# Elims Contractualism Aff

## 1AC

### Framework

#### Moral theories must be able to explain why we care about right and wrong.

#### SCANLON 2K [T.M. Scanlon, “What We Owe to Each Other”, 2000, DDA]

A satisfactory moral theory needs to explain the reason-giving and motivating force of judgments of right and wrong. This is commonly referred to as the problem of explaining moral motivation. I will continue to use this familiar label, but I want to stress at the outset that it is misleading in two important respects. First, it suggests that the problem in question is one of understanding how people are motivated rather than of understanding the reasons they have. As explained in Chapter 1, I hold that the question of reasons is primary and that once the relevant reasons are understood there is no separate problem of motivation. Second, the term “moral motivation” suggests a problem about motivation, or reasons, for action: a problem of understanding a special form of motivation, or a special kind of reason, that is triggered when one decides that it would be wrong not to do some- thing, and can move one, even in the face of strong countervailing considerations, to do it. As I will argue below, this formulation seems to me to be overly narrow. But, taking the problem in this form for the moment, I want to examine some of the questions it raises and some of the problems involved in answering them. The task of explaining how the fact that an action would be wrong provides a reason not to do it can be seen, first, as a task of self-understanding: we want to understand the reasons we are responding to when we are moved by moral considerations. But there seems to be more at stake than mere interpretation of the reasons we take ourselves to have. Even from the point of view of those of us who already care about right and wrong, a mere portrait of what it is we care about may seem to give us less than what we want: what we want to know is not merely what we care about when we care about right and wrong but why this is something we must care about. This concern is magnified when we turn to consider others: it seems that an adequate account of the morality of right and wrong should explain not merely what those who care about it are moved by but also why its importance is something that everyone has strong reason to recognize. This might be put by saying that what the question “Why be moral?” calls for is not mere self-understanding but justification: an account of why we and others have compelling reason to be moral. But ‘justification’ is a misleading term for what is needed here. It is misleading to say that what those of us who already care about right and wrong are looking for in our own case is a justification, because this suggests that we think we should abandon our concern with right and wrong unless some additional ground for it can be provided. It is also misleading to say that we are looking for a way of justifying the morality of right and wrong to someone who does not care about it—an “amoralist”—because this suggests that what we are looking for is an argument that begins from something to which such a person must be already committed and shows that anyone who accepts this starting point must recognize the authority of the morality of right and wrong. I myself doubt whether such a justification can always be provided. What we can provide, and what seems to me sufficient to answer our reasonable concerns, is a fuller explanation of the reasons for action that moral conclusions supply. In giving this explanation, however, we must address the problem of the moral “must”—the seeming necessity of moral demands—in two slightly different forms. The fact that an action would be wrong constitutes sufficient reason not to do it (almost?) no matter what other considerations there might be in its favor. If there are circumstances in which an agent could have sufficient reason to do something that he or she knew to be wrong, these are at best very rare. But if right and wrong always or even almost always take precedence over other values, this is something that requires explanation. How can it make sense, if we recognize values other than right and wrong and take them seriously, to claim that reasons of this one kind have priority over all the rest? I will refer to this as the problem of the priority of right and wrong over other values. This is the first way in which moral reasons seem to have a special force that needs to be explained. The second concerns our attitude toward people who are not moved by considerations of right and wrong. Failure to see the reason-giving force of such considerations strikes us as a particularly serious fault. This failure is not, in my view, a case of irrationality. (It could be called this only in the overextended sense in which it is irrational to fail to respond to any strong reason.) Nonetheless, failing to be moved by the fact that an action would be wrong seems quite different from merely being deaf to the appeal of reasons of some other kind, such as failing to see the value of art or literature, say, or the value of great works of nature. It strikes us as a more serious and important kind of fault. This is not just a difference in moral importance. It is no doubt trivially true that moral failings are more serious, from a moral point of view, than nonmoral failings. But it also seems true, in a more general sense which requires explanation, that there is a difference between a lack of concern with considerations of right and wrong and a failure to respond to reasons of other kinds, and that the former is a more serious failing in this more general sense, one with particularly grave implications. I will refer to the problem of explaining this difference as the problem of explaining the special importance of considerations of right and wrong. The problem of priority is a problem of explaining how considerations of right and wrong can play a certain role in the thinking of an agent. The problem of importance concerns the significance, for a third party, of the fact that an agent does or does not give moral considerations this role. Taken together, these two problems capture much of the concern that I mentioned above in discussing the idea of the moral “must.” I do not believe that an adequate answer to either of them needs to take the form of a justification of morality, but they are two related features of our notions of right and wrong that any adequate account of moral motivation must explain.

