but reasonable given a particular aim, namely, the aim of 'find[ing] principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject' (4). To understand just what having this aim involves, we might usefully compare it with two other rather different aims that individuals might have (Southwood, *Contractualism and the Foundations of Morality*, ch. 3). First, they might have the aim of finding principles for the general regulation of behaviour whether the principles are acceptable or not. Let us say that such individuals are 'unconcerned' for others. Second, individuals might have the aim of finding principles for the general regulation of behaviour that are acceptable to other individuals, irrespective of whether those other individuals also have the aim of finding principles that are acceptable to others. Let us say that these individuals are 'unconditionally concerned' for others. In contrast, Scanlon's contractors are, as we might say, 'conditionally concerned' for others. They have the aim of finding principles that are acceptable to other individuals, but only so long as those other individuals also have the aim of finding principles that are acceptable to others.

How does having this aim affect what principles it would be reasonable for individuals to accept and reject? According to Scanlon, it means that we must weigh up our reasons to accept and reject principles against others' reasons to accept and reject those principles. If there is some other individual who has stronger reasons to accept a principle (or stronger reasons to reject any alternative to the principle) than we have reasons to reject the principle, then it would not be reasonable for us to reject the principle. Suppose, for example, that we have made various commitments, the fulfilment of which will prove personally costly to us. This gives us some reason to object to principles that would require us to fulfil the commitments. But it would presumably not be reasonable for us to reject the principles, because those to whom we have made the commitments have much stronger reasons to accept the principles, reasons based on fairness, trust, agency and so on.

It is important to emphasise that it is only particular individuals' reasons to accept and reject principles that can affect what principles it is reasonable or unreasonable for us to accept or reject. Scanlon is quite explicit that different individuals' reasons, although they can and must be weighed against one another, cannot be interpersonally aggregated (229). Suppose that it would make 10,000,000 different people fractionally better off if we were permitted to execute politicians who broke electoral promises. Let us suppose that this gives each of them a weak reason to object to a principle forbidding us to execute politicians who have broken electoral promises, without making it reasonable for any of them to reject the principle. The fact that 10,000,000 people would be made slightly better off is not something that can make any difference whatsoever to whether it would be reasonable for us to accept the principle. The only considerations that matter are the claims of distinct individuals, not the claims of groups.

It might be wondered what kind of theory Scanlon's contractualism is. It is not simply a piece of moral conceptual analysis – an account of what we mean by calling actions 'right' and 'wrong'. Nor is it merely a criterion of right action, or a discovery procedure that tells us how to go about finding out which acts are right and wrong. Scanlon makes a good deal of the fact that the notion of justifiability to others is meant to explain morality's distinctive normativity or reason-giving force, something which lies well beyond the job description of a criterion or discovery procedure (11). It does so, he believes, by

instantiating a distinctive kind of value, the value of standing in a certain kind of relation to others. He writes:

This relation, much less personal than friendship, might be called a relation of mutual recognition. Standing in this relation to others is appealing in itself – worth seeking for its own sake. A moral person will refrain from lying to others, cheating, harming, or exploiting them, “because these things are wrong”. But for such a person these requirements are not just formal imperatives; they are aspects of the positive value of a way of living with others (162).

Scanlon's idea is that to stand in this relation just is to act towards others in ways that are justifiable to them. As acting morally is a matter of acting towards others in ways that are justifiable to them, it follows that we have reasons to act morally.

I believe that we should think of Scanlon's contractualism – and indeed moral contractualism more generally – as a theory of what *ultimately grounds* morality, a theory of what ultimately makes actions right and wrong (Southwood, *Contractualism and the Foundations of Morality*). This might seem to run explicitly counter to what Scanlon says (see Stratton-Lake). Scanlon writes:

The contractualist formula ... is intended as an account of what it is for an act to be wrong. What *makes* an act wrong are the properties that would make any principles that allow it one that it would be reasonable to reject (391, n. 21).

However, this is based on a misunderstanding. Suppose that we think that it is wrong to engage in torture, say, because torture involves inflicting pain, suffering and humiliation on fellow human beings. In some sense, this seems like a perfectly good account of what makes torture wrong, of what explains why it is wrong. However, we might still wonder why it is wrong to inflict pain, suffering and humiliation on fellow human beings. In other words, we might want to know what *ultimately grounds* moral facts such as the fact that torture is wrong. One possibility is that there is nothing further to be said; the wrongness of torture cannot be further explained. I submit that contractualism offers a different picture. What ultimately explains the fact that torture is wrong, according to the contractualist, is that we could not justify to one another principles that permitted us to inflict the kind of pain, suffering and humiliation on our fellow human beings that torture involves.⁴

2. The Appeal of Scanlon's Contractualism

Before we turn to consider objections to Scanlon's contractualism, it is worth saying something briefly about its appeal. Many philosophers have found it extremely attractive, even those who confess that they are not ultimately convinced. The main reason for this, I think, is that it seems to capture much of what is appealing about competing theories without the costs.

