

# Contractualism Rough Notes

## Phenomenological Argument

Scanlon writes "I myself accept contractualism largely because the account it offers of moral motivation is phenomenologically more accurate than any other I know of. It captures very accurately my sense of the reasons that ground and shape my thinking about central questions of right and wrong". In other words, contractualism is an attractive moral theory because the ideal of justifiability that it identifies as the ground of our reasons for acting rightly is accurate to the phenomenology of acting morally, and of moral deliberation. Scanlonian contractualism "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 behaviour that no one could reasonably reject as a basis for informed, unforced general agreement." By contractualist lights, we have reason to act morally because we have reason to act justifiably, to act justifiably is to stand in relationships of mutual recognition to each other, and we have reason to stand in such relationships, presumably, because such is the appropriate sort of relationship between persons. In other words, we respond appropriately to each other's status as a person by acting in a way that is justifiable to each other, and we act rightly iff we act so justifiably.

This account of our reasons for acting rightly seems 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.'

The contractualist ideal of justifiability also appears to ground the broader practice of morality in a compelling way. In other words, the contractualist account of moral motivation explains not only why we should act morally, but why we should morally deliberate in a way that, intuitively, it seems we (morally) should. We are moved to act rightly not only by the thought of an act's wrongness but also by more concrete considerations like "that would be cruel to him", "that would be unfair to him", and "he needs my help". On the contractualist account, this is because, "the reason we have to live with others on terms that they could not reasonably reject" "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". Others could reasonably reject our deliberating in a way that gives inadequate weight to such concrete considerations or in a way that gives any weight at all to considerations such as "it would be slightly inconvenient for me" in contexts where that is not appropriate. Further, being moral also involves "revising and refining our conception of the reasons that are relevant and those that are morally excluded in certain contexts". On the contractualist account, we have reason to do so because others could reasonably reject our refusal to improve our moral deliberation. The contractualist account of moral motivation is phenomenologically accurate and explains not only why we should act morally, but also why we (morally) should deliberate in certain ways, and develop ourselves. This account seems particularly compelling. If we accept it, we should accept also the contractualist moral theory (which tells us what acts are right) which seems to be uniquely consistent with it.

But grounding our reasons for deliberating as we morally should in the contractualist ideal of justifiability seems to suggest that our moral deliberation is some form of false consciousness. On this contractualist account, wrongness is reason-giving, so our reason, for example, for not acting cruelly is that it would be wrong to do so, not that "that would be cruel to him". But on this account, we have a "higher-order" reason to shape our moral deliberation to be sufficiently moved by the latter consideration. So we are made blind to the true reasons we have for acting rightly. This is odd, and undermines the plausibility of the contractualist account of moral motivation.

Wallace suggests that the contractualist account of moral motivation can be rehabilitated. On Wallace's account, we have reason to care about basic moral considerations such as cruelty, fairness, and need because we have reason to act justifiably, and such considerations are relevant to whether or not some act is justifiable. When we are moved by thoughts such as "that would be cruel to him" it is because the thought "so it would not be justifiable" has been internalised and does not become explicit in our deliberation. This latter thought is so internalised, presumably, because in the cases where we are so directly moved, an act's unjustifiability very obviously and naturally follows from the basic considerations such as that it is cruel. Analogously, we are moved by the basic consideration "that would be a complete waste of time" without the explicit thought "so it would be bad for me" in prudential deliberation to avoid acting in certain ways. On this account, we are not made blind to the true reasons we have for acting rightly, but simply move very quickly through some steps in our moral deliberation, leaving the thought "so it would not be justifiable" implicit.

## Redundancy

Scanlonian contractualism "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 behaviour that no one could reasonably reject as a basis for informed, unforced general agreement." Scanlon tells us also that a set of principles could be reasonably rejected iff the strongest complaint against that set of principles is stronger than the strongest complaint against some alternative set. It seems then, that the reference to the unjustifiability of an act (the fact that any set of principles that permit this act could be reasonably rejected) is redundant, i.e. the contractualist has no good reason for identifying wrong actions by reference to their unjustifiability. It follows from the contractualist mechanism for identifying wrong acts that an act is wrong iff there is some sufficiently strong complaint against principles permitting it. If some complaint is sufficient to ground the unjustifiability of some act, then it seems sufficient also to ground the wrongness of that act. For example, suppose that any set of principles which permits the torturing of innocent persons for fun could be reasonably rejected by the victims of such torturing because such torturing is cruel. Then, by contractualist lights, torturing innocent persons for fun is wrong because it is unjustifiable. But, intuitively, torturing innocent persons for fun is wrong simply because it is cruel. The contractualist mechanism treats such complaints as, in some sense, antecedent to the idea of justifiability (since the idea of justifiability makes ineliminable reference to such complaints, i.e. it is built "on top of" such complaints). But if wrong acts are wrong because of such complaints, it seems there is no need to explain their wrongness in terms of justifiability. It would be odd if it were the case that every wrong action is wrong because of its unjustifiability and also because of basic facts such as that it is cruel. If this is implied by contractualism, its being implied undermines the plausibility of contractualism.

