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Improving Scanlon's Contractualism

Scanlon's *What We Owe to Each Other* is, I believe, the best book on ethics published in the 20th Century. Scanlon proposes and defends one of the two best versions of contractualism, the other being a revised Kantian theory. Of Scanlon's several other achievements, the greatest seem to me the ways in which he has shown that the most fundamental normative truths are not about what is right or wrong but about normative reasons. Things go worse, for example, if they go in ways in which we all have stronger impartial reasons to want things to go, and morality matters because we have reasons not to act wrongly.

I shall now discuss some ways in which Scanlon could revise and extend his version of contractualism.

In *What We Owe to Each Other*, Scanlon claimed that, rather than describing the facts that can *make* acts wrong, his theory gives an account of wrongness itself, or of *what it is* for some act to be wrong. This claim, I believe, was a mistake.¹ According to one statement of

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

If Scanlon was here using 'wrong' in a Contractualist sense, to mean 'disallowed by such an unrejectable principle', he could claim that his formula gives an account of *what it is* for acts to be wrong in this Contractualist sense. But *Scanlon's Formula* would then be a concealed tautology, which told us only that acts are wrong in this Contractualist sense just when they are wrong in this sense. We could all accept this trivial claim, whatever our moral beliefs. Scanlon's claim should instead be that, if some act is disallowed by a principle that no one could reasonably reject, this fact makes this act wrong in one or more other, non-contractualist senses. Scanlon might for example claim

Editors's note: Since Derek Parfit sadly died on January 1st, 2017, only a few months after the symposium, he was not able to revise his symposium talk for publication. We are very grateful to Tim Scanlon for supplying a title for Parfit's paper and making some edits of a non-substantive nature, including a few footnotes and a list of cited works at the end. We would also like to thank Derek Parfit's literary executor, Jeff McMahan, for granting us permission to publish this version of Parfit's talk from the 2016 Lauener Symposium in Bern.

¹ See Parfit (2011) 213–215.

SF*: When some act is wrong in this Contractualist sense, that makes this act wrong in the justifiabilist, blameworthiness, and reactive-attitude senses.

These four senses of ‘wrong’ are all abbreviations of longer phrases. So this version of Scanlon’s *Formula* could be more fully stated as

SF**: When some act is disallowed by some principle that no one could reasonably reject, this fact makes this act unjustifiable to others, blameworthy, and an act that gives its agent reasons for remorse and gives others reasons for indignation.

Scanlon could not claim that when some act is wrong in his Contractualist sense, that is *the same* as being, or is *what it is* for this act to be, wrong in these other senses. Being disallowed by a principle that could not be reasonably rejected couldn’t be *what it is* for an act to be blameworthy, or what it is for an act to give its agent reasons for remorse and others reasons for indignation. These are different properties. But being disallowed by such a principle might be one of the highest level wrong-making properties under which other wrong-making properties can be subsumed. Scanlon has shown that, as well as having intuitive beliefs about which acts would be wrong, we have intuitive beliefs about what would be reasonable grounds for rejecting some moral principle. This is one way in which Scanlon has developed and improved some of our moral thinking. Scanlon, I believe, may now accept that his Contractualist theory should take this second, substantive, non-reductive form.²

I turn next to some of Scanlon’s claims about what would be such reasonable grounds for rejecting moral principles. According to what we can call Scanlon’s

Impersonalist Restriction: In rejecting some moral principle, we cannot appeal to claims about the impersonal goodness or badness of outcomes.

In Scanlon’s words, “impersonal values are not themselves grounds for reasonable rejection.”³ All reasons for rejecting principles, Scanlon also claims, must

² Scanlon writes: “I should have avoided describing contractualism as an account of the property of moral wrongness. [...] The claim ... can be dropped from my account without affecting the other claims I make for contractualism.” Scanlon (2004) 137. He also writes: “The fact that an action would cause harm may make it reasonable to reject a principle that would permit that action, and thus make that action wrong in the contractualist sense I am describing. It is also true that an action’s being wrong in this sense makes it morally wrong in the ... general sense of that term ...” (ibid. 136). For a longer discussion, see Scanlon (2007).