Consider agent-based theories – theories such as Kantianism, egoism and virtue ethics. The nice thing about agent-based theories is that they take very seriously the deliberative or first-person perspective of individual agents (Darwall, 'Autonomist Internalism'; Nagel; Korsgaard). So does Scanlon's contractualism. There is no veil of ignorance in Scanlon's theory that requires individuals to shed their distinctive identities, values, goals and commitments. Individuals are not required to cast off their individual standpoints and consider candidate moral principles from the perspective of the universe. Moreover, Scanlon's contractualism effectively assigns to each agent a power of reasonable moral veto so far as establishing valid moral principles is concerned. If it would be reasonable for any

individual to reject a candidate moral principle, this immediately disqualifies the principle. Agent-based theories sometimes encounter difficulties, however, when it comes to accounting in the right kind of way for the moral significance of others. Scanlon's contractualism encounters no such difficulties. Scanlon's contractors are taken to have the aim of finding principles that others could not reasonably reject. Others occupy centre-stage within the moral point of view.

Or consider utilitarianism. What is plausible about utilitarianism is the idea that well-being plays a very significant role in determining what is morally right and wrong. Scanlon's contractualism shares this with utilitarianism. Reasonable complaints to principles based on the effects the principles would have on an individual's well-being are paradigmatic instances of the kinds of complaints that suffice to render principles reasonably rejectable and hence invalid. What is not so plausible about utilitarianism is that well-being is *all* that matters. Scanlon's contractualism does not make this further claim. On the contrary, it holds that plenty of other considerations such as fairness, autonomy and responsibility matter too and can ground objections to principles.

Or again, consider consequentialism (whether utilitarian or otherwise). Like consequentialism, contractualism provides a way of making sense of the idea that morality is impartial, that moral decision-making transcends one's individual perspective. But, unlike consequentialism, it does not permit interpersonal aggregation. So the fact that a very great increase in overall good could be had by, say, sacrificing members of a minority has no moral weight according to contractualism. It 'take[s] seriously the distinction between persons' (Rawls 27). Nor, as we have seen, does Scanlon's contractualism require ascending to the point of view of the universe in which one's interests as an agent are assigned the same weight as those of others. So it seems to avoid the charge that it is overly demanding, or alienating or unfairly freedom-impinging.

Or consider intuitionism. Like intuitionism, contractualism is designed to vindicate much of commonsense morality. It recognises agent-relative prerogatives and restrictions. It recognizes asymmetries based on doing and allowing, actions and omissions, responsibility and so on. It recognises a range of permission and obligations – permissions to assign differential weight to the interests of one's nearest and dearest, obligations to keep promises and not to tell malicious lies and so on. Unlike intuitionism, however, it does not simply take these features of commonsense morality as brute or primitive but, rather, gives them a deeper explanation or grounding in terms of the idea of justifiability to others.

Finally, contractualism – in at least some guises – might also seem to combine what is most attractive in various meta-ethical theories. Contractualism is sometimes presented or interpreted as a kind of constructivism, the thesis that moral facts or truths are ultimately grounded in facts about what follows from some kind of actual or hypothetical procedure (Timmons).⁵ Like other kinds of moral realism and unlike most kinds of moral anti-realism, constructivism is capable of vindicating the idea that moral judgements are truth apt and indeed sometimes true, and that they are made true by facts that are somehow independent of individual moral judges. In contrast, many people think there is something unsatisfactory about both naturalistic versions of moral realism that claim that morality is (conceptually or metaphysically) reducible to natural facts and non-naturalistic versions that hold that moral facts are brute primitive facts. Naturalistic versions of moral realism seem incapable of explaining morality's normativity. Non-naturalistic versions seem to imply that moral facts are ontologically 'queer'. In understanding moral facts as the product of a hypothetical procedure, contractualist constructivism may seem to capture both the truth in moral realism but also the kernel

of truth in moral anti-realism – that morality is in some sense a human construction, that moral facts are somehow ‘created’ (Milo).

