Contractualism Reading

Scanlon, 2000

Scanlon, T. M. (2000) What We Owe to Each Other. London, England: Belknap Press, pp. 147-247.

Wallace, 2002

Wallace, R. J. (2002) "Scanlon's Contractualism," Ethics, 112(3), pp. 429-470.

- "The general task that Scanlon sets himself [in chapter 4] is to [...] show why facts about the morality of right and wrong provide us with reasons for action."
    - "Such an account must illuminate both the priority and importance of moral reasons [and] must avoid getting impaled on the horns of Prichard's dilemma."
    - "Scanlon [... develops] a substantive account of the reason-giving force of morality [in which he] characterise[s] in substantive terms the particular kind of value that people respond to in acting rightly and that they violate when they do what is wrong."
    - On Scanlon's account "[t]he substantive value that is realised by moral behaviour consists in a certain kind of relation to one's fellow humans". "Scanlon's argument is that this is a from of relationship whose concrete positive value we can appreciate and affirm through reflection".
    - "Scanlon's treatment of [the problem of] importance is comparatively straightforward. The question to be answered is why the failure to be moved by moral considerations strikes us as a specially significant kind of shortcoming". By contractualist lights "to lack moral concern is to fail to see any need to justify oneself to those who are potentially affected by one's behaviour, something that is tantamount to the failure to appreciate their value as persons". Presumably this strikes us as significant because we take our personhood to be significant.
        - That the importance of moral reasons, by contractualist lights, is contingent on our taking our personhood to be significant seems to pose no threat to Scanlon's argument.
    - The problem of priority is about "the capacity of [moral] considerations to prevail in practical reflection". "Scanlon proposes a three part strategy for establishing that moral considerations have priority [...]. The first stage is to argue that the morality of right and wrong can itself make room for the pursuit of individual projects, insofar as it would be reasonable to reject principles that do not allow for such pursuits [...] The second and third stages [... point] to the "great importance" of the value of mutual recognition [...] and to the idea that personal projects themselves have a "built-in sensitivity to the demands of right and wrong"."
        - Wallace appears skeptical about the second stage of this argument, in which Scanlon appeals to the importance of moral considerations in explaining their priority, and the third stage of this argument, in which Scanlon suggests that non-moral values have a built-in sensitivity to the demands of morality.
        - In the second stage, Scanlon appears to suggest that, upon reflection, we will find that the value to us of standing in relationships of mutual recognition is so great as to ground our affording moral considerations (which steer us to acting morally hence to standing in such relationships) priority in practical deliberation. Wallace is worried that this response does not do enough to illuminate the priority of moral considerations since the problem of priority is essentially comparative and any contrast between moral considerations and non-moral considerations has been left by Scanlon to the reader as an exercise of reflection. Further, the value of standing in relationships of mutual recognition "is rather bloodless, detached as it is from such tangible benefits as warmth and understanding and human emotional support" compared to the value, for example, of friendship or familial love. If we were to afford deliberative priority to one set of considerations, it seems that we ought to afford it to those that flow from the more "full" non-moral values than to those that flow from the bloodless value of relationships of mutual recognition. "The explanation of moral reasons in terms of mutual recognition seems to invite the question of priority rather than to settle it".
        - Wallace argues that a more convincing contractualist response to the problem of priority is that our projects are important to us because they contribute to making our lives worthwhile or meaningful, and the same is true of relationships of mutual recognition which we stand in when we act morally.
        - In the third stage, Scanlon illustrates the "built-in sensitivity" of non-moral values to the demands of morality with the example of friendship. Scanlon argues that a person treats another as a friend only if the former also treats the latter as a person to whom justification is owed qua person. A person who recognises that justification is owed to friends qua persons, Scanlon seems to think, must recognise that justification is also owed to non-

friends qua persons, hence must recognise the force of moral demands. Wallace is skeptical about this latter claim. Scanlon does not make sufficiently clear why a person who recognises that justification is owed to friends qua persons must recognise that it is also owed to non-friends qua persons.

- Wallace argues that "the appeal to mutual recognition does not seem [...] persuasive as a general account of the reason-giving force of morality." Because the virtuous agent is often moved by concrete considerations like "he needs my help" rather than by considerations that appeal to the value of relationships of mutual recognition like "if I act otherwise I could not justify it to him", that our reasons for acting rightly flow from this value seems "false to the phenomenology of moral deliberation and action".
  - Scanlon's response that the value of mutual recognition "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" appears to suggest that our processes of moral deliberation are a form of false consciousness. Wallace is not explicit about the difficulties with such a view.
  - Wallace frames moral deliberation somewhat differently. According to Wallace, the reason-giving force of "concrete considerations" derives from the value of relationships of mutual recognition. In other words, we have reason to act fairly because we have reason to act justifiably (and we could not justify acting unfairly), and we have reason to act justifiably because to act justifiably is to stand in relationships of mutual recognition to others and such relationships are the appropriate sort of relationship between persons. This derivation of the reason-giving force of concrete considerations is "internalised" and does not become explicit in our moral deliberations. This account of moral deliberation does not depend on "the application of contractualist reasoning in second-order reflection about our processes of deliberation themselves".