#### Contractualism gives the best account for moral motivation.

#### SCANLON 2 [T.M. Scanlon, “What We Owe to Each Other”, 2000, DDA]

Contractualism offers such an account. It holds that an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.8 I will defer discussion of the normative content of this account until later chapters. It should at least be clear, however, that it overlaps to a significant degree with Mill’s definition of wrongness while not coinciding with it exactly. If we all have good reason to want acts of a certain kind not to be performed, then it is likely that any principles allowing such acts could be reasonably rejected, hence that they will be wrong. But it does not follow that this will be so in every case in which a greater balance of happiness would result from such acts’ being punished. According to contractualism, thinking about right and wrong is in one respect like thinking about the civil and criminal law: it involves thinking about how there is reason to want people in general to go about deciding what to do. But thinking about right and wrong differs from thinking about law in a number of crucial ways. One of these is that the reasons that guide us in thinking about what the law should be are commonly very different from the “sanction” that moves us to obey it (whether this is fear of punishment or a sense of obligation). In the case of the morality of right and wrong, however, these two kinds of reasons flow from the same more general reason: the reason we have to live with others on terms that they could not reasonably reject insofar as they also are motivated by this ideal. Because we have this reason we have reason to attend to the question of which actions are right and which wrong, that is, to try to determine what would be allowed by principles that others could not reasonably reject, and we also have reason to govern our practical thought and our conduct in the ways that these principles require. This account of moral motivation has much in common with another idea mentioned by Mill. In the chapter of Utilitarianism devoted to moral motivation Mill does not appeal directly to the substantive value of “the greatest happiness of the greatest number,” but invokes instead what he calls “the social feelings of mankind; the desire to be in unity with our fellow creatures.”9 The ideal to which contractualism appeals—that of being able to justify your actions to others on grounds that they could not reasonably reject—is very similar to Mill’s idea of “unity.” One important difference, however, is that Mill takes himself to be describing a sentiment—a natural feature of human psychology—which explains how the motivation to act in accordance with utilitarianism could arise on some basis other than social conditioning. By contrast, on the account I am offering there is no need to appeal to a special psychological element to explain how a person could be moved to avoid an action by the thought that any principle allowing it would be one that others could reasonably reject. This is adequately explained by the fact that people have reason to want to act in ways that could be justified to others, together with the fact that when a rational person recognizes something as a reason we do not need a further explanation of how he or she could be moved to act on it.