In short, contractualism appears to tread an attractive middle-path between a number of hazardous extremes. It is not surprising that many people find it appealing.

3. Objections

Despite its appeal, Scanlon’s contractualism has been on the receiving end of plenty of vigorous criticism. I shall focus here on what I take to be five of the most important objections that have been raised.

3.1. OUR DUTIES TO THE COGNITIVELY LIMITED AND IMPAIRED

The first objection concerns the ability of Scanlon’s contractualism to account for our moral duties to individuals who are cognitively limited or impaired: the severely mentally disabled, infants, non-human animals and so on (Phillips; Hooker, *Ideal Code, Real World* 66–70; Nussbaum). The problem is that the notion of justifiability to others does not seem to make much sense in the case of such individuals. It seems plausible to suppose that for an individual to have a reason to object to a principle, she must be in a position to recognise that she has such a reason. But the severely mentally disabled, young children and non-human animals are clearly not in a position to recognise considerations as reasons. So it seems that they are necessarily excluded from Scanlon’s contractual situation. To be sure, this does not mean that Scanlon has to deny that cognitively limited and impaired individuals have moral status. After all, those of us who are able to reasonably accept and reject principles would presumably object reasonably to principles that permitted doing unpleasant things to the cognitively limited and impaired. This suffices to confer a certain kind of moral status on them (Morris; Bernstein; Stark). However, their moral status is contingent and derivative: were we not to care about them, their interests would not constrain how we were permitted to behave towards them. At most, Scanlon’s contractualism seems able to account for our moral duties *involving* the cognitively limited and impaired; it seems unable to account for our duties *to* them, properly speaking (Hooker, *Ideal Code, Real World* 67).

There are two main kinds of responses to this objection. The first is to try to extend the notion of justifiability to others so that the cognitively limited and impaired are somehow included in the contractual situation. The obvious way to do this is by assigning trustees to the cognitively limited and impaired who have the task of accepting and rejecting principles on their behalf. So, although babies, say, cannot reasonably accept and reject principles, we can imagine trustees who can. For example, the trustees might reasonably object to principles that would permit parents to behave towards their infants in a way that assigned no weight to their interests.

Scanlon considers this possibility (183) but is rather lukewarm about it, arguably for good reason. For it does not fit well with his account of contractualism’s normative basis. The notion of justifiability to others, recall, is meant to be a way of cashing out the value of mutual recognition; our reasons to act in accordance with contractualist principles are, at root, due to the value of mutual recognition that we realise in doing so. Even if there is a kind of one-way recognition involved in our behaving towards the cognitively limited and impaired in ways to which their trustees could not reasonably reject, the recognition is hardly mutual.

The second response – Scanlon's favoured one – is to propose that morality includes different classes of moral duties, as it were, and that his contractualism is only supposed to be accounting for one class of them, namely our moral duties to other persons. He writes:

[C]ontractualism as I describe it is not meant to characterise everything that can be called 'moral' but only that part of the moral sphere that is marked out by certain specific ideas of right and wrong, or 'what we owe to others.' The boundary of this part of morality marks an important moral distinction, but it does not mark the distinction between those beings who 'count morally' and the rest who are of merely instrumental value (178).⁶

This may be right but it is a costly concession. Our moral duties seem to form something like a natural kind; there seems to be something important that they have in common, whether they are duties to other fully cognitively competent persons or to individuals who are cognitively limited or impaired. If Scanlon's contractualism cannot account for the full scope of our moral duties, it is tempting to look for a theory that can.

3.2. AGGREGATION

An attractive feature of Scanlon's contractualism, as we saw before, is that it avoids objectionable forms of aggregation of the kind permitted and indeed required by utilitarianism and the other kinds of consequentialism. But aggregation is not always objectionable. On the contrary, sometimes it seems morally obligatory. If we are in a position to save either one person or 100 people from violent death and all else is equal, we are morally obliged to save the 100. This seems to be because the claims of the 100 are collectively weightier than the claim of the one. But according to Scanlon, we are not permitted to add different individuals' claims together in this way. For there is no individual for whom it would be reasonable to object to a principle that would permit us to save the one. So Scanlon's contractualism appears to be unable to account for cases of this kind (Reibetanz; Hooker, 'Contractualism, Spare Wheel, Aggregation'; Norcross; Parfit; Raz).