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 an action is unjustifiable are the same fact, the former is not some further fact that derives from the latter. Then, the contractualist can accept the intuition that an act is wrong because of basic facts such as that it is cruel, i.e. that such basic considerations are the grounds of wrongness. On this interpretation, an act's unjustifiability is not a ground of its wrongness, but what its wrongness consists in, so contractualism does not imply that every wrong act is wrong both because of the relevant basic considerations and because of its unjustifiability, i.e. it does not offer justifiability as a redundant ground of wrongness.

Stratton-Lake argues that Scanlon's contractualism, even understood as above, remains vulnerable to redundancy of a different sort. Scanlon maintains that the wrongness of an act supplies us with reason not to so act, apparently because of the intuitive appeal of this claim. But it seems, intuitively, that the complaints which ground reasonable rejection of principles which permit wrong action also supply us with reason not to so act. For example, Scanlon would maintain that we have moral reason not to torture others for fun because to do so would be wrong. But intuitively, we have moral reason not to torture others for fun, it seems, because to do so would be cruel to them. It would be odd if it were the case that we had sufficient moral reason not to do each wrong act both because to do so is wrong and because of basic facts such as that it is cruel. Since the contractualist mechanism takes such complaints as antecedent to the concept of justifiability, it seems the contractualist should have stopped at saying the basic facts supply moral reasons, since he has no reason to think we have such odd "twofold" moral reasons.

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 basic facts such as that so acting is cruel, and contractualism does not offer a redundant reason for not acting wrongly. Granted, Scanlon takes to be one of the primary attractions of his contractualism that it illuminates the reason-giving force of judgements of right and wrong, i.e. explains (in a compelling way) why we think the fact that an act is wrong gives us reason not to so act, so Scanlon will be reluctant to abandon the reason-giving force of wrongness. Stratton-Lake suggests that even if Scanlon abandons the reason-giving force of wrongness, Scanlon's contractualism can still explain (in a compelling way) why we think the basic facts about an action such as that it is cruel, give us reason not to so act, and so Scanlon's contractualism is no less attractive.

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 tells us explicitly that only personal reasons are valid reasons for the rejection of candidate sets of principles. This restriction is motivated by Scanlon's identification of "the morality of right and wrong" or of "what we owe to each other" as a unified normative domain, and the subject matter of his contractualist theory. Presumably, Scanlon takes "we" and "each other" to refer to persons. Given the contractualist view that to act rightly is to act justifiably, it seems to follow that we make good on what we owe to each other when we act in a way that is justifiable to each other person. So it is to persons that our actions (morally) must be justified, hence it is the complaints of other persons against candidate sets of principles (which we refer to in justifying our actions) that are relevant. A reason is a personal one therefore if it belongs to some person in some meaningful sense. For example, the reason "that such principles would permit actions that hurt Smith" is not a personal reason, but the reasons "that such principles would permit actions that hurt me, Smith", "that such principles would permit actions that hurt my friend, Smith", and even "that such principles would permit actions that hurt my

fellow human being, Smith" are personal reasons. This is because, from a personal standpoint (even Smith's) that Smith is hurt is something we have reason to care about only if Smith is someone we have reason to care about, i.e. if Smith is someone to us. 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 to not so act. 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. So the "basic fact" that some act is cruel (to someone) is not as such reason for an agent to not so act, and the contractualist can maintain that wrongness is reason-giving without suggesting that our reasons for acting rightly are "twofold" in some odd way. In fact, the contractualist conception of wrongness as unjustifiability and as reason-giving is necessary for contractualism to illuminate our reasons for acting rightly at all. This explains how some "basic facts" ground moral reasons for acting in some way while others do not.

One might be suspicious of Ridge's response, in particular about the identification of reasons such as "that such principles would permit actions that hurt Smith" as impersonal. Such reasons seem, in a sense, much more "personal" than, for example, "that such principles would fail to maximise utility" which Scanlon seems to have front-of-mind when giving the personal restriction. [Incomplete]

## Saving the Greater Number

Scanlonian contractualism appears unable to yield the intuitive result that