

## JUSTIFIABILITY TO EACH PERSON

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According to

*Scanlon's Formula*: An act is wrong just when, and because, such acts are disallowed by some principle that no one could reasonably reject.

Though 'reasonable' usually means much the same as 'rational', Scanlon uses this word in a different, moral sense. We are unreasonable, in this sense, if we ignore, or give too little weight to, some other people's well-being or moral claims.<sup>1</sup>

Some critics have suggested that, because Scanlon appeals to this sense of 'reasonable', his formula is empty. On this objection, whenever we believe that some act is wrong, we shall believe that people have moral claims not to be treated in this way. We could therefore argue that such acts are disallowed by some principle which no one could reasonably reject, since anyone who rejected this principle would be giving too little weight to people's moral claims not to be treated in this way. Since everyone could claim that the principles which they accept could not be reasonably rejected, Scanlon's Formula would make no difference to our moral thinking.

That is not so. If we reject the principles that disallow certain acts, we are denying that such acts are wrong. This denial would be unreasonable if it would give too little weight to some other people's moral claims. So Scanlon's Formula implies that

(1) an act is wrong when, and because, the denial that such acts are wrong would give too little weight to some people's moral claims.

<sup>1</sup> Scanlon does not assume that, when two people disagree, at least one of these people must be being unreasonable. There can be reasonable mistakes. But, if neither person is being unreasonable in rejecting the other's principle, there may be no relevant principle that could not be reasonably rejected, with the result that Scanlon's Formula would fail. So, when Scanlon claims that no one could reasonably reject some principle, he should be taken to mean that anyone who rejected this principle would be making a moral mistake, by failing to recognize or giving too little weight to other people's moral claims, even if this might be a not unreasonable mistake.

If we accept (1), we cannot also claim that

(2) people have moral claims not to be treated in some way, because such acts are wrong.

People cannot have these moral claims because the denial that such acts are wrong gives too little weight to these claims.

To illustrate this point, suppose that, in

*Earthquake*: You and Black are trapped in burning wreckage. We are potential rescuers. We could save Black's life, but only by causing you to lose an arm.

On one view about such cases, which we can call

*the Greater Burden Principle*: We are permitted to impose a burden on someone if that is our only way of saving someone else from a much greater burden.

According to

*the Means Principle*: It is wrong to inflict great injuries on some people as a means of saving others from greater injuries.

Scanlon makes various claims about what would be reasonable grounds for rejecting moral principles. According to one such claim,

it would be unreasonable . . . to reject a principle because it imposed a burden on you when every alternative principle would impose much greater burdens on others.<sup>2</sup>

Black might say that, as this claim implies, you could not reasonably reject the Greater Burden Principle. Though our following this principle would impose a burden on you, our following the Means Principle would impose a much greater burden on Black. Losing an arm is much less bad than dying.

You might reply that, in your opinion, Black could not reasonably reject the Means Principle. But why would this rejection be unreasonable? You might say that you have a right not to be seriously injured as a means of benefiting someone else. But, in claiming that you have this right, you would be appealing to your belief that it would be wrong for us to injure you in this way. And on Scanlon's view, as we have seen, you cannot appeal to such beliefs. According to Scanlon's Formula,

<sup>2</sup> 'Contractualism and Utilitarianism', in *Moral Discourse and Practice*, edited by Stephen Darwall, Allan Gibbard and Peter Railton (OUP, 1997) p. 272.

(3) if it is wrong to inflict such injuries, that is because the Means Principle cannot be reasonably rejected.

If you accept (3), you cannot also claim that

(4) the Means Principle cannot be reasonably rejected because it is wrong to inflict such injuries.

Combining these claims would be like pulling on your boot laces to hold yourself in mid air. If certain acts are wrong because they are condemned by some unrejectable principle, this principle cannot be unrejectable because such acts are wrong.

As this example shows, if we accept Scanlon's contractualism, that makes some moral beliefs easier to defend, and makes others harder to defend. When Black defends the Greater Burden Principle, she can claim that dying is much worse than losing an arm. This is the kind of fact to which, on Scanlon's view, moral reasoning can appeal. When you defend the Means Principle, you cannot appeal to such a fact. Your problem is that, unlike the Greater Burden Principle, the Means Principle is best defended by appealing to our moral intuitions. When we consider cases of this kind, most of us believe that it is wrong to injure some people, without their consent, as a means of benefiting others. If we think about morality in Scanlon's way, we cannot appeal to such intuitive beliefs. According to what we can call this

*moral beliefs restriction*, when we apply Scanlon's Formula, we cannot reject moral principles by appealing to our beliefs about which acts are wrong.<sup>3</sup>

This feature of Scanlon's view has wide implications. For example, according to

*Act Consequentialism*: We ought to do whatever would make things go best.