Scanlon's way of responding to such cases is to argue that individuals within larger groups do, in fact, have a reasonable objection to not being saved that is based on the fact that failing to do so would be unfair to them (234). Consider a second case in which one is in a position to save either one (but not both) of the two individuals from violent death. Assuming that all else is equal, it seems clear that it would be permissible to save either individual. But if this is so and if it is permissible to save the one rather than the 100 in the first case, then it seems that the extra 99 individuals are not making any moral difference. That seems unfair. Given that we have reasons to object to principles that fail to treat us fairly, it would be reasonable for members of the 100 to object to principles that would permit one to save the one.

Whether this response is satisfactory is not entirely clear. For one, it is not clear whether fairness requires saving the 100 rather than, say, holding a weighted lottery in which the members of the 100 have 100 times the odds of being saved (Broome; Timmermann; Doggett). The advantage of a weighted lottery is that it gives each individual some chance of being saved, whereas saving the 100 gives the solitary individual no chance of being saved. So, arguably, it is fairer to hold a weighted lottery. For another, even if it succeeds in showing that we are required to save the 100, it may seem to allow – indeed require – some of the objectionable forms of aggregation that contractualism was meant to avoid (Doggett).⁷ Suppose that we could either save the lives of 99 people or that of 99 people and prevent a 100th person from having a serious migraine. It might

be argued that if the argument from fairness succeeds in showing that we are required to save the 100, it also requires us to save the 99 and prevent the 100th person from having a serious migraine. But, intuitively, this is not correct. It would be permissible to save the 99.⁸

3.3. DEMANDINGNESS

Commonsense morality recognises the existence of a fairly extensive set of what Samuel Scheffler calls 'agent-relative prerogatives'⁹ – entitlements to do things, even where we could do more good by doing otherwise. So, for example, we are permitted to dine at restaurants and go to the theatre, even if we could save the lives of the poor by giving the money to Oxfam. We are permitted to spend our weekends watching the cricket, even if we could potentially transform individual lives by volunteering to teach English to refugees. Contractualism's ability to vindicate an extensive set of agent-relative prerogatives is often taken to be crucial in ensuring that, unlike many forms of consequentialism, say, it is not excessively demanding; it gives individuals adequate freedom to live their lives as they see fit (Kumar, 'Defending the Moral Moderate').

However, Elizabeth Ashford has argued that contractualism is more demanding than many people, including Scanlon, seem to have appreciated. Whether the privileged are required to perform acts that would benefit the underprivileged or not is a matter of whether the reasons of the privileged for rejecting principles that would require them to do so are outweighed by the reasons of the underprivileged for rejecting principles that would permit the privileged to act otherwise. But surely a starving person's reason for rejecting a principle that would permit a wealthy person to go to the theatre as opposed to giving money to Oxfam is simply much stronger than the wealthy person's reason for rejecting a principle that would require her to give money to Oxfam. What interest can be more important than survival? Similarly, an uneducated refugee surely has much better grounds to reject a principle permitting cricket fans to go to the cricket than the cricket fan has for rejecting principles that would require her to work in the refugee shelter.

Notice that the problem is not that Scanlon's contractualism implies that we have a bit less freedom than we thought. Rather, Ashford's point is that the contractualist must concede that individuals are potentially required to make great sacrifices where failing to do so would result in an even greater loss on the part of the needy. It may turn out that we are required to sell our car, give up one of our kidneys, quit our job and go and work in a refugee camp in Somalia and so on. For whatever objection we can have to principles that would require us to do these things, this is arguably outweighed by the reasons that the beneficiaries have for rejecting principles that would permit us to do otherwise.

To respond to this objection, the contractualist has two options. One is simply to claim that commonsense morality is mistaken in recognising an extensive set of agent-relative prerogatives. The other is to try to show that the privileged have additional reasons that make it reasonable for them to object to demanding principles after all. There are various possibilities. Perhaps the principles impinge unduly upon the autonomy of the privileged. Perhaps they risk treating the privileged as means rather than ends. Perhaps they have some kind of great expressive disvalue. Whether such a move will work is hard to evaluate. But there is a reason to be sceptical. No matter how significant the costs to the privileged, it seems hard to imagine that they will be sufficient to outweigh the reasons that the starving have for insisting upon demanding principles.

3.4. NORMATIVITY

Recall that Scanlon believes that an important achievement of his contractualism is that it is able to account for the distinctive normativity of moral requirements. In complying with principles that are justifiable to others, we enjoy a particular kind of intrinsically valuable relation with others – what Scanlon calls ‘mutual recognition’. Given that we have reasons to want to stand in this relation, it follows that we have reasons to do what morality requires.