#### Additional Reasons to Prefer:

#### 1. Moral values have a special significance that only contractualism can account for.

#### SCANLON 3 [T.M. Scanlon, “What We Owe to Each Other”, 2000, DDA]

In our assessments of ourselves and others, being “left cold” by morality counts as a more important fault than merely failing to see the force of reasons of some other kind. The task of this section is to show how contractualism can explain this importance. Let me begin by considering some of the things that we might say about amoralists, who can understand the difference between right and wrong but do not see, and perhaps even deny, that it is anything they have reason to care about. First, unless their situation differs from ours in ways that are morally relevant, we must say that the moral reasons that apply to us apply to these people as well. This much is required by what I called, in Chapter 1, the universality of reason judgments. Looked at in this way, their case is quite different from that of people who “have different tastes,” such as those who do not enjoy skiing or do not like the taste of bananas. In these cases, the main point of the activities in question is a certain kind of enjoyment; so people who do not get this enjoyment from the activities lack reasons to engage in them. But morality is not aimed at enjoyment, so the reasons to give it a place in one’s life are not conditional in this way. Failure to care about right and wrong does not make a person irrational in the sense in which I am using that word, but a person who is left cold by moral considerations does fail to appreciate reasons that apply to him or her. Just saying this, however, does not seem to capture the seriousness of such a failure. There are many other cases of people who fail to see the force of certain reasons, such as people who fail to see the value of science or of historical understanding, and people who think that the Grand Canyon is just a big ditch that might as well be filled in if that proves to be economically advantageous. All these people can be said to be “missing something” in at least two senses: there is a category of reasons, a form of value, that they are failing to appreciate; and their lives are poorer because of this lack. But it would understate our reaction to an amoralist to say only that he or she is “missing something” in these senses. So we need a further explanation. I should emphasize that what I am trying to explain here is not the special stringency of moral considerations—some special rational force—that moral reasons have over the agents to whom they apply, but rather the special significance for us of someone’s failing to be moved by these reasons.12 To understand this significance it will be helpful to return to a point made at the end of Chapter 1, that the reasons that a person recognizes are important to us because they affect the range of relations we can have with that person. In many cases these effects are quite local. If someone does not see the point of music, or of chess, or does not appreciate the grandeur of nature, then one cannot discuss these things with him or enjoy them together. “Blind spots” such as these may stand in the way of certain relations with a person, but they leave much of life untouched. A person who cannot share our enthusiasm for one or another valuable pursuit can still be a good neighbor, co-worker, or even friend. The effects of a failure to be moved by considerations of right and wrong are not, however, confined in this way. This failure makes a more fundamental difference because what is in question is not a shared appreciation of some external value but rather the person’s attitude toward us— specifically, a failure to see why the justifiability of his or her actions to us should be of any importance.13 Moreover, this attitude includes not only us but everyone else as well, since the amoralist does not think that anyone is owed the consideration that morality describes just in virtue of being a person. People with a consuming interest in one activity often feel that a large gulf separates them from those who cannot see the point or value of that pursuit. The gulf that some religious people feel separates them from unbelievers may be an extreme case of this. But even this feeling of distance has the personal character I have just mentioned only if the believer feels that denying his religion involves denying his standing as a person and that of others as well. Conceivably, some believers may see things this way. What I am suggesting is that almost all of us have reason to see the gulf separating us from an “amoralist” as having this character, and that this accounts for the special importance we attach to seeing the force of moral considerations.14

#### 2. Universality dictates that individuals give others’ moral reasons equal weight in their moral reasoning.

#### SCANLON 4 [T.M. Scanlon, “What We Owe to Each Other”, 2000, DDA]

Different people can have different reasons for action, because of differences in their circumstances, their interests, and their intentions. People can also disagree about reasons, and I have been defending the view that people can be mistaken about their reasons for action—not just mistaken about what will promote their ends, but mistaken in having those ends to begin with. Attempts to claim this kind of objectivity for judgments about reasons are sometimes viewed with suspicion, on the ground that they are driven by a desire to claim the authority to criticize others and to tell them what to do. I therefore want to say something here about the diverse reasons we have for caring about what reasons other people have and about what reasons they take themselves to have. What should be said first is that there is fundamentally no question of why we should be concerned with the reasons that other people have. We must be so concerned, insofar as we take ourselves to have any reasons at all, since any judgment about our own reasons entails claims about the reasons that others have or would have in certain circumstances. I have already made this point in passing in discussing our reasons for resisting the idea that all reasons have subjective conditions, but it is important enough to merit fuller discussion. Suppose Jane looks out her window after a snowstorm and sees her neighbor shoveling his driveway. The snow is heavy. He is already panting, and he still has a long way to go. Jane sees that he could use help, and she takes this as a reason to get her shovel and go out. Even though she may not make them explicit to herself at the time, there are certain features of her neighbor’s situation and her own in virtue of which she takes this consideration to be a reason. Perhaps she thinks that she has a reason to help only because she cares about her neighbor, or only because she would enjoy helping, or only because she expects to need his help in the future and wants to make it harder for him to refuse. On the other hand, she may be a strict moralist who thinks that she has a reason to provide such help whether she feels like it or not. Leaving this question open, let G be the set of factors, whatever they may be, in virtue of which Jane takes herself to have reason to help her neighbor. Since she accepts the judgment that, given G, she has reason to help her neighbor, Jane is also committed to the view that anyone else who stands in the relation described by G to someone in need of help has reason to provide it. This is an instance of what I will call the universality of reason judgments. This is not a moral principle; Jane may be moved by moral considerations or she may not.62 It is not even a substantive claim about the considerations that count as reasons, since the contents of G have been left entirely open. In particular, the universality of reason judgments is not something that should be a matter of controversy between those who hold, and those who deny, that all our reasons, or certain of them, have subjective conditions. Even if all reasons are based on desires, the universality of reason judgments still holds that if I have a reason to do something because it will satisfy my desire, then anyone else who has that same desire (and whose situation is like mine in other relevant respects) also has this reason. The universality of reason judgments is a formal consequence of the fact that taking something to be a reason for acting is not a mere pro-attitude toward some action, but rather a judgment that takes certain considerations as sufficient grounds for its conclusion. Whenever we make judgments about our own reasons, we are committed to claims about the reasons that other people have, or would have under certain circumstances. We thus have wholly self-regarding reasons for having views about the correctness or incorrectness of the judgments people make about the reasons they have, since these judgments imply conclusions about the reasons we have. So situations can arise in which, if their judgments about their reasons for action are correct, our judgments about our own reasons must be mistaken. In order for such conflicts to be real, both parties must be making judgments about the same thing: for example, about whether certain considerations do in fact count in favor of a given attitude for a person in a certain situation. This means that they must be talking about the same attitude and that they must be employing similar sets of evaluative categories.