This view is best challenged by appealing to our moral intuitions. Most of us believe that it can be wrong to act in certain ways – such as killing, lying, or stealing – even when such acts would make things go best. But, if we all accepted Scanlon's Formula, Act Consequentialists could dismiss these appeals to our intuitions.

<sup>3</sup> Thomas Scanlon, *What We Owe To Each Other* (Harvard University Press, 1998), 4–5, 216. Simple page numbers below will refer to this book.

According to

*Rule Consequentialism:* We ought to act on the principles whose acceptance would make things go best.

If we accepted Scanlon's Formula, Rule Consequentialists could argue:

We ought to act on the principles that no one could reasonably reject. No one could reasonably reject any of the principles whose acceptance would make things go best.

Therefore

These are the principles on which we ought to act.

Scanlon believes that both forms of consequentialism are mistaken. Partly for this reason, he imposes another restriction on grounds for rejecting moral principles. According to what we can call Scanlon's

*anti-consequentialist restriction:* We cannot reasonably reject some principle by appealing to claims about the goodness of outcomes.

Such claims, Scanlon writes, 'do not provide, in themselves, reason for rejecting principles.'<sup>4</sup> If we cannot reject principles by appealing to such claims, consequentialism is undermined.

According to

*Act Utilitarianism:* We ought to do whatever would benefit people most.

This view need not make claims about the goodness of outcomes. If Act Utilitarians make no such claims, their view is not undermined by Scanlon's anti-consequentialist restriction. And, if we accepted Scanlon's Formula, these people could dismiss the strongest objections to their view. As Scanlon writes,

the implications of act utilitarianism are wildly at variance with firmly held moral convictions.<sup>5</sup>

On Scanlon's account of moral reasoning, we cannot reject a moral view by appealing to such convictions.

<sup>4</sup> 222.

<sup>5</sup> 'Contractualism and Utilitarianism', 267.

According to

*Rule Utilitarianism:* We ought to act on the principles whose acceptance would benefit people most.

As before, this view need not make claims about the goodness of outcomes. And, if we accepted Scanlon's Formula, Rule Utilitarians could argue:

We ought to act on the principles that no one could reasonably reject. No one could reasonably reject any of the principles whose acceptance would benefit people most.

Therefore

These are the principles on which we ought to act.

Scanlon believes that both forms of utilitarianism are mistaken. Partly for this reason, he adds a further claim about grounds for reasonable rejection. According to what we can call Scanlon's

*Individualist Restriction:* In rejecting some moral principle, we must appeal to this principle's implications only for ourselves, or for any other *single* person.

In Scanlon's words:

the justifiability of a moral principle depends only on *individuals'* reasons for objecting to that principle and alternatives to it.<sup>6</sup>

This restriction undermines the argument just given. Even if some principle is one of those whose acceptance would benefit people most, there may be people who could reasonably reject this principle. These people may have personal reasons to reject this principle which are stronger than anyone's reasons to reject some alternative.

Scanlon makes several claims about personal reasons for rejecting principles. The strength of these reasons depends in part, as we have seen, on how great the burdens are that some principle's acceptance would impose on us. But it may also depend on certain other facts, such as how badly off we are, or whether we would be responsible for the burdens that would be imposed on us. Some reasons for rejecting principles, Scanlon adds, have

<sup>6</sup> 229.

nothing to do with our well-being. Such reason might be provided, for example, by some principle's unfairness to us.<sup>7</sup> And this list may be incomplete, since reflection may lead us to recognize other reasonable grounds for rejecting moral principles.

Scanlon's view has great appeal. 'What is basic to contractualism', Scanlon writes, 'is the idea of justifiability to each person'. If some act is unjustifiable to other people, that seems enough to make this act wrong. And it seems plausible that, as Scanlon claims, our acts are justifiable to each person only when, and because, we are following principles that no one could reasonably reject.

Should we accept Scanlon's view?

## 2

One of Scanlon's aims is to provide 'a clear account of the foundations of non-utilitarian moral reasoning'.<sup>8</sup> It is Scanlon's Individualist Restriction, he assumes, that does most to achieve this aim.

Rawls similarly claims that his version of contractualism provides an argument against utilitarianism. This argument, I believe, does not succeed. According to one version of veil of ignorance contractualism, the contractors are told to suppose that they have an equal chance of being in anyone's position. As several writers have claimed, Rawls has no objection to this *equal chance formula* except that it leads to broadly utilitarian conclusions.

It may seem that, in imposing his Individualist Restriction, Scanlon follows Rawls in giving only a question-begging argument against utilitarianism. But this objection can be partly answered. On Rawls's proposed replacement for our ordinary moral thinking, we ensure impartiality by appealing to the principles that it would be rational for us to choose if we didn't know who we were. Nothing in this idea counts against supposing that we have an equal chance of being anyone. As a way of achieving impartiality, this proposal could not be bettered. That is why veil-of-ignorance contractualism provides no argument against utilitarianism.