One problem with this account is that it seems unable to account for the important idea that others are entitled to expect us to comply with moral principles (Southwood, *Contractualism and the Foundations of Morality*, ch. 5). This is because of an important disanalogy between mutual recognition and the other kinds of relationships that Scanlon discusses such as friendship. In the case of friendship, say, the legitimate expectations we have of one another depend on the fact that we are already friends. As your friend, I am entitled to expect that you will act in certain ways; you have reasons to do so in part because we are friends. But in the case of mutual recognition, Scanlon is quite explicit that we do not stand in this relation with others unless and until we act in a way that is justifiable to others; standing in the relation of mutual recognition is nothing over and above behaving towards others in ways that they could not reasonably reject. But in that case, it is hard to see how others can have legitimate expectations of us before we decide how to act. To say that individuals with whom we do not yet stand in the relation of mutual recognition are entitled to expect us to do what is constitutive of mutual recognition would be like saying that an individual, with whom I have not yet made up my mind whether to become friends or not, is entitled (on account of the value of friendship) to expect me to do what is constitutive of friendship. What we need to show is that there is a legitimate expectation in place before the agent decides whether to act morally or not. But, in that case, this legitimate expectation must be generated by something that is not itself dependent on whether agents act in ways that are constitutive of mutual recognition.

Another objection, pressed by R. Jay Wallace, concerns the ability of Scanlon’s contractualism to account for what Scanlon calls the ‘priority’ of moral reasons, the fact that moral requirements have a kind of normative significance from within the agent’s first-personal perspective that often outweighs other normative considerations (Scanlon, 148–9, ch. 4, section 5). Part of the problem is that compared with many of the things that may compete with moral considerations – say, the demands of our personal relationships, individual projects and deepest commitments – the significance of mutual recognition appears rather questionable. As Wallace puts it, ‘[t]he idealized value of mutual recognition that [Scanlon] ascribes to morality is rather bloodless, detached as it is from such tangible benefits as warmth and understanding and human emotional support’ (454).

Wallace himself is optimistic that the problem may prove solvable. The key, he suggests, is to explain how mutual recognition is enriching of individual lives. ‘What is needed’, he writes, ‘is an elucidation of the concrete contribution that morality can make to the meaning and goodness of the agent’s own life, showing how the agent’s life is itself transformed when it is conducted on moral terms’ (455). Whether this burden can be discharged remains to be seen.¹⁰

3.5. EXPLANATORY ADEQUACY

The objections we have considered so far concern contractualism’s faithfulness to a range of features of morality. But perhaps the most serious objection to contractualism concerns

its *explanatory adequacy*. Recall that contractualism purports not merely to describe our moral duties but to ultimately ground morality: to explain why we are morally required to perform some acts and refrain from performing others. Is it really the fact that we could not justify to others the performance of certain actions that ultimately explains why it would be morally impermissible to perform them?

There are a number of different ways in which contractualism has been claimed to be explanatorily inadequate, although they are not always clearly distinguished. (For a systematic account of the different kinds of explanatory inadequacy and a discussion of how to respond to them, see Southwood, *Contractualism and the Foundations of Morality*, chs 1 and 7).

Sometimes, the objection seems to be that contractualism is literally *explanatorily backwards*. Judith Jarvis Thomson (30n), for example, writes: 'My impression is that the explanation goes in the opposite direction – that it is the patent wrongfulness of the conduct that explains why there would be general agreement to disallow it'.

Other critics object that contractualism is *explanatorily superseded* by some alternative better explanation. According to Colin McGinn (35–6):

Suppose I condemn the actions of the Serbian forces in Kosovo. I describe them as monstrous, evil, and utterly unethical. ... The moral force of the condemnation ... [comes from the fact] that the actions are instances of genocidal murder. That is the real content of the moral judgement, not the insipid assertion that the soldiers and the politicians responsible could not justify their actions to people in terms that they could not reasonably reject.

Another version of the objection is that contractualism is (partially) *explanatorily circular* in the sense that it presupposes (part of) what it purports to explain (Hooker, 'Contractualism, Spare-Wheel, Aggregation'; Southwood, *Contractualism and the Foundations of Morality*, ch. 3; 'A Deliberative Model of Contractualism'). There are a number of places where we might worry that features of morality are being illicitly smuggled into the contractual situation: the motivational characterisation of the contractors; the fact that individuals are taken to have a kind of intrinsic value; and Scanlon's holistic theory of justification, to mention just a few.