add Taurek arg for contractualism

## Extra

#### Two requirements to explain moral motivation

Attempts to explain how the fact that an action is wrong provides a reason not to do it face a difficult dilemma. Understood in one way, the answer is obvious: the reason not to do the action is just that it is wrong. But this is surely not the kind of answer that is wanted: it simply takes the reason-giving force of moral considerations for granted. Suppose, on the other hand, that we were to appeal to some clearly nonmoral reason, such as that people have reason to be morally good because, taking into account the effort that deception requires, the likelihood of being found out, and the costs of social ostracism, it is in their self-interest to be moral. This account might supply a reason for doing the right thing, but it would not be the kind of reason that we suppose a moral person first and foremost to be moved by. I will refer to this as Prichard’s dilemma.1 So a satisfactory answer to our question must not, on the one hand, merely say that the fact that an action is wrong is a reason not to do it; but it must, on the other hand, provide an account of the reason not to do it that we can see to be intimately connected with what it is to be wrong. Answers can thus be arrayed along one dimension according to their evident moral content, ranging from those that appeal to what seem most obviously to be moral considerations (thus running the risk of triviality) to those having the least connection with moral notions (thus running the risk of seeming to offer implausibly external incentives for being moral).

#### Framework net benefit: prefer substantive accounts of morality over formal accounts of morality.

#### SCANLON 2K [T.M. Scanlon, “What We Owe to Each Other”, 2000, DDA]

Explanations of the importance of morality and its reason-giving force can also be compared along another dimension, according to their degree of formality or, on the other hand, of substantive content. The strategy of formal explanations is to appeal to considerations that are as far as possible independent of the appeal of any particular ends. Kant’s theory is a leading example insofar as he undertakes to show that anyone who regards him- or herself as a rational agent is commit- ted to recognizing the authority of the Categorical Imperative. Habermas also appears to follow a formal strategy insofar as he argues that valid moral principles can be derived in argument following rules that must be presupposed by anyone who undertakes to engage in argument at all.2 The alternative strategy is to explain the reason-giving force of moral judgments by characterizing more fully, in substantive terms, the particular form of value that we respond to in acting rightly and violate by doing what is wrong. The aim is to make clearer what this particular form of value is and to make its appeal more apparent. Alasdair MacIntyre has observed, for example, that the Christian version of Aristotelian morality gave morality a twofold point and purpose: to say what will lead to the attainment of man’s true end, and what is required by God’s law.3 These amount, in the terms I am using here, to two substantive accounts of the reason-giving force of morality. MacIntyre contrasts them with what he calls the Enlightenment project of grounding moral requirements in a conception of reason that dispenses both with the idea of divine authority and with that of a distinctive human telos. Insofar as it appeals only to a conception of rationality rather than to any specific good, this is an example of what I am calling a formal strategy. (I leave aside the question of whether this was the “Enlightenment project” and whether it is, as MacIntyre argues, unrealizable.) Formal accounts have been attractive because it has seemed that the force and inescapability of the moral “must” would be well explained by showing that moral requirements are also requirements of rationality, and not dependent on the appeal of any particular good. But although showing this might provide the secure basis that some have sought for the demand that everyone must care about morality, it does not give a very satisfactory description of what is wrong with a person who fails to [care about morality] do so. The special force of moral requirements seems quite different from that of, say, principles of logic, even if both are, in some sense, “inescapable.” And the fault involved in failing to be moved by moral requirements does not seem to be a form of incoherence. For these reasons, looking for a substantive account seems to me a more promising strategy. The main difficulty for such accounts is that it is not clear that they can give sufficiently strong answers to the questions of importance and priority. Once we identify one particular substantive value as the source of moral reasons it may be difficult to explain why that value should take precedence over all others, and why it is a value that, more than any other, everyone must recognize. This difficulty has not seemed insuperable, however, and in fact the accounts of morality that have drawn the widest support have generally been substantive ones. The ideas of God’s will and the human telos, for example, seemed to many to provide successful accounts of morality because they seemed to have the necessary priority and importance. (And there are of course many who think that if these beliefs are lost then no adequate basis for morality can be found.)