On Scanlon's version of contractualism, we appeal instead to the principles that no one, given full information, could reason-

<sup>7</sup> 212, and elsewhere.

<sup>8</sup> 'Contractualism and Utilitarianism', 267. He also says that he is one of those 'who look to contractualism specifically as a way of avoiding utilitarianism', 215.

ably reject. This idea does not itself imply that grounds for rejecting principles are provided only by what Scanlon calls 'individuals' reasons'. It does not seem unreasonable to reject some principle by appealing to the burdens that this principle would impose on some group of people. But Scanlon's Individualist Restriction, which excludes such appeals, does not merely beg the question. Since we are asking which are the principles that *no one* could reasonably reject, we must consider each person's reasons for rejecting some principle, and these reasons can plausibly be claimed to be provided by this principle's implications for *this* person. Unlike Rawls's rejection of the equal chance formula, Scanlon's Individualist Restriction is given some support by the rest of his account of moral reasoning.

Scanlon also claims that, by appealing to this restriction, we can reject utilitarianism 'in what seems, intuitively, to be the right way'.<sup>9</sup> Utilitarians reach unacceptable conclusions, Scanlon assumes, because they mistakenly add together different people's benefits and burdens. That is why utilitarians believe that it would be right to impose great burdens on some people whenever that would bring small benefits to a sufficient number of other people.

To avoid such conclusions, Scanlon believes, we should claim that benefits to different people cannot be morally summed. In Scanlon's words:

A contractualist theory, in which all objections to a principle must be raised by individuals, blocks such justifications in an intuitively appealing way. It allows the intuitively compelling complaints of those who are severely burdened to be heard, while, on the other side, the sum of the smaller benefits to others has no justificatory weight, since there is no individual who enjoys these benefits . . .<sup>10</sup>

There is, I shall argue, another, better response to utilitarianism. This alternative is suggested by Scanlon himself, and is also well supported by the contractualist idea of justifiability to each person. If Scanlon dropped his Individualist Restriction, and developed this alternative, this revision would only add to the plausibility and strength of Scanlon's theory.

<sup>9</sup> 241.

<sup>10</sup> 230.

In arguing for this revision of Scanlon's view, I shall appeal to what we could plausibly believe about the wrongness of certain kinds of act. It may be objected that, when we apply Scanlon's Formula, we cannot appeal to such beliefs. But I shall be discussing, not what is implied by Scanlon's Formula, but Scanlon's defence of his Individualist Restriction. Scanlon supports this restriction by appealing to our beliefs about the wrongness of certain acts in some imagined cases. In one such case,

*Jones* has suffered an accident in the transmitter room of a television station. To save Jones from an hour of severe pain, we would have to cancel part of the broadcast of a football game, which is giving pleasure to very many people.<sup>11</sup>

Scanlon claims that, in this case, the numbers would not count. Even if a billion people were watching this game, we ought to interrupt their pleasure for the sake of saving Jones from his hour of pain. Since Scanlon defends his Individualist Restriction by appealing to our intuitions about particular cases, I shall also appeal to such intuitions.

In most of the cases that I shall discuss, there are people who need help, and we must decide whom to help. None of these people, we should assume, has any special claim to be helped, nor do these people differ in any other morally relevant way.

According to Scanlon's Individualist Restriction, benefits to different people cannot be morally summed. On what we can call the *pure anti-numbers view*, it is always irrelevant how many people our acts could affect. In choosing between any two acts, we should take into account only the strongest claim that anyone has that we act in one of these ways, and the strongest claim that anyone has that we act in the other way. It makes no difference how many people have these strongest claims, and we can ignore all weaker claims. Every choice can thus be regarded as if it would affect only two people.

This view, Scanlon believes, is too extreme. On the view that Scanlon defends, which we can call

*the Tie-breaker View*: When the strongest opposing claims are roughly equally strong, numbers break ties, and we ought to do what would meet the claims of more people.<sup>12</sup>

<sup>11</sup> 235.

<sup>12</sup> 240.

To assess this view, consider

*Life Boat:* White is stranded on one rock, and five people are stranded on another. Before the rising tide covers both rocks, we could use a life boat to save either White or the five.

These six people, we should suppose, would all get the same benefits from the saving of their lives. On Scanlon's Tie-breaker View, since these benefits are equal, the numbers count. We ought to save the five rather than White.

White could challenge this conclusion. We can reasonably reject some principle, Scanlon claims, if we have personal reasons to reject this principle which are stronger than anyone's reasons to reject some alternative. The strength of our reasons to reject some principle depends mainly on how great the burdens are that this principle's acceptance would impose on us. And we count as burdened if we are denied some possible benefit. On these assumptions, White could reasonably reject the Tie-breaker View. According to

*The Equal Chance Principle:* When we could give equal benefits either to some people or to others, we ought to give everyone an equal chance of getting these benefits.