Undoubtedly, the most commonly heard version of the complaint that contractualism is explanatorily inadequate is that it is *explanatorily epiphenomenal* or redundant (Blackburn; Pettit, *The Common Mind* 302; 'The Consequentialist Perspective' 136–40; Schmidtz). In other words, the fact that principles could or could not reasonably be rejected is an explanatorily inert by-product of considerations that are doing the real normative work. As Simon Blackburn puts it,

Suppose that it is reasonable to reject my principles because, for instance, they lead to vast inequalities of wealth. Why then isn't this the very feature that makes my principles wrong? Why go through the detour of dragging in the hypothetical agreement with others?

Michael Ridge offers a response to the charge that contractualism is explanatorily epiphenomenal (for other responses, see Stratton-Lake; Kumar, 'Reasonable Reasons in Contractualist Moral Argument'; Frei). The essence of Ridge's response is that the critics are supposing that the reasons that ground reasonable rejectability are agent-neutral reasons, whereas in fact they are agent-relative reasons. This being so, 'some further story needs to be told about how your agent-relative reason provides a reason for me. Otherwise, if I ask, "What justifying reason do I have not to perform this action?" there will be no answer' (478). The contractualist apparatus, far from being epiphenomenal or redundant, derives its point from the fact that it offers an answer to this question (for critiques of

Ridge's argument, see Frei and Southwood, *Contractualism and the Foundations of Morality*, ch. 3).

Even if Ridge is right that contractualism is not epiphenomenal, another worry is that it is *explanatorily non-fundamental* (Pettit, 'Can Contract Theory Ground Morality?'; Southwood, 'A Deliberative Model of Contractualism'; *Contractualism and the Foundations of Morality*, ch. 3). Contractualism, I have said, purports to provide an account of morality's *ultimate* grounds. If there are other considerations that themselves explain the normative significance of justifiability to others, then we have not reached explanatory rock-bottom. Philip Pettit holds that the contractualist is committed to acknowledging the existence of such considerations at pain of rendering the verdicts of contractors objectionably arbitrary. Whether this is right or not, it seems to be part of the very structure of reasonable rejectability that contractors are responsive to independent considerations that give them reasons. These considerations have normative significance in and of themselves and explain – in some normative and not merely causal way – why contractors would reasonably accept and reject the principles they do.

4. Conclusion: Moral Contractualism beyond Scanlon?

Where does this leave us with respect to Scanlon's contractualism? I think it is too early to tell. Many of the objections that have been raised are serious and it is not yet clear whether Scanlon's theory has the resources to deal adequately with them.

Notice, however, that even if we end up rejecting Scanlon's theory, this does not necessarily spell doom for moral contractualism as such. Moral contractualism is a schema that can be filled in many different ways. Scanlon's contractualism is one way of doing so. But there are many others. For example, there is the kind of contractualism associated with Thomas Hobbes – 'Hobbesian' contractualism or 'contractarianism' – which holds that the relevant morality-grounding agreements are instrumentally rational agreements that are or would be entered into for the purpose of individual gain (Harman; Gauthier; Hampton; Kavka). There are also other non-Scanlonian versions of 'Kantian' contractualism, such as those of Rawls', Parfit (*On What Matters*), Barry and Darwall (*The Second-Person Standpoint*). There is the 'deliberative' model of contractualism defended by Southwood, which holds that the relevant morality-grounding agreements are agreements that would be entered into were to be perfectly deliberatively rational, that is, if we were to comply fully with the norms that we presuppose when we engage in deliberation with others (*Contractualism and the Foundations of Morality*; 'A Deliberative Model of Contractualism'). There are many other possibilities in conceptual space. In short, contractualism as a moral theory is still in its infancy. Before we consign it to the dustbin of progress, it seems, at the very least, well worth exploring further.

Short Biography

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Notes

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¹ 'Moral contractualism' is to be distinguished from 'political contractualism', which adduces agreements to account for the justice of our social and political institutions, or the authority of states, or the legitimacy of particular political decisions.

² Some philosophers use the term 'contractualism' in much more restrictive ways. For example, Ashford and Mulgan ('Contractualism') use it to refer exclusively to Scanlon's theory. Darwall ('Introduction') uses it to refer exclusively to 'Kantian' versions of contract theory and distinguishes it from 'Hobbesian' versions of contract theory, which he calls 'contractarianism'.

³ For this characterisation, I am indebted to Darwall ('Introduction', 5).