There is clearly something right about this account. Even on a nonutilitarian view, the idea that an action is of a kind that there is reason to have discouraged is surely not unrelated to the idea of its being wrong. The challenge is to formulate this relation correctly and to spell out how believing an act to be wrong is connected to seeing a reason not to perform it. The fact that it would be a good thing if people were discouraged from such actions by threat of legal punishment and social disapproval, or by an ingrained tendency to feel disapproval toward themselves, could provide a reason to acquire such a tendency, but that does not amount to a reason not to so act. What we need to do, then, is to explain more clearly how the idea that an act is wrong flows from the idea that there is an objection of a certain kind to people’s being allowed to perform such actions, and we need to do this in a way that makes clear how an act’s being wrong in the sense described can provide a reason not to do it.

The reason which contractualism emphasizes, the reason we have to want to be able to justify our actions to others on grounds that they (if similarly motivated) could not reasonably reject, must be distinguished from the reasons we often have for wanting to be able to justify our actions to others on grounds that they actually do or will accept. It would be pleasant to live in actual harmony with others and to have them approve of the way we behave toward them, and it is unpleasant to be in conflict with those around us and to suffer their disapproval. But the appeal of actual agreement cannot be the motivational basis of morality, since there are obviously cases in which acting morally re- quires one to resist the prevailing consensus about what is and is not justified. If, for example, the people who are the victims of one’s action are fully convinced that their interests are much less important than those of others, they may be quite happy with, and even grateful for, much less than is their due. But it does not follow from the fact that they (and others) accept your action as justified that that action is morally correct.

Actual agreement with those around us is not only something that is often personally desirable; it is sometimes morally significant as well. There are many cases in which morality directs us to seek consensus or to secure the permission of others before acting. But where actual agreement is morally significant this reflects a particular substantive judgment within morality, and the significance of this kind of agreement should be clearly distinguished from the ideal of hypothetical agreement which contractualism takes to be the basis of our thinking about right and wrong.

#### Also, prefer this account of moral motivation:

Why accept this account of moral motivation? I accept it, first, because it seems to me to be phenomenologically accurate. When I reflect on the reason that the wrongness of an action seems to supply not to do it, the best description of this reason I can come up with has to do with the relation to others that such acts would put me in: the sense that others could reasonably object to what I do (whether or not they would actually do so). Second, as I will argue more fully below, this account seems to offer the right kind of response to Prichard’s dilemma, by describing an ideal of relations with others which is clearly connected with the content of morality and, at the same time, has strong appeal when viewed apart from moral requirements.

Third, the ideal of justifiability to others plays a large enough role in our practical reasoning to enable it to account for the complexities of “moral motivation.” As I mentioned at the beginning of this chapter, moral motivation is often discussed as if it were solely a matter of motivation to act—a source of motivation that is triggered by the conclusion that acting in a certain way would be morally wrong and then weighs against competing motives (like the sanction that is attached to violating the law). This “sanction model” is false to the facts of moral experience. “Being moral” in the sense described by the morality of right and wrong involves not just being moved to avoid certain actions “because they would be wrong,” but also being moved by more concrete considerations such as “she’s counting on me” or “he needs my help” or “doing that would put them in danger.” A morally good person is sometimes moved by “the sense of duty” but more often will be moved directly by these more concrete considerations, without the need to think that “it would be wrong” to do otherwise. The latter thought is more likely to come to the fore as a motivating consideration in cases in which we have failed to do what we ought or are feeling tempted to do so.