³ Scanlon (1998) 222.

be *personal*. Of those who appeal only to personal reasons, some believe that there is no sense in which outcomes can be impersonally good or bad. That is not Scanlon's view. Scanlon believes both that outcomes can be impersonally good or bad, and that we can have strong reasons to try to produce or prevent such outcomes.⁴

Scanlon gives, as one example, reasons provided by the suffering of animals. He writes: "... like the pain of humans, the pain of non-human animals is something we have reason to prevent and relieve, and failing to respond to this reason is a moral fault."⁵ Scanlon then imagines someone saying: If there are impersonal reasons of this kind, why should they not count as possible grounds for reasonably rejecting principles? He replies: "The contractualist formula is meant to describe one category of moral ideas: the requirements of 'what we owe to each other'. Reasons for rejecting a principle thus correspond to particular forms of concern that we owe to other individuals. By definition, impersonal reasons do not represent forms of such concern."⁶

Since Scanlon himself defines his Contractualist sense of 'wrong', he is entitled to claim that, when we ask which acts are in this sense wrong, we should not appeal to impersonal reasons, since by definition such reasons are irrelevant. But on the substantive reading of *Scanlon's Formula*, when certain acts are wrong in Scanlon's Contractualist sense, that makes them wrong in other senses. Scanlon could not say that, when we ask which acts are wrong in these other senses, claims about what is impersonally worse in reason-implying senses are *by definition* irrelevant.

This version of Scanlon's view could take either of two forms. If Scanlon keeps his *Impersonalist Restriction*, he might claim that, when certain acts are wrong in his Contractualist sense, that would often make these acts wrong in these other senses, but such acts might be justified if they would prevent things from going much worse in the reason-implying sense.

It would be better, I believe, if Scanlon drops his *Impersonalist Restriction*. On this version of Scanlon's view, when we ask whether we could reasonably reject some principle, we are allowed to appeal to our beliefs about the goodness or badness of outcomes. Scanlon could then make the wider claim that acts are wrong in the other senses just when, and in part because, these acts are wrong in Scanlon's Contractualist sense. If that were true, Scanlon's Contractualism

⁴ Scanlon (1998) 182.

⁵ Scanlon (1998) 181.

⁶ Scanlon (1998) 219.

would unify, and help to explain all of the more particular facts that can make acts wrong. That gives Scanlon a strong reason to make this wider claim.

If Scanlon allowed us to reject some principles by appealing to our beliefs about the badness of outcomes, that would not make Scanlon's theory Consequentialist. Of the facts that can make outcomes impersonally worse, many are facts about various effects on people's well-being. Scanlon could claim that, in most cases, we would have no need to appeal to claims about the badness of these outcomes, since we can appeal directly to these effects on people's well-being.

Suppose that some act would give small benefits to many other people, in a way that would impose a great burden on me. On Scanlon's view, I could reasonably reject any principle that would allow this great burden to be imposed on me. None of the other people could reasonably reject any principle which condemned such acts, since none of these people could claim that his being denied the small benefit gave him a stronger ground for reasonable rejection than my great burden would give me.

In such cases, the great burden imposed on me might make the outcome worse. But I would not need to appeal to this fact. I might also reasonably reject any such principle even if, because the small benefits would come to very many people, my being burdened would make the outcome better. As these remarks suggest, if Scanlon allowed us to appeal to claims about impersonal reasons, and the badness of outcomes, that would make little difference to much of the moral reasoning that his Contractualism describes.

There is, however, at least one important exception. When Scanlon asks what we owe to others, he intends these *others* to include all future people. In his words: "... contractualism provides no reason for saying that people who do not now exist but will exist in the future have no moral claims on us."⁷ He also writes: "... a restriction to presently existing human beings seems obviously too narrow."⁸ When we consider how our acts may affect future people, we face some new questions. Suppose that we and others in our community are choosing between two energy policies. What I shall call the *selfish* policy would be somewhat better for us, but would greatly lower the quality of people's lives more than a century from now. This fact, I believe, would give us strong reasons not to choose this policy, and may make this policy wrong. We may assume that this great lowering in the quality of life would be worse for the people who would later live. But that may not be so. These people's lives would be worth liv-

⁷ Scanlon (1998) 187.

⁸ Scanlon (1998) 186.

ing, and given the facts about human reproduction, if we had chosen the other, better policy, these particular future people would never have existed. It would have been other, different people who would have later lived and had a higher quality of life. The selfish policy would then be worse for no one.