White's objection to the Tie-breaker View is stronger than anyone's objection to this alternative. If we acted on the Tie-breaker View, that would impose on White the great burden of certain death. If we acted on the Equal Chance Principle, that would not impose on anyone as great a burden.

When Scanlon considers a similar principle, he writes:

it might be argued that the strongest grounds for rejecting this principle are weaker than the strongest grounds for rejecting the principle of saving the greater number, since whoever loses out under this principle has at least been given a chance of being saved. The argument is not persuasive, however. Whichever of these principles is followed, the ultimate stakes for the people affected are the same: some will suffer severe harm, the others will be saved.<sup>13</sup>

These remarks assume that, when we compare different principles, we should ignore people's chances of avoiding burdens, or

<sup>13</sup> 233.

receiving benefits, since the chance of some benefit is not itself a benefit. White cannot claim that, if we give her a chance of being saved, that would be better for her. She might be unlucky; and, if she were, she would have gained nothing.

These remarks do not, I believe, answer White's argument. Though the chance of a benefit is not itself a benefit, we should not ignore such chances. We should take into account people's *expected* benefits, which are the possible benefits that these people might receive, divided by the chances that they would receive them. On the simplest view, which is at least roughly right, expected benefits matter as much as benefits that are certain. Suppose that, in some medical example, our alternatives are these:

We treat Green	Green will certainly live for one more year	Grey will die now
We treat Grey	Green will die now	Grey will have a one in two chance of living for another forty years

As Scanlon would agree, we ought here to treat Grey. We could give Grey an expected benefit of another twenty years of life, and that expected benefit is much greater than the certain benefit of one extra year that we could give to Green. Green's benefit, we can add, would not in fact be certain. We could at most give Green a high probability of living for one more year, and that is a lesser expected benefit than Grey's one in two chance of living for another forty years.

Return now to White and the five. While the Tie-breaker View would impose on White the burden of certain death, the Equal Chance Principle would impose on everyone only a one in two chance of death. Compared with the certainty of death, that chance would be a significantly smaller expected burden. So, on Scanlon's Individualist Restriction, White can reasonably reject the Tie-breaker View. White's personal reasons for rejecting this view are significantly stronger than anyone's reasons for rejecting the Equal Chance Principle.

We can draw a wider conclusion. On Scanlon's assumptions, we should always follow the Equal Chance Principle. Whenever we could give equal benefits either to some people or to others, we ought to give everyone an equal chance of getting these benefits, since that is always what would make the greatest individual

burden as small as possible. In all such cases, it is only the Equal Chance Principle that no one could reasonably reject.

Scanlon is right, however, to reject this principle. It would be wrong to toss a coin, giving White her chance of being saved, since that would also be a chance that we would save four fewer lives. As Scanlon's Tie-breaker View implies, we ought to save the five.

To defend this view, I believe, Scanlon must give up his Individualist Restriction. The five must be allowed to argue that, though White's personal reason to reject the Tie-breaker View is stronger than any of their reasons to reject the Equal Chance Principle, their five reasons *together* outweigh White's.

Return next to Scanlon's claim that, when one person's burden would bring small benefits to others,

the sum of the smaller benefits to others has no justificatory weight, since there is no individual who enjoys these benefits.

White could similarly claim that, though our saving of the five would give them a sum of benefits that is greater than the single benefit that we could give White, this sum of benefits has no justificatory weight, since there is no one who would enjoy these benefits. If we saved the five, none of them would live five lives.

Scanlon gives some other arguments for the Tie-breaker View. These arguments, he claims, preserve 'the individualistic basis of contractualism', since they could be given 'from the standpoints of the individuals involved'. That is true, I believe, only in the sense in which utilitarianism also has an individualistic basis. For example, Scanlon writes

It would be reasonable to reject a principle . . . that did not give positive weight to each person's life.<sup>14</sup>

As utilitarians might say, 'Each person counts for one. That is why more count for more'.

After defending the Tie-breaker View, Scanlon suggests that, in some cases, numbers can do more than break ties. On this suggestion, which we can call

*the Close Enough View*: When burdens to different people are close enough in size, one greater burden could be morally outweighed by a sufficient number of lesser burdens.

<sup>14</sup> 233.

This view might be combined with the assumption that, when burdens are close enough, their moral importance is proportional to their size. That is what utilitarians believe. Utilitarians merely add that *all* burdens are close enough, so that every burden's importance is proportional to its size.