- "Scanlon [...] emphasises that morality as it is conventionally understood includes a plurality of normative domains [such as] the values of friendship, parenthood, achievement, and sex. [...] But the fragmentation that Scanlon detects within the broader moral realm threatens to bleed over into the central domain of right and wrong that is his primary concern. If morality writ large represents a hodgepodge of values and ideals, how can we be certain that the morality of right and wrong exhibits the unity of a single subject matter?"
  - Wallace considers the following challenge to the unity of the morality of right and wrong. Wallace "question[s] whether there is any unified, general story to tell either about what makes actions right and wrong or about what gives us reason to act accordingly". On Scanlon's account, concepts such as suffering, fairness, loyalty, need, and help "help us to understand which candidate principles it would be reasonable to reject" hence "are often necessary to explain what makes particular actions right and wrong". But it may be objected that "[w]hat really guides normative reflection [...] is not our sense of the conditions under which candidate principles could reasonably be rejected but, rather, our prior understanding of the concrete values to which [concepts such as suffering, fairness, loyalty, need and help] refer." In other words, actions are wrong, for example, simply because they aim to inflict gratuitous and unwanted suffering on a person and not because they so aim and are therefore unjustifiable. Then, "since our grasp of the relevant reasons is prior to and independent of the idea that corresponding principles could reasonably be rejected, that idea cannot be said to play a constitutive role in determining what it is [...] to be wrong". In other words, it is not justifiability that makes an act right or wrong, but these other "thick" concepts.
  - One implication of the fragmentation of the morality of right and wrong is that there is "no coherent normative domain that is specially concerned with moral right and wrong". Wallace argues that this is not implausible, since our sense that there is such a domain may be "a historical relic—a remnant, perhaps, of religious attitudes that once made adherence to a selected subset of norms seem a matter of particular urgency".

- One reason for maintaining the unity of the morality of right and wrong is that, as Scanlon believes, "contractualism provides an account of moral motivation that is uniquely true to the phenomenology of moral experience." This suggests that our motivation for acting morally is best understood as our responding to the value of acting justifiably, i.e. of standing in relationships of mutual recognition. If instead, the morality of right and wrong only appeared to be and was not really a unified moral domain, there is no plausible explanation of how we have reason to act rightly.

- A second reason for maintaining the unity of the morality of right and wrong is that moral arguments that acts are right or wrong "seem to establish that an action is wrong just when, and just because, they show that so acting could not be justified to others". In other words, on inspection of the moral arguments we make for the rightness or wrongness of acts in concrete cases, we find that these arguments in fact argue that such acts are right precisely iff and because they are justifiable.
  - "Scanlon might maintain that we do not really have a grip on the question of how properly to respond to the value of assurance if we abstract from the question of whether this value provides a reasonable basis for rejecting candidate principles for the general regulation of behaviour."

- A third reason for maintaining the unity of the morality of right and wrong is that the morality of right and wrong "has the job of spelling out [...] what we owe to others in virtue of their standing as persons". This constitutes reason for thinking

that the morality of right and wrong is a unified normative domain since its diverse demands can be understood as "hang[ing] together as responses to a single central value.""

Stratton-Lake, 2003

Stratton-Lake, P. (2003) "Scanlon's Contractualism and the Redundancy Objection," Analysis, 63(1), pp. 70-76.