This policy would be wrong, *Scanlon's Formula* implies, if this policy would be disallowed by some principle that no one could reasonably reject. Could these future people reasonably reject any principle which permitted us to choose this selfish policy? If all grounds for reasonable rejection should appeal to personal reasons, the answer seems to be No. These future people could not reject any such permissive principle by appealing to the burdens that this policy imposed on them. There are no such burdens, since these people would have lives worth living, and they would owe their existence to our choice of this policy. Nor could we claim that this principle could be reasonably rejected by the people who would have existed, and had a higher quality of life, if we had chosen the better policy. If we choose the selfish policy, these people would never be actual. When we apply *Scanlon's Formula*, we cannot defensibly appeal to claims about what could be reasonably rejected by people who are merely possible, and never actual. Since we cannot appeal to the *personal* reasons that would be had by people who *never* exist, we should appeal to the *impartial* reasons that are had by people who *do* exist. On this version of Scanlon's view, we could reasonably reject any principle that would permit the selfish policy, and other such policies, because these policies would make things go much worse. That is how Scanlonian Contractualism could, as he intends, apply to the acts with which we affect future people.

I shall end by discussing one other way in which Scanlon might revise his view. 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 and for other single people.

In Scanlon's words: "... the justifiability of a moral principle depends only on individuals' reasons for objecting to that principle and alternatives to it."⁹ We can also call such reasons *personal grounds* for rejecting some principle. The strength of these grounds depends in part on how great the burdens are that this principle's acceptance would or might impose on us. This strength may also depend on certain other facts, such as how badly off we are, and whether we are responsible for the fact that either we or others will have to bear certain burdens. Some reasonable personal grounds for rejecting principles, Scanlon

9 Scanlon (1998) 229.

adds, may have nothing to do with our well-being. I shall not discuss such grounds here.

Scanlon's *Individualist Restriction* is given some support by one of Scanlon's most appealing ideas, that of justifiability to *each* person. Since we are asking which are the principles that *no one* could reasonably reject, we must consider each person's grounds for rejecting some principle, and we can plausibly claim that these grounds are provided by this principle's implications for *this* person.

Scanlon also defends this claim in another way. Like Rawls, Scanlon intends his Contractualism to provide 'a clear account of the foundations of non-Utilitarian moral reasoning'.¹⁰ Act Utilitarians believe that it would always be right to impose great burdens on a few people, if we could thereby give small benefits to enough other people. In one of Scanlon's imagined cases, *Jones* has suffered an accident in the transmitter room of a television station. To save Jones from one 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.¹¹

If this broadcast was giving pleasure to enough people, Utilitarians would believe that we ought to let Jones have his hour of severe pain. Utilitarians reach such unacceptable conclusions, Scanlon suggests, because they mistakenly *add together* different people's benefits and burdens. By appealing to the *Individualist Restriction*, Scanlon writes, we can avoid such conclusions "in what seems, intuitively, to be the right way."¹² In his 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 ..."¹³

On the simplest form of Scanlon's *Individualist Restriction*, benefits to different people cannot ever be *morally summed*. In applying *Scanlon's Formula* to any two conflicting principles, we should compare only the strongest personal objection that any one person would have to one of these principles, and the strongest objection that anyone else would have to the other principle. We can ignore significantly weaker objections to some principle, whatever the number of people who would have these objections. In Scanlon's phrase, *the numbers do not count*.

¹⁰ Scanlon (1998) 267. He also writes that he is one of those "... who look to views such as contractualism specifically as ways of avoiding utilitarianism." (1998) 215.

¹¹ Scanlon (1998) 235.

¹² Scanlon (1998) 241.

¹³ Scanlon (1998) 230.

Scanlon qualifies this view in two ways. He suggests that, when different possible acts would impose equal burdens on different people, numbers can break ties, since we ought to impose such burdens on as few people as we can.¹⁴ Scanlon also suggests that, when one burden is not much smaller than another, the numbers count. To avoid these complications, I shall discuss cases in which we could either save one person from some great burden, or save many other people from *much* smaller burdens.

Scanlon's *Individualist Restriction* is not, I believe, the right way to avoid unacceptable Utilitarian conclusions. Scanlon misdiagnoses how Utilitarians reach these conclusions. Their mistake is not their belief that the numbers count, but their belief that it makes no moral difference how benefits and burdens are distributed between different people.

To illustrate this distinction, we can suppose that Jack and several other people are aged 25, and have life-shortening medical conditions. We are doctors, who must choose whom to treat. In *Case One*, the relevant facts are these:

- If we did nothing, Jack would live to the age of 30, and the other people would live to 70.
- If we treat Jack, he, like the others, will live to 70.
- If we treat the others, Jack will die at 30 but the others will live to 75.