Scanlon seems to make a different assumption. When he describes the Close Enough View, Scanlon writes,

it could be wrong to save one person's life when we could instead have prevented a million people . . . from becoming paralysed.<sup>15</sup>

For most people, becoming completely paralysed would be at least a twentieth as bad as dying. If the importance of these burdens were proportional to their size, one person's death would be morally outweighed by as few as thirty or forty people's becoming paralysed. Since Scanlon chooses the much larger number of a million people, he seems to give these lesser burdens much less weight. On what we can call this

*Disproportional View*: Lesser burdens should be discounted, since their moral importance is less than proportional to their size.

We now have four views to consider. On Scanlon's Individualist Restriction, different people's burdens cannot be morally summed. On the Tie-breaker View, when we must choose whom to save from equally great burdens, numbers can break ties. On the Close Enough and Disproportional Views, great burdens can be outweighed by many lesser burdens that are close enough in size, but these lesser burdens have disproportionately less weight.

There is, I believe, a decisive objection to all these views. Scanlon defends his Individualist Restriction as the best way to avoid some unacceptable utilitarian conclusions. According to utilitarians, it can be right to let some people bear great burdens for the sake of giving small benefits to enough other people. Scanlon plausibly assumes that, in some such cases, we ought to reject this view. But, as I shall now argue, Scanlon's description of these cases misidentifies their morally relevant features. As a result, he rejects utilitarianism for the wrong reason. Utilitarians

<sup>15</sup> 239–40.

go astray, not by letting the numbers count, but by ignoring or rejecting all principles of distributive justice.

## 3

In the cases that are most relevant here, there are several people whom we could easily help, and we must choose whom to help. In some cases of this kind, if we don't intervene, some of the people whom we could help would be worse off than others. In such cases, we can say, the *baseline is unequal*.

Suppose that, in *Case One*, various people have painful diseases. With our scarce medical resources, we cannot treat all these people. The only possible outcomes are these:

		Future weeks of pain	
		for Blue	for each of some number of other people
	do nothing	100	10
We	do (A)	100	0
	do (B)	0	10

According to utilitarians, if the number of other people was eleven, we ought to choose (A), since that is how we could produce the greatest sum of benefits. Most of us would disagree, believing that we ought to save Blue from her great ordeal. We may even believe that, whatever the number of these other people, we ought to benefit Blue rather than them.

Scanlon suggests three ways of defending such beliefs. According to the Individualist Restriction, Blue could reasonably reject all principles that permitted us to choose (A), since these principles would impose a burden on Blue that is much greater than the burden imposed on anyone by principles requiring us to choose (B). According to one version of the Close Enough View, Blue's benefit of a hundred pain-free weeks could not be morally outweighed by ten pain-free weeks for any number of the other people, since the size of these lesser benefits is not close enough. According to the Disproportional View, even if these lesser benefits are close enough, they should be discounted. We ought to benefit Blue rather than giving these lesser benefits to twenty, or a hundred, or even more other people.

These views are all, I believe, mistaken. If we ought to benefit Blue rather than these other people, that is not because we would

be giving Blue a greater benefit. It is because, without this benefit, Blue would suffer more than these other people.

That can be shown by removing this feature of the case. Suppose that, in *Case Two*, our alternatives are these:

		Future weeks of pain	
		for Blue	for each of some number of other people
	do nothing	100	10
We	do (A)	100	0
	do (B)	0	10

In this version of the case, the baseline is equal. If we don't intervene, all these people would be equally badly off, since they would all suffer as much. On Scanlon's Individualist Restriction, since benefits to different people cannot be morally summed, we ought again to choose (B), giving Blue her greater benefit. It makes no difference how many other people we could save from part of their ordeal. We ought to give Blue her hundred pain-free weeks rather than giving ten pain-free weeks to each of as many as a *million* other people. That is very hard to believe.

One objection to this view is that, if we gave Blue her greater benefit, the outcome would be much worse, since there would be much more suffering. To find this objection forceful, we need not be act consequentialists, who believe that we should never choose the worse of two outcomes. It is enough to be *semi-consequentialists*, who believe that some acts are wrong because their outcomes are so bad. Most of us would believe that, in this example, we ought to save a million of these other people from ten of their weeks of pain.

Scanlon is a *pure anti-consequentialist*, since he believes that the wrongness of acts never depends on the badness of their outcomes. Of those who hold such views, most reject the idea that some outcomes are worse than others. That is not Scanlon's view. Scanlon believes that it would be worse if more people suffer or die. But, on Scanlon's account of moral reasoning, the badness of outcomes is morally irrelevant.

Scanlon knew that he was telling us to ignore such badness. But my example has another feature, whose importance Scanlon seems to have overlooked. If we gave Blue her greater benefit, we would not merely be failing to prevent vastly more suffering. This suffering would come to people who would all, without our help,

suffer just as much as Blue. In such cases, I believe, Scanlon's view conflicts with all acceptable views about distributive justice.