- Stratton-Lake offers the "what wrongness is" response to the redundancy objection, raises the "new and improved" redundancy objection, and then suggests that Scanlon can and should respond by abandoning the reason-giving force of wrongness. Ridge (2001) offers the "agent-relative" response to the "old" redundancy objection. Ridge (2003) offers the "agent-relative" response to the "new and improved" redundancy objection.
- Under Scanlon's contractualist mechanism for determining whether an act is right or wrong, an act X is wrong in circumstances C if each set of principles P which permit X in C could be reasonably rejected because it so permits. "The basic idea [of the redundancy objection] is that whenever principles allowing an action are reasonably rejectable because such actions have feature F, such actions are wrong simply in virtue of having F and not because their having F makes principles allowing them reasonably rejectable." (Ridge, 2001, pp. 472-473)
  - More fully spelled out, if some reason R is sufficient for rejecting any set of principles P that permit act X in circumstances C, it is natural to suppose that R is sufficient to explain the wrongness of X in C, i.e. that R is the grounds of the wrongness of X in C. It would be odd to think that X in C is wrong because of R and that X in C is wrong because any set of principles permitting R in C could be reasonably rejected. Then, X in C is wrong not because such principles could be reasonably rejected, i.e. an act's being wrong is not because of its being unjustifiable.
- Stratton-Lake argues that "Scanlon's [contractualist mechanism for determining rightness and wrongness of actions] is not supposed to tell us what makes certain actions morally wrong, but rather to tell us what it is for these actions to be morally wrong. The principle does not, therefore, specify the ground of moral wrongness, but the nature of moral wrongness."
  - Under this interpretation, if some reason R is sufficient for rejecting any set of principles P that permit act X in circumstances C, R constitutes the grounds of the wrongness of X in C, and the wrongness of X in C is the fact that any such set of principles could be reasonably rejected. Then, the fact that any such set of principles could be reasonably rejected does not constitute grounds for the wrongness of X in C. The objection that the contractualist mechanism (implausibly) offers redundant grounds for the wrongness of X in C does not succeed.
- Stratton-Lake argues that Scanlon's contractualism, under this interpretation remains redundant in the sense that it offers a redundant reason for acting rightly. Scanlon holds that the wrongness of an act supplies reason not to so act. Then under this interpretation, that any set of principles that permit an act could be reasonably rejected supplies reason not to so act. It is natural to suppose also that the concrete considerations that make an act wrong, for example, that it is unfair or vicious, supply reason not to so act. It would be odd to think that we have these two sorts of reasons not to act wrongly. Then, it seems that the reason supplied by the fact that some act is not justifiable is redundant.
  - Stratton-Lake suggests that the best strategy to escape this redundancy is to abandon the reason-giving force of wrongness, i.e. the claim that an act's unjustifiability supplies reason not to so act. Then, our reasons for not acting wrongly are simply the concrete considerations about such acts, for example, that they are unfair or vicious, and contractualism does not offer a redundant reason for not acting wrongly.
  - One doubt about Stratton-Lake's thought here is that it seems perfectly natural to suppose that we have reason not to act wrongly because of such concrete considerations and because of such act's wrongness

Ridge, 2001

Ridge, M. (2001) "Saving Scanlon: Contractualism and Agent-Relativity", The Journal of Political Philosophy 9(4), pp. 472-481.

- By contractualist lights, an action is wrong (in the sense of what we owe to each other) iff it is not justifiable, i.e. iff it is prohibited by some set of principles no person could reasonably reject. A set of principles could be reasonably rejected iff the strongest complaint against it is stronger than the strongest complaint against some alternative set of principles. It follows that if an action is wrong, any set of principles permitting this action is one that some person has a strong complaint against. It seems then that these complaints are themselves sufficient reason for considering wrong action to be wrong. If such complaints are sufficient reason to think wrong actions wrong, then, in some sense, no further reason, such as that wrong action is unjustifiable in the contractualist sense, is required. The contractualist reference to justifiability in its identification of wrong action appears unmotivated. In other words, if concrete considerations, for example, about the unfairness of some action, are sufficient reason for thinking that action wrong, why need we offer a further reason for thinking it wrong, namely that it is unjustifiable?

- One response is that the identification of wrong action by reference to justifiability is essential to a plausible account of moral motivation. This reference admittedly yields "twofold" grounds of wrongness, but is not unmotivated.

Ridge, 2003

Ridge, M. (2003) "Contractualism and the New and Improved Redundancy Objection," Analysis, 63(4), pp. 337-342.