The contractualist account can explain these facts about moral motivation, because the source of motivation that it identifies—the ideal of justifiability to others—does not figure merely as a “sanction” that is triggered when we have concluded that an action would be wrong. It also provides a higher-order reason to shape our process of practical thinking in the ways that are necessary to make it one that others could reasonably be asked to license us to use. Three features of this “shaping” deserve mention here: it can be seen in both positive and negative aspects, and its function is a dynamic one.

First, positively, since others could reasonably refuse to license us to decide what to do in a way that gave concrete factors such as those listed above no weight, the aim of justifiability to others gives us reason to recognize these considerations as ones that are generally relevant, and are in some circumstances compelling reasons to act.

Second, negatively, “being moral” involves seeing certain considerations as providing no justification for action in some situations even though they involve elements which, in other contexts, would be relevant. The fact that it would be slightly inconvenient for me to keep a promise should be excluded as a reason for not doing so. Even if I am in great need of money to complete my life project, this gives me no reason to hasten the death of my rich uncle or even to hope that, flourishing and happy at seventy-three, he will soon be felled by a heart attack. Against this, it might be claimed that I do have such reasons and that what happens in these cases is that I conclude that an action (breaking the promise or hiding my uncle’s medicine) would be wrong and that the normative consequences of this conclusion then outweigh the very real reasons I have to do it. But this does not seem to me, intuitively, to be correct. It does not seem true even of most of us, let alone of a person who was fully moved by moral reasons, that the moral motivation not to act wrongly has to hold in check, by out- weighing, all these opposing considerations. It is, phenomenologically, much more plausible to suppose that, certainly for the fully moral person and even for most of us much of the time, these considerations are excluded from consideration well before the stage at which we decide what to do. Being moral involves seeing reason to exclude some considerations from the realm of relevant reasons (under certain conditions) just as it involves reasons for including others.10 The contractualist account can explain this fact, since these considerations are ones that others could reasonably refuse to license us to count as reasons.

Contractualism can also explain why the motive of “not acting wrongly” plays a more prominent role in cases in which we act badly or are tempted to do so. The reason that contractualism sees as basic to moral motivation applies in the first instance to our overall practice of practical reasoning—it is a reason to govern ourselves in a way that others could not reasonably refuse to license. The reason we have to avoid a course of action that we believe to be wrong is one of the many more specific reasons that flow from this, since an action is wrong just in case it would not be allowed by any system of governance that meets this standard. When one has reached the conclusion that a course of action would be wrong but is tempted to pursue it nonetheless, the considerations that one finds tempting are ones that have been excluded or overridden at an earlier stage—that is, they have been ruled out as reasons insofar as one is going to govern oneself in a way that others could not reasonably reject. What one is asking in such a case is therefore how much one should care about living up to this ideal, and this question thus presents itself in the form: How much weight should I give to the fact that doing this would be wrong? Cases of this kind are all too familiar. What I am suggesting, however, is that their familiarity (and drama) should not distract us from the existence of many other cases that do not take this form because our acceptance of the aim of justifiability to others has led us to set these potentially competing reasons aside conclusively at an earlier stage in our deliberation, or even to exclude them from consideration altogether, so that they do not even occur to us as potential reasons which then need to be ruled out.

Third, and finally, the “shaping” role of the aim of justifiability to others is a dynamic one. There is no fixed list of “morally relevant considerations” or of reasons that are “morally excluded.” The aim of justifiability to others moves us to work out a system of justification that meets its demands, and this leads to a continuing process of revising and refining our conception of the reasons that are relevant and those that are morally excluded in certain contexts. I will describe this process more fully in the chapters ahead, but what I will describe is a continuing process, not a fixed list of results.11

To summarize, I have so far claimed that contractualism offers an account that accurately describes moral motivation as many of us experience it, and that it can account for the diversity of moral reasons and for the diverse roles that moral motivation plays in our practical thought. I have also claimed, but not yet shown, that it provides a plausible response to Prichard’s dilemma. I will return to this claim in the following sections, where I will argue that contractualism can also explain the special importance of the morality of right and wrong and its priority over other values.