⁴ Moreover, it is consistent with a theory's being an account of what ultimately grounds morality that whatever ultimately makes acts right and wrong is identical with the properties of rightness and wrongness. It is just that this is not required. It may be that Scanlon is implicitly assuming the Humean thesis that there can be no necessary connections between distinct existences.

⁵ Contractualists need not be constructivists. Contractualism can be thought of as a purely normative ethical theory that is wholly neutral about whether there are moral facts or truths and if so what those facts or facts consist in.

⁶ In doing so, he is following the lead of John Rawls. In *A Theory of Justice*, Rawls wrote: "Certainly it is wrong to be cruel to animals ... The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly impose duties of compassion and humanity in their case. I shall not attempt to explain these considered beliefs. They are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them in a natural way" (512).

⁷ Indeed, some critics have suggested that it is inconsistent with Scanlon's individualist restriction (Otsuka 291–2; Norcross).

⁸ There are a number of other responses that have been suggested. Hsieh, Strudler and Wasserman have argued that each of the individuals has a *right* to be saved; that where we are incapable of respecting all of their rights, we are required to do what comes closest to doing so; and that saving the 100 comes closer to doing so than saving the one. Derek Parfit has argued that Scanlon should simply give up on the individualist restriction. Others, including John Taurek and more recently Tyler Doggett have suggested that perhaps the contractualist should simply bite the bullet and insist that commonsense morality is wrong in holding that we are required to save the 100.

⁹ Contractualism might also seem to be well-placed to account for agent-relative *constraints* or *restrictions*, prohibitions to act in certain ways even where doing so would have the best consequences. For an argument that contractualism cannot account adequately for agent-relative constraints, see Brand-Ballard.

¹⁰ One potential problem that Wallace discusses concerns the precise status that mutual recognition is meant to have within the deliberative perspective of individual agents. "What is supposed to move virtuous agents to do the right thing are not thoughts about rightness or wrong themselves, nor thoughts about our ability to live in unity with our fellow creatures but, rather, thoughts about the kinds of considerations that render particular options right or wrong: that a given action would hurt someone's feelings, say, or be demeaning or cruel or helpful. To attempt to extract from the value of mutual recognition a general account of the reason giving force of moral considerations thus seems false to the phenomenology of moral deliberation and action, ascribing to it a self-directed focus that it does not ordinarily seem to exhibit" (Wallace 455).

Works Cited

- Ashford, Elizabeth. 'The Demandingness of Scanlon's Contractualism.' *Ethics* 113 (2003): 273–302.
- and Tim Mulgan. 'Contractualism.' *Stanford Encyclopedia of Philosophy*, 2007. 30 Aug. 2007. <http://plato.stanford.edu/entries/contractualism/>.
- Barry, Brian. *Justice as Impartiality*. Oxford: Clarendon Press, 1995.
- Bernstein, Mark. 'Contractualism and Animals.' *Philosophical Studies* 86 (1997): 49–72.
- Blackburn, Simon. 'Am I Right?' *New York Times*, 21 Feb. 1999.
- Brand-Ballard, Jeffrey. 'Contractualism and Deontic Restrictions.' *Ethics* 114 (2004): 369–400.
- Broome, John. 'Selecting People Randomly.' *Ethics* 95 (1994): 38–55.
- Darwall, Stephen. 'Autonomist Internalism and the Justification of Morals.' *Nous* 24 (1990): 257–68.
- . 'Introduction.' *Contractarianism-Contractualism*. Ed. Stephen Darwall. Oxford: Blackwell Publishing, 2003. 1–8.
- . *The Second-Person Standpoint: Respect, Morality, and Accountability*. Cambridge, MA: Harvard University Press, 2006.
- Doggett, Tyler. 'Kamm, Scanlon, Taurek.' Unpublished paper.
- Frei, Tamra. 'The Redundancy Objection, and why Scanlon is not a Contractualist.' *The Journal of Political Philosophy* 17 (2009): 47–65.