- Stratton-Lake argues that the redundancy objection in this form is premised on a misunderstanding of Scanlon's contractualism. According to Stratton-Lake, Scanlon's position is not that an action's unjustifiability is grounds for its wrongness, but that an action's wrongness consists in its unjustifiability. In other words, that an action is wrong and that it is unjustifiable are the same fact, that an action is wrong is not a further fact that derives from its unjustifiability. Under Stratton-Lake's interpretation, the contractualist can accept that the strong complaints against sets of principles that permit wrong action, such as that it is unfair or that it is vicious, are the grounds for wrongness since the fact that such actions are unjustifiable is simply the fact that it is wrong and is not a redundant, apparently unmotivated, ground for wrongness.
- Stratton-Lake argues that Scanlon's contractualism remains vulnerable to redundancy of a different sort. Scanlon appears to defend the reason-giving force of wrongness, i.e. that the fact an action is wrong supplies us with sufficient reason not to so act, because of the intuitive appeal of this claim. But it seems that the complaints which ground reasonable rejection of sets of principles which permit wrong action also supply us with reason not to so act. The contractualist mechanism makes essential reference to such complaints which are, in some sense, antecedent to and independent of justifiability. But if such complaints themselves supply us with reason to act rightly, then, in some sense, no further reason, such as that such action is wrong, is required. Contractualist judgements of right and wrong appear unmotivated. In other words, if concrete considerations, for example, about the unfairness of some action, are sufficient reason for not so acting, why need we offer a further reason for not so acting, namely that it is wrong?
- Stratton-Lake suggests that the Scanlonian contractualist should escape this sort of redundancy by abandoning the reason-giving force of wrongness.
- Ridge rejects that the complaints which ground reasonable rejection of sets of principles which permit wrong action also supply us with sufficient reason not to so act. Scanlon is explicit that only personal reasons are valid reasons for the rejection of candidate sets of principles. A reason is personal iff it is characterised by a principle which makes essential pronominal reference to the person whose reason it is. It is natural (for the contractualist) to suppose that only personal reasons are valid reasons for rejection because contractualism is intended as a theory of the morality of what we owe to each other. In other words, it is natural to think that it is "to each other" that our actions must be justified.
  - A consideration is relevant within the morality of what we owe to each other only if it is, in a meaningful sense, a consideration of some person. For example, the reason "that such principles would permit actions that hurt Smith" as such does not meaningfully belong to any person (even Smith) but the reason "that such principles would permit actions that hurt me" meaningfully belongs to Smith, and the reason "that such principles would permit actions that hurt my friend" meaningfully belongs to Smith's friends, and even "that such principles would permit actions that hurt my fellow human being" meaningfully belongs to all human beings. This is because a person (even Smith) cares that Smith is hurt only if Smith means something to this person. In other words, we care not about Smith qua Smith, but only about Smith qua me, or qua my friend, or qua my fellow human being.
  - Then, the personal reasons that some person has for rejecting any set of principles that permit wrong action are not, as such, reasons for some other person for not so acting. For example, an oppressed person's personal reasons for rejecting any set of principles which permit his persecution by his oppressors, that such acts undermine his (qua himself) well-being, do not as such constitute reason for his oppressors not to so act, since, by supposition, this persecution does not undermine the well-being of the oppressor.
  - Then, it is only the wrongness (equivalently, under Stratton-Lake's interpretation, the unjustifiability) of action itself that gives us moral reason not to so act. The personal reasons which ground an actions wrongness (equivalently, its unjustifiability) do not themselves give such reason. Contractualist wrongness is necessary to explain our reasons for acting rightly, it is not redundant or unmotivated.
- "If we simply appeal to a first-order agent-neutral reason not to humiliate someone then there will be no need to consider our potential victim's agent-relative reasons as such even if our agent-neutral reason is constituted by the very same fact that constitutes the potential victim's agent-relative reason to reject principles allowing the action." "So if we want to preserve the apparent phenomenological insights of Scanlon's account then we need a way to transform a potential victim's agent-relative reasons for rejection into reasons for potential transgressors to accommodate those reasons in so far as they ground reasonable complaints."

Otsuka, 2006

Otsuka, M. (2006) "Saving Lives, Moral Theory, and the Claims of Individuals," Philosophy and Public Affairs, 34(2), pp. 109-135.