It will be enough to consider two such views. On both views, though we always have a moral reason to produce the greatest net sum of benefits minus burdens, it also matters how benefits and burdens would be distributed between different people. According to *egalitarians*, we should give some weight to equality of distribution. On the *Priority View*, benefiting people matters more the worse off the people are to whom these benefits would go. On this view, if we gave Blue her hundred pain-free weeks, most of this benefit would matter less than the benefits that we could give to each of the other people. Compared with reducing each of these people's burdens from a hundred weeks of pain to ninety, it would be less important to reduce Blue's burden from ninety weeks to eighty, less important to make a further reduction to seventy, and so on.

If Scanlon dropped his Individualist Restriction, he might appeal to the Close Enough View. And he might claim that, compared with a hundred pain-free weeks, ten such weeks are close enough. That would allow him to claim that, rather than giving this greater benefit to Blue, we ought to give the lesser benefits to a million of the other people. And, if Scanlon appealed to a weak version of the Disproportional View, he might claim that these lesser benefits should not be heavily discounted. That would allow him to claim that, rather than giving the greater benefit to Blue, we ought to give these lesser benefits to as few as a hundred, or fifty, or even twenty of these other people.

These revisions would not, I believe, go far enough. If the importance of these benefits is not proportional to their size, it is not these lesser benefits but Blue's *greater* benefit that should be discounted. As prioritariness claim, we should discount benefits, not when they are smaller, but when they come to people who are relevantly better off. If we gave Blue her greater benefit, she would be far better off than the other people, since they would have a hundred weeks of pain, and she would have none. Rather than giving Blue her hundred pain-free weeks, we ought to give ten such weeks to only ten, or nine, or even fewer of these other people.

It may help to vary the example. Suppose that, in *Case Three*, we could use our limited medical resources to treat either a single person, *Black*, or some number of other people. The possible outcomes are these:

		Black will live to the age of	A million other people will live to
	do nothing	30	30
We	do (A)	30	35
	do (B)	80	30

If benefits to different people cannot be summed, we ought to choose outcome (B), giving Black her fifty more years of life rather than giving five more years to each of the million other people. That is clearly false. And what makes it false is not merely that, compared with fifty years, five million years of life would be a much greater sum of benefits. In outcome (A), these benefits would also be much better distributed between different people. As before, if any of these benefits should be discounted, it is Black's greater benefit. Most of this benefit would come to someone who would already have lived longer than all these other people. Rather than giving Black her fifty more years, we ought to give five more years to only ten, or nine, or even fewer of these other people.<sup>16</sup>

Because utilitarians believe that the importance of all benefits is proportional to their size, they deny that it would be in itself better if benefits were more equally distributed, or if benefits came to people who were worse off. Though this view may be mistaken, utilitarians are at least neutral between different patterns of distribution. In some cases, as we have seen, various versions

<sup>16</sup> There is something to be said for choosing (B), since that would allow at least one person to live a complete life. This we might call the qualitative argument for inequality. Though I believe that this argument has force, it does not support the Disproportional View. Consider, for example, *Musical Chairs*: A hundred people will later be at a hundred levels of well-being. There are two possibilities:

(A) Person One is at level 1, Person Two at level 2, and so on.

(B) Person One is at level 100, and everyone else is one level lower down.

On the Disproportional View, we ought to choose (B). If greater gains and losses have an importance that is more than proportional to their size, the single gain to Person One of being ninety nine levels higher must outweigh the ninety nine losses to the others of being one level lower. Suppose next that, in a variant of this case, the alternative to (A) is

(C) Person One is at level 100, Persons Three to a Hundred are one level lower down, but Person Two is *two* levels lower down.

On the Disproportional View, we ought here to choose outcome (C). As before Person One's gain of ninety nine levels, if given disproportionately greater weight, would morally outweigh the combined losses of the other ninety nine people.

In both these cases, I believe, the Disproportional View is mistaken. And there is no qualitative argument for giving Person One her great benefit.

of Scanlon's view favour the less equal distribution. These views have a built-in bias against equality, and against giving priority to those who are worse off. That is not what Scanlon intends. And, as Scanlon would agree, we ought to reject these views.

## 4

There may seem to be something right in the Close Enough View. According to utilitarians, as Scanlon writes, one person's great burden could be morally outweighed by sufficient benefits to others, 'no matter how small these benefits may be'.<sup>17</sup> Some great burdens, we may believe, could not be morally outweighed by any number of such tiny benefits. These benefits may seem to be what Kamm calls 'irrelevant utilities'.

Before considering this idea, we should note a technical objection to the Close Enough View. Suppose that, for two benefits to be close enough, the lesser benefit must be at least a tenth as great. The Close Enough View would then imply that,

rather than giving fifty extra years of life to Black, we ought to give five extra years to some number of other people.

Similarly,

rather than giving five years to these people, we ought to give a single extra year to some larger number of other people.