- Gauthier, David. *Morals by Agreement*. Oxford: Clarendon Press, 1986.
- Hampton, Jean. *Hobbes and the Social Contract Tradition*. New York and Cambridge: Cambridge University Press, 1986.
- Harman, Gilbert. 'Moral Relativism Defended.' *Philosophical Review* 84 (1975): 3–22.
- Hooker, Brad. *Ideal Code, Real World*. Oxford: Clarendon Press, 2000.
- . 'Contractualism, Spare Wheel, Aggregation.' *Critical Review of International Social and Political Philosophy* 5 (2002): 53–76.
- Hsieh, Nien-He, Alan Strudler, and David Wasserman. 'The Numbers Problem.' *Philosophy and Public Affairs* 34 (2006): 352–72.
- Kavka, Gregory. *Hobbesian Moral and Political Theory*. Princeton, NJ: Princeton University Press, 1986.
- Korsgaard, Christine. *The Sources of Normativity*. New York: Cambridge University Press, 1996.
- Kumar, Rahul. 'Defending the Moral Moderate: Contractualism and Common Sense.' *Philosophy and Public Affairs* 28 (1999): 275–309.
- . 'Reasonable Reasons in Contractualist Moral Argument.' *Ethics* 114 (2003): 6–37.
- McGinn, Colin. 'Reasons and Unreasons.' *The New Republic* (1999): 34–8.
- Milo, Ronald. 'Contractarian Constructivism.' *Journal of Philosophy* 92 (1995): 181–204.
- Morris, Christopher. 'Moral Standing and Rational-Choice Contractarianism.' *Contractarianism and Rational Choice: Essays on David Gauthier's Morals by Agreement*. Ed. Peter Vallentyne. New York and Cambridge: Cambridge University Press, 1991. 76–95.
- Nagel, Thomas. *Equality and Partiality*. New York: Oxford University Press, 1991.
- Norcross, Alastair. 'Contractualism and Aggregation.' *Social Theory and Practice* 28 (2002): 303–14.
- Nussbaum, Martha. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Belknap Press, 2006.
- Otsuka, Michael. 'Scanlon and the Claims of the Many versus the One.' *Analysis* 60 (2000): 288–93.
- Parfit, Derek. 'Justifiability to Each Person.' *Ratio* 16 (2003): 368–90.
- . *On What Matters*. Oxford: Oxford University Press, forthcoming.
- Pettit, Philip. *The Common Mind: An Essay in Psychology, Society, and Politics*. New York and Oxford: Oxford University Press, 1993.
- . 'The Consequentialist Perspective.' *Three Methods of Ethics*. Eds. Marcia Baron, Philip Pettit, and Michael Slote. Oxford: Blackwell Publishing, 1997. 92–174.
- . 'Can Contract Theory Ground Morality?' *Contemporary Debates in Moral Theory*. Ed. James Dreier. Oxford: Blackwell, 2006. 77–96.
- Phillips, David. 'Contractualism and Moral Status.' *Social Theory and Practice* 24 (1998): 183–204.
- Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press, 1971.
- Raz, Joseph. 'Numbers, with and without Contractualism.' *Ratio* 16 (2003): 346–67.
- Reibetanz, Sophia. 'Contractualism and Aggregation.' *Ethics* 108 (1998): 296–311.
- Ridge, Michael. 'Saving Scanlon: Contractualism and Agent-Relativity.' *The Journal of Political Philosophy* 9 (2001): 472–81.
- Scanlon, T. M. *What we Owe to Each Other*. Cambridge, MA: Belknap Press of Harvard University Press, 1998.
- Scheffler, S. *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions*. Oxford: Clarendon Press, 1982.
- Schmidtz, David. 'Justifying the State.' *Ethics* 101 (1990): 89–102.
- Southwood, Nicholas. 'A Deliberative Model of Contractualism.' *Politics, Philosophy and Economics* 7 (2008): 183–208.
- . *Contractualism and the Foundations of Morality*. Oxford: Oxford University Press, forthcoming.
- Stark, Cynthia. 'How to Include the Severely Mentally Disabled in a Contractarian Theory of Justice.' *The Journal of Political Philosophy* 15 (2007): 127–45.
- Stratton-Lake, Philip. 'Scanlon's Contractualism and the Redundancy Objection.' *Analysis* 63 (2003): 70–6.
- Taurek, John. 'Should the Numbers Count?' *Philosophy & Public Affairs* 6 (1977): 293–316.
- Thomson, Judith Jarvis. *The Realm of Rights*. Cambridge, MA: Harvard University Press, 1990.
- Timmermann, Jens. 'The Individualist Lottery: Why Individuals Count but not their Numbers.' *Analysis* 64 (2004): 106–12.
- Timmons, Mark. 'The Limits of Moral Constructivism.' *Ratio* 16 (2003): 391–423.
- Wallace, R. Jay. 'Scanlon's Contractualism.' *Ethics* 112 (2002): 429–70.