- "Kamm and Scanlon present their individualistic arguments as means of resisting John Taurek's famous recommendation that, just as you should toss a coin to decide whether to save either one person's life or another person's life when you cannot save both, you should toss a coin to decide whether to save either one life or two when you cannot save everyone. As you would thereby give each person an equal chance of being saved".
  - Scanlon argues that "either member of the larger group might complain that [Taurek's] principle did not take account of the value of saving his life, since it permits the agent to decide what to do in the very same way that it would have permitted had he not been present and all[.] [...] This is unacceptable, the person might argue, since his life should be given the same moral significance as anyone else's in this situation."
- Otsuka argues that "it is simply false, however, to say that the third person's existence makes no difference to what you do under Taurek's principle. For if the third person's existence really made no difference, then you would [...] toss a coin and save the first person if the coin lands heads and the second person if it lands tails; if, moreover, the coin lands tails you would proceed to rescue the second person [and not the third, and] that would be to deny the moral significance of the third person."
  - "Even if [...] the two must both be rescued if either is rescued, it would still be possible to rescue the second and third persons in a manner that ignores the third person's equal moral significance. [This failure] would reside in an attitude of indifference that is supported by counterfactuals".
- One response is that the third person could complain that "[his] existence does not change anyone's odds of being saved" hence "his presence [...] is not making enough of a difference".
  - But "even if treating the third person [...] as having equal significance with the other two requires an adjustment in people's odds of being saved" this is not sufficient reason to ground a moral requirement to save the greater number. To ground such a requirement, it must be the case that treating this person as having equal significance requires that the first person's odds of being saved plummet to zero while the second person's odds skyrocket to one.
  - Further, if saving the greater number is required, then we must certainly save the larger group in 1-5 and 2-5 cases. But if treating each person has having equal moral significance requires that person's presence to bear on each other person's odds of being saved, then to do so would be to fail to treat the second person in the first group this way.
- Otsuka argues that abandoning the individualist restriction would "create the following two problems for Scanlon's contractualist enterprise".
- "Scanlon's contractualism is individualistic in the following two respects". First, moral principles must be justifiable to each individual, i.e. each individual could not reasonably reject moral principles. Second, each individual's grounds for reasonable rejection of candidate sets of moral principles must be individual complaints, rather than some aggregation of complaints. This is the individualist restriction.
  - The former "individualist" aspect of Scanlon's contractualism can be understood as an alternative to some "majoritarian" process for the evaluation of moral principles, under which moral principles need only be justifiable to some sufficiently large number or proportion of individuals. This former aspect then seems to be motivated by the thought that it is "necessary to protect individuals from the tyranny of the majority". But this contractualist motivation then also requires that the grounds for reasonable rejection be individual complaints. If each individual's grounds for reasonable rejection aggregated the complaints of other individuals, it seems that the "tyranny of the majority" re-appears.
- A further worry is that "contractualism without the individualist restriction introduces a circularity that is debarred by Scanlon's explanatory aspirations". Suppose that under "aggregative" contractualism, it is wrong to not save the greater number because saving the greater number is required by any set of moral principles that could not be reasonably rejected. Given Scanlon's comparative conception of reasonable rejectability, this is presumably because the aggregation of the complaints of the members of the larger group against sets of principles that do not require saving the greater number is stronger than the aggregation of the complaints of the members of the smaller group against sets of principles that require saving the greater number. But this claim about the relative strength of aggregated complaints, one worries, is no more than the claim that we have greater moral reason to save the larger group than to save the smaller group. Then, "aggregative" contractualism tells us that wrongness consists in unjustifiability, but unjustifiable acts are simply those which we have, on balance, moral reason to avoid, i.e. acts which are wrong. In other words, justifiability is constructed on a prior notion of wrongness and is redundant.

Parfit, 2003

Parfit, D. (2003) "Justifiability to Each Person," Ratio, 16(4), pp. 368-390.

- "Scanlon supports [the individualist] restriction by appealing to our beliefs about the wrongness of certain acts in some imagined cases." Parfit seems to support Otsuka's view that the individualist motivation is motivated by the belief that it is necessary to block some sort of "tyranny of the majority".
- "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." This seems to say that the essential restriction is the personal reasons restriction, and we have personal reasons to care about other persons. Parfit argues that intuitively, we could justify to each member of the smaller group our saving the larger group.

Scanlon, 2003

Scanlon, T. M. (2003) "Replies," Ratio, 16(4), pp. 424-439.

Ashford, 2003

Ashford, E. (2003) "The Demandingness of Scanlon's Contractualism," Ethics, 113(2), pp. 273-302.

- "[T]wo central features of emergencies are that persons' basic interests are at stake, and an agent is in a position to help. The term 'emergency' is also generally used to refer to short-term and rare episodes."
- Ashford argues that "[Scanlonian] contractualist obligations to promote others' basic interests are just as demanding as utilitarian ones", and that we should abandon the intuition that, "in the current state of the world", we are not subject to demanding moral obligations.
  - The argument for the latter claim is that the morally relevant feature which we think grounds the demandingness of our obligations in emergencies is also a feature of "the current state of the world", namely that "persons' basic interests are at stake, which means that whatever an agent who is in a position to help does or fails to do has a drastic and irrevocable impact on others' interests", i.e. that emergencies are "short-term and rare" is not necessary for our being so obligated.
- Ashford argues further that the contractualist is committed to implausible judgements in the case of risky practices.
- Claim: "contractualist obligations to promote others' basic interests are just as demanding as utilitarian ones".
  - In emergencies, it seems that "gains and losses in well-being are the most morally salient considerations" since "what the agent does on this one occasion will have a drastic and irrevocable impact on others' well-bring".
  - Further, as commonly understood, "agents are unlikely to encounter more than a few emergency situations in their lifetime where a plausible principle governing emergencies would require them to act, which means that such a principle is unlikely to impose a long-term cumulative cost on an agent over her life as a whole."
  - So it seems that complaints against principles that do not require agents to give aid (even at significant personal cost) in emergencies are stronger than complaints against principles that do require this.
- One response is that contractualism would require that agents give aid only when the cost is modest, and that agents refrain from harming others even if the cost of so refraining is significant.
  - Because, under demanding principles of aid, agents must stand ready to make significant sacrifices, this imposes long-term costs on agent, perhaps undermining their attachments to other persons or to their projects, and "would seriously impinge on the control agents have over the course of their lives, to a much greater extent than the obligation not to harm others' vital interests".
  - "Each person might therefore agree to bearing the remote potential burden of being allowed to die, in order to avoid the burdens imposed on agents by a more demanding principle".
- This is insufficient if the group of persons in a position to give aid and the group of persons in a position to require aid are separate. Under such a situation, plausibly framed, the cost of not receiving aid to each person in the latter group constitutes a stronger complaint than the complaints of person in the former group.
  - From the standpoint of the persons requiring aid, they are certain to die if they do not receive aid, which is, presumably, highly likely if everyone's behaviour was regulated by a less demanding principle. This cost is surely greater than the cost to those in a position to give aid, of standing ready to give aid and actually giving aid when called upon.
- Ashford argues that in reasonably rejecting candidate sets of principles for the general regulation of behaviour, it is their implications under realistic levels of compliance, not their implications under ideal or general compliance, that persons' complaints should make reference to.
  - But if this is so, it seems, given human fallibility and the psychological difficulty of complying with demanding principles, a large number of those who require aid will remain unaided, hence their complaints against more demanding principles of aid are no weaker than their complaints against less demanding principles of aid.
- In "the current state of the world", contractualism yields demanding principles of aid.