But this view would also imply that,

rather than giving these single years to these people, we ought to give fifty extra years to Black.

On this view, we could not avoid acting wrongly. Whatever we do, we ought to have done something else instead. In cases of this kind, that is an unacceptable conclusion.

This view goes astray because *close enough* is not a *transitive* relation. Though one year is close enough to five, and five years are close enough to fifty, one year is not close enough to fifty. If we believe that a great benefit to one person cannot be morally outweighed by any number of much smaller benefits to other people, we cannot appeal to the relative difference in the size of these

<sup>17</sup> 230.

benefits. As we have just seen, that could imply that, whatever we do, we ought to have acted differently. But we might appeal to one or more broadly defined absolute thresholds. Nothing above such thresholds, we might claim, could be outweighed by anything below.

Such claims are most plausibly applied to benefits and burdens that are either trivial or imperceptible. For example, we might claim that

- (1) we ought to give one person one more year of life rather than lengthening any number of other people's lives by only one minute.

And we might claim that

- (2) we ought to save one person from a whole year of pain rather than saving any number of others from one minute of the same pain.

These lesser benefits, we might say, fall below the *triviality threshold*.

These claims, though plausible, are false. A year contains about half a million minutes. Suppose that we are a community of just over a million people, each of whom we could benefit once in the way described by (1). Each of these acts would give one person half a million more minutes of life rather than giving one more minute to each of the million others. Since these effects would be equally distributed, these acts would be worse for everyone. If we always acted in this way, everyone would lose one year of life. Suppose next that we could benefit each person once in the way described by (2). Each of these acts would save one person from half a million minutes of pain rather than saving a million other people from one such minute. As before, these acts would be worse for everyone. If we always acted in this way, everyone would have one more year of pain.

There are several ways in which claims like (1) and (2) may seem plausible. Most of us are bad at judging the significance of large numbers. We may assume that, if one person's extra minute of pain is morally of trivial significance, that is true of a million people's extra minutes. We may also assume that, if some people would bear much greater burdens than others, or lose much more of their well-being, these are the people who would be worst off. That may not be true; and, when it isn't, that changes the relative importance of these burdens. If I gave a million dollars to some

aid agency which would divide this sum equally between a hundred million of the world's poorest people, the loss in my well-being might be much greater than the average benefit that a single extra cent would give to each of these other people.<sup>18</sup> But these hundred million benefits would together be much greater than my loss. Since this sum of benefits would both be much greater, and come to people who are much worse off than me, it is morally irrelevant that these benefits would be very small. My dollars would be well spent.

A third mistake is to consider only single acts. Some acts give ourselves significant benefits in ways that impose tiny burdens on very many other people. That is true, for example, of many of the acts that add to the pollution of many people's air, food, and water. When we consider any one such act, the tiny effects on the many other people may seem trivial. It may seem not to matter if such an act imposes costs on others of less than one cent, or reduces the life-expectancy of others by less than one minute. But, when many people act in such ways, these small effects add up. And, when such effects are roughly equally distributed, these acts are worse for almost all of the affected people. In the world as it is now, such acts together impose great burdens on very many people.

Scanlon warns us not to make this third mistake. He discusses a principle that would require us to save one person from an hour of pain at the cost of inconvenience to any number of other people. According to what we can call this

*Triviality Principle:* We ought to save one person from a great burden rather than saving any number of others from very tiny burdens.

Scanlon claims that, in deciding whether to accept this principle, we should ask whether

if [it] were generally followed, the consequences for some individuals (intrapersonally aggregated) would be so great as to make it reasonable to reject the principle.

Scanlon is referring here to the way in which, if the following of this principle would repeatedly impose small costs on certain

<sup>18</sup> I say 'the average benefit' because there may be some of these people to whom one extra cent would bring no benefit. There may be nothing they could buy with that cent. But there may be other people to whom one extra cent would make a significant difference, as when this would just enable these people to buy some tool, or make some journey, that would give them several later benefits.

people, these costs would together amount to great burdens. If these burdens were great enough, as Scanlon rightly assumes, these people could reasonably reject the Triviality Principle.

Scanlon's view about this principle differs, however, in one way from mine. I believe that, when we assess moral principles, it is often relevant to consider what these principles would imply in cases that are merely possible. In my two imaginary examples, if we always followed the Triviality Principle, that would shorten everyone's life, and give everyone more pain. That is enough, I believe, to refute this principle. Scanlon seems to assume that, in assessing this principle, we should consider only actual cases. After asking the question quoted above, Scanlon writes:

I do not believe that this is so. It seems to me that we currently follow something close to this principle and that the occasions to which it applies seem sufficiently rare that the costs on each of us are not very significant.

No one could reasonably reject this principle, Scanlon assumes, because there are few actual cases in which anyone can act upon it.