Scanlon's view implies that we ought to give Jack his 40 more years of life, whatever the number of other people to whom we could instead give 5 more years. If the number of the other people would be very large, this view would, I believe, be too extreme. But it would be fairly plausible to claim that we ought to give Jack his 40 more years of life rather than giving 5 more years to each of eight, twelve, twenty, or even more of these other people.

Though *Scanlon's Formula* gives a fairly plausible answer here, it does not, I believe, support this answer in the right way. If we ought to treat Jack rather than these other people, that is not because we would be denying Jack the eight times greater benefit of 40 more years of life. It is because, if we don't give Jack this benefit, Jack would be much worse off than these other people, since Jack would die at 30 and the others would live to 70. To show this fact to be what matters, we can change this feature of this case. Suppose that, in *Case Two*, the relevant facts are these:

- If we did nothing, Jack and all the other people would live to only 30.
- If we treat Jack in one way, he will live to 70 but the others will live to only 30.
- If we treat Jack and the others in a different way, Jack and the others will all live to 35.

¹⁴ Scanlon (1998) 240.

On Scanlon's view, we ought to give Jack his 40 more years of life rather than giving 5 more years to Jack and to as many as a million of these other people. That is clearly false. And what makes it false is not merely that, compared with 40 more years, 5 *million* more years of life would be a vastly greater total sum of benefits. These benefits would also be more fairly distributed between different people. It would be clearly better if, rather than Jack's living to the age of 70 rather than 30, Jack and a million other people each live to 35 rather than 30. This second outcome would be better, I believe, even if these 5 extra years came to as few as seven, or six, or perhaps even fewer of these other people.

These cases show, I believe, that Scanlon ought to drop his *Individualist Restriction*.¹⁵ Rather than giving Jack 40 more years of life, we ought to give 5 more years to Jack and at least seven other people who, without these years, would die as young as Jack. For *Scanlon's Formula* to give the right answer in such cases, Scanlon must allow that these many other people could reasonably reject any principle that did not require us to give these benefits to them. Since the benefits to *each* of these other people of five more years would be much smaller than the benefit of forty years that we could give Jack, these other people must be allowed to appeal to the fact that, as well as being as badly off as Jack, if they die at 30, *they together* would receive a greater total sum of benefits, in significant amounts of five years per person. Each of these people must be allowed to appeal to this fact, speaking on behalf of this group.

As such cases also show, it is not only Utilitarianism that gives weight to the numbers of people who might receive benefits or burdens. So do all plausible distributive principles. Rather than greatly benefitting one person, we often ought to give much smaller benefits to each of many people who are just as badly off.

Scanlon claims that his *Individualist Restriction* is central to the guiding idea of Contractualism, and is also what enables it to provide a clear alternative to Utilitarianism.¹⁶ This claim implies that, if Scanlon dropped this restriction, Scanlon's view would cease to provide a clear alternative to Utilitarianism. But

¹⁵ These claims apply only to those cases in which both (1) the baseline is equal and (2) we can give much greater benefits to some people than to others. If we could give equal benefits to each person, as is often true, no one could reasonably reject a principle requiring us to give everyone such benefits. But cases in which (1) and (2) are true, though they are much less common, help us to see more clearly what is distinctive in the version of Scanlon's view that includes his *Individualist Restriction*.

¹⁶ Scanlon (1998) 229.

that is not so. Even without the *Individualist Restriction*, Scanlonian Contractualism would provide such an alternative.

Here is one of the many ways in which that is true. According to what we can call

The Contractualist Priority View: People have stronger moral claims, and stronger grounds to reject some moral principle, the worse off these people are,

Scanlon supposes we could either do something to relieve the pain of someone who has much pain, or do more to relieve the pain of someone who has little pain. In such a case, he writes, the fact that the first has more pain strengthens her claim to be given the lesser of these two benefits.¹⁷ As well as dropping his *Individualist Restriction*, Scanlon ought, I believe, to give more weight to this *Contractualist Priority View*.

I have now described four ways in which Scanlonian Contractualism could be developed further. Scanlon, I believe, should claim that, if acts are wrong in his contractualist sense, that makes them wrong in other senses. He should reject his *Impersonalist* and *Individualist Restrictions*, and he should return to a stronger version of his *Priority View*. These changes would all, I believe, strengthen what is already one of the best moral theories.

References

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¹⁷ He then writes: "... the way in which A's situation is worse strengthens her claim to have *something* done about her pain, even if it is less than could be done for someone else." Scanlon (1998) 227.