- Ashford argues that this does not count against the plausibility of contractualism because of "combination of the drastic and irrevocable impact on others of not being helped with the fact that there are constantly so many in this position that the long-term cost of giving help soon becomes extremely high."
  - Then, if any plausible moral theory must be impartial, i.e. afford equal weight to each person's moral concerns, it must demand that we respond to the first fact by giving aid, and because of the second fact, it is costly to do so.
- Ashford then argues that contractualism yields implausible judgements of right and wrong about risky practices.
  - "Scanlon stipulates that the unlikelihood that a form of behaviour will cause harm does not diminish the complaint of the individuals who actually end up being harmed".
  - "Scanlon's worry is that if the weight given to burdens is discounted by the probability of suffering them, then even a serious burden might be outweighed by relatively minor benefits to others, if the burdens were sufficiently unlikely."
  - "The kinds of cases Scanlon has in mind are ones in which those at risk of being harmed by a form of behaviour could not have expected to benefit from it."
  - For Scanlon, such practices could not be justified to the persons harmed "on the ground that if they had not known whether or not they would suffer [...] it would have been in their own rational self-interest to have chosen the experiments" because that would "distort[] the nature of justification to individuals". Presumably, the thought is that persons are actually situated in some way or another, and know how they are situated. They are not ever so ignorant.
  - "Most important, a principle that imposes a burden on certain individuals must be [justifiable] to those individuals who actually end up suffering the burden".
  - "Thus, the stipulation that the low probability of being burdened by a principle does not diminish the complaint [...] is central to ensuring that a principle is relevantly acceptable from each individual's standpoint."
  - The difficulty with this stipulation is that it "seems to imply that behaviour that involves a very remote risk of harm is just as objectionable as behaviour that is certain to cause harm". For example, personal air travel.
  - The problem generalises to other forms of risky activity.
- Scanlon says "[t]he probability that a form of conduct will cause harm can be relevant not as a factor diminishing the 'complaint' of the affected parties [...] but rather as an indicator of the care that the agent has to take to avoid causing harm".
  - The idea is that "a principle that required that every possible precaution against the risk of harm be taken would be so burdensome on those taking precautions that such a principle could be reasonably rejected".
- But this is ridiculous, the cost to a traveller of a ban on air travel is surely less than the cost to a crash victim of being killed by a falling plane.
- The objection that contractualism fails to yield plausible moral principles governing risky activity seems to rest on a mis-statement of the sort of principles which could permit risky activity.

Kumar, 1999

Kumar, R. (1999) "Defending the Moral Moderate: Contractualism and Common Sense," Philosophy and Public Affairs, 28(4), pp. 275-309.

- Options
  - A principle of aid in emergencies that requires each person "to always do what is necessary to prevent another from incurring a significant loss, provided she can do so at a cost to herself that is less significant", could be reasonably rejected, Kumar argues, because such a principle (for the general regulation of behaviour), each person is allowed little to no control over his own life. Such a principle would require not only that each person actually aid others at significant costs to himself, but also that each person stand ready to do so. This readiness in turn seems to require that a person diligently pay attention to potential situations of need where his intervention is required, and also that a person entertain an insecurity in his possession of goods which he may be called upon to sacrifice in so intervening. The cost of the former sort of readiness can be described in terms of psychological effort, while the cost of the latter sort of readiness lies in the forgone value of certain sorts of attachments in the life of a person who entertains such insecurity. Plausibly, such costs, over a lifetime, exceed the costs to those who would fail to receive aid under a less demanding principle of aid.
    - One reply is that the complaints against more demanding principles of aid, as above, are overstated. While persons do bear "readiness costs" under such a demanding principle of aid, each person also enjoys the benefits that flow from his receiving aid when he requires it, and also from his resting easy in the knowledge that he would receive aid should he require it.
    - Kumar argues that these benefits are not particularly considerable. Because reasons for the rejection of candidate sets of principles must be generic reasons, from a standpoint characterised in terms of "commonly available information about what people have reason to want", and generally, "emergency" situations, where one