Factual claims of this kind might be enough to defend our adoption of some policy. But they could not defend a moral principle. If we ought to prevent one person's great burden rather than any number of tiny burdens to others, that is always true. When some principle requires us to act in some way, this principle's acceptability cannot depend on whether such acts are often possible. We cannot defend some principle by claiming that, in the world as it is, there is no danger that too many people will act in the way that this principle requires.

We might, however, revise such a principle, so that it requires us to act in this way only if we know that the number of others acting in this way is not too large. Moral principles ought to take this form when it would be best if there were neither too few nor too many people acting in some way. For example, we might be required to join some rescue mission if we knew that more rescuers were needed, but required not to join if we knew that there was no such need, and that our joining would merely obstruct this mission.

On the Triviality Principle, we ought to save one person from a great burden whatever the number of tiny burdens that our act would impose on others. As we have seen, if people often acted in this way, that might be worse for everyone affected, including

those whom these acts would save from great burdens. This principle might be revised, so that it required us to act in this way only if we knew that the number of people acting in this way was below some threshold. Even in this form, I am inclined to believe, this principle is indefensible. But, since this revised principle has little importance, and the arguments against it raise difficult questions, I shall not give these arguments here.

## 5

Discussing his Individualist Restriction, Scanlon writes

This feature is central to the guiding idea of contractualism, and is also what enables it to provide a clear alternative to utilitarianism . . .<sup>19</sup>

Neither, I believe, is true.

Scanlon's guiding idea is that of justifiability to each person. This idea gives some support to Scanlon's Individualist Restriction. Our acts would be justifiable to each person, Scanlon plausibly assumes, if such acts are permitted by some principle that no one could reasonably reject. When we ask on what grounds anyone might reasonably reject some principle, it seems a plausible suggestion that each person's grounds for rejection are provided by the burdens that this principle would impose on *this* person, and by other such personal reasons. But this suggestion about grounds for rejection is not implied by the idea of justifiability to each person. It would be no less plausible to claim that, in rejecting some principle, each person could appeal to the burdens that this principle would impose not only on her, but also on other people. Scanlon could give up his Individualist Restriction without giving up, or in any way weakening, his idea of justifiability to each person.

Return to *Life Boat*, for example, in which we could save either White or five other people. Scanlon rightly claims that, in such cases, we ought to save the larger number. That claim could be justified to White. We could reasonably expect White to agree that, since everyone's life matters equally, our reasons to save the five morally outweigh our reason to save White. As Scanlon himself writes,

<sup>19</sup> 229.

any nonrejectable principle must direct an agent to recognize a positive reason for saving each person . . . It would be reasonable to reject a principle . . . that did not give positive weight to each person's life . . .<sup>20</sup>

Similar claims apply to cases that involve unequal benefits or burdens. Return to the case in which we could either give Black fifty more years of life, or give five more years to each of many other people – people who would all, without our help, die just as young as Black. We could reasonably expect Black to agree that the single benefit to her could be morally outweighed by some number of these lesser benefits to these other people.

Scanlon also believes that, by appealing to his Individualist Restriction, we can avoid some implausible utilitarian conclusions. This belief, I have argued, misdiagnoses how utilitarians reach these conclusions. Utilitarians go astray, not by adding together different people's benefits and burdens, but by rejecting all distributive principles. Given Scanlon's Individualist Restriction, as we have seen, his formula can lead to some conclusions that are at least as implausible, in part because they conflict with all plausible distributive principles.

Scanlon claims that, if he gave up his Individualist Restriction, his contractualist theory would cease to provide 'a clear alternative to utilitarianism'. That, I believe, is not so. Scanlon underestimates what his theory can achieve. If Scanlon dropped his Individualist Restriction, his formula could support various non-utilitarian principles. That would strengthen his theory, and make it provide a better alternative to utilitarianism.<sup>21</sup>

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<sup>20</sup> 233.

<sup>21</sup> Scanlon, I believe, should also give up his claim that his contractualism gives an account of wrongness itself. He should claim that, if acts are wrong in his contractualist sense, that makes these acts wrong in various non-contractualist senses. If he gave up his anti-consequentialist restriction, Scanlon could claim that his formula describes the single highest-level property that makes acts wrong in these other senses. Though this version of Scanlon's theory would not be constructivist, that would also make it stronger. Scanlon would allow that, in deciding whether to accept his theory, we could appeal to our beliefs about the wrongness of acts. When we apply Scanlon's Formula, we should bracket these beliefs. But we would here appeal to our beliefs about another question: that of what would

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be reasonable grounds for rejecting principles. As much of Scanlon's book shows, that would improve our moral reasoning. Scanlon also shows, I believe, that the most important questions are not about wrongness, but about reasons. I shall defend these claims in a book provisionally called *Wrongness, Rationality, and Reasons* (Oxford University Press, in preparation).