would bear a significant cost if some other person or persons did not give aid at a lesser but also significant cost, are rare, it is generally of little value to each person that he would receive aid in such situations. Further, it is not clear that the value of this benefit is even comparable to the forgone value of attachments. Plausibly, our lives are given meaning in large part because of such attachments. A longer life, for example, due to the greater availability of life-saving aid, empty of such attachments because of the requirement to stand ready to give aid, would nonetheless be greatly impoverished.

- Kumar's first response is dubious because the position of persons in dire straits can also be characterised in suitably general terms. The generic reasons restriction does not require that we consider only one general standpoint, but all standpoints that can be characterised in suitably general terms. It is a mistake to think that objections must be raised by some "average person".

- Even apparently less demanding principles of aid could be reasonably rejectable in this way. Consider, for example, a principle which requires that a person do "what is necessary to prevent a significant loss to someone else when she can do so at a much less significant cost to herself". The cumulative cost of meeting such a requirement to those in a position to aid a great number could be significant. Collectively, the large number of such requirements would also significantly erode the degree of control agent's have over their own lives. Further, "the principle may result in [...] certain kinds of relationships ceasing to be live possibilities".

  - An amendment which stipulates some threshold of cumulative cost such that no agent is required to bear an implausibly high cost is also implausible. This is brought out in the drowning children case.

  - It seems that the relevant difference between the drowning children case and the flooded inbox case is that the complaint the drowning children would have against any less demanding principle appeals to not only the effect of such principles on their well-being, but that under such principles, it is permissible for other persons to treat their lives as of little moral significance. A contractualist would argue that the right response to others' personhood involves acting in a way that is justifiable to them. In the same way, a contractualist could argue that the right response to others' lives involves bearing some costs in order to preserve their lives.

- Kumar argues that these considerations lead us to a much less demanding principle governing aid, which requires that a person "intervene to prevent a significant harm or burden from befalling someone else if the potential resulting harm or burden to oneself is much less significant". This would yield the right response in the flooded inbox case, and seems more plausible because forgone benefits, such as that in the case of the flooded inbox, count as costs but not as harms or burdens. "[T]he principle that has begun to emerge from subsequent revisions [...] is slowly moving closer to mapping the intuitive contours of our thinking about mutual aid."

- Constraints

  - We think that a principle which allows some agent to commandeer the body of another person, thereby inflicting significant costs on this other person, to avoid greater costs befalling himself, could be reasonably rejected. The complaint of the person whose body is commandeered against such a principle is that under such a principle it is permissible for other persons to disregard her status as "an independent being, whose body is hers, to the extent that she has sole authority in deciding how it will be used, abused, or developed". Because, in such situations, another person has "presumed to take a decision on [his] behalf concerning how his body will be used". An appropriate revision that this would suggest is that such acts require the consent of the person whose body is being used to prevent greater harm.

  - One objection to this argument for constraints in the promotion of well-being is that how a person's body is used is assimilated within a person's well-being. We think, for example, that if consent is offered in the rabid dog case, the life of the person who loses an arm to the dog goes better for him (even if it still does not go very well). But this must not be because of the consent, and the fact that he maintains authority over his body if he offers consent, itself. This is brought out by the fact that we think we would wrong a dead person but not make his life worse for him if we removed his organs despite his non-consent, following his death.

Frick, 2015

Frick, J. (2015) "Contractualism and Social Risk," Philosophy and Public Affairs, 43(3), pp. 175-223.

- "The challenge for the contractualist is to explain, without resorting to interpersonal aggregation, how such risky actions could be permissible". These risky actions "will affect a large number of individuals [hence] it is virtually certain that some people will end up being burdened by it". "The individual losses to those who are burdened are considerably greater than the individual gains for those who are benefited." "The action-type in question is rare, or rarely affects the same people twice; as a result, we cannot assume that over time almost everyone will benefit" But "[t]he risky action or omission is intuitively permissible." This, Frick dubs "the problem of social risk".

- Frick suggests that the question this invites is whether relevant justification is ex ante or ex post. If the contractualist "appeals to an ex post view", "he seems committed to the intuitively unappealing conclusion that most instances of social risk, as defined above, are unjustifiable". "On the other hand, if he embraces an ex ante view, Scanlon fears that this will move his contractualist theory too close to those aggregative views that he wished to escape from in the first place".
- Intuitively, risk is acceptable in Mass Vaccination (Unknown Victims) but not in Mass Vaccination (Known Victims). But on Scanlon's view that the relevant stage at which justifiability is to be evaluated in determining right or wrong, risk is unacceptable in both cases. This is because, in both cases, it is (statistically) certain that some person dies due to the risky action, and this person, ex post, would have a very strong complaint against principles which permit the risky action.
  - The contractualist could argue that we have reason to evaluate the justifiability of relevant principles ex post rather than ex ante because knowledge of which persons are harmed (that we have ex post but not ex ante) is morally irrelevant. Both ex post and ex ante, we know that it is (statistically) certain that some number of persons will be harmed. The thought is that, surely only this fact is relevant. For example, it seems equally wrong to murder a person whose identity is known as it is to murder a person whose identity is unknown because his head is covered in a bag.
  - But the ex post view yields more unintuitive results. For example, this view appears to commit the contractualist to a ban on passenger air travel.
- If the contractualist were to instead evaluate the justifiability of principles ex ante, contractualism yields the intuitive judgements in both Mass Vaccination cases and other similar cases of risky practices. No person in the Unknown Victims case has a particularly strong complaint against mass vaccination since, ex ante. This is brought out by the fact that, we think it rational and prudent to take such vaccines (and often do). In the Known Victims case, the strongest complaint against mass vaccination is the complaint of the persons who are certain to die as a result. Stepping back from the contractualist mechanism and speaking more intuitively, it seems that we could justify to each person that he should take the vaccine (in the Unknown Victims case).
  - But if the knowledge of the victim's identity is indeed morally irrelevant, then mass vaccination with known victims is wrong iff mass vaccination with unknown victims is wrong. So if we adopt ex ante contractualism and maintain our intuition, we must have reason to reject the argument from irrelevant information. The ex ante contractualist argues that this information is relevant because it does not merely mask the identities of victims, but bears directly on the sorts of complaints potential victims could raise. Where the would-be victims know that they are such, their complaint is that the practice results in their death, where this is not known, they do not have nearly as strong a complaint. To these persons, certain death is not justifiable but some risk for the sake of a greater benefit is.
  - There seems to be no good reason for thinking that the complaint of the luckless child in the single person case is weaker than the complaint of the luckless child in Mass Vaccination (Unknown Victims) by the fact that, in the latter case, it is certain that some other child dies.
- "Scanlon's central objection to ex ante contractualism is closely connected with what I shall call the problem of ex ante rules." Such rules "the adoption of which, at some time t_1, is in everyone's interest, but which licenses or requires some agent to act at a later time t_2 in a way that benefits some but significantly burdens others.
  - Scanlon's objection is brought out in the case of Medical Experimentation.
  - Scanlon's solution seems to rest on the idea that "avoiding the intentional imposition of harms" such as in Medical Experimentation, "is usually not very costly, whereas entirely eliminating any risk of harm" such as in the case of risky medical procedures, "can be prohibitively costly". Hence principles which require eliminating risk in risky but generally sensible practices face stronger complaints than principles which prohibit the intentional imposition of harms.
  - But supposing the maximum possible precautions have been costlessly taken in both cases, our intuitions about both cases remain.
  - Further, the cost of eliminating risk in sensible practices is zero if this risk is eliminated by the termination of the practice.
- Frick proposes a "decomposition test" whereby risky practices must be justifiable to each person at each point in time. In Medical Experimentation, at the time after the experiment subjects have been selected, the subsequent action which results in their deaths is not justifiable to them, by the familiar contractualist reasoning. Note that their right to life has not been waived through consent, by supposition.
- "Although the Decomposition Test tracks our intuition that administering the risky treatment is permissible while carrying out the human experiments is not, some philosophers may doubt whether it does so for the right reasons". Kumar argues that we think Medical Experimentation wrong and Risky Surgery right because the former violates constraints which are grounded in the value of bodily autonomy, the respect for which is an important part of the respect for other persons as individual human beings (whose bodies belong to them).
  - Frick argues that Kumar's idea of constraints is insufficient to meet the problem of social risk because similarly objectionable cases can be constructed where there is no such violation of constraints.

- An ex ante contractualist would struggle with the issue of balancing identified and statistical lives because it seems to yield the result that the we are required to save one identified life at the cost of any number of statistical lives.
    - "Saving Gareth, the identified miner, means saving someone who but for our intervention was certain (or at least very likely) to die in short order. By contrast, preventing the loss of statistical lives in Miners (1 vs. 100) comes about by slightly reducing an already quite small risk of death for each member of a larger group."
    - This is made clearer in a 1-to-1 comparison.
    - This is what Frick calls the "Pro Identified Lives Argument".
    - This, I think, suggests that what is at issue is the problem of saving the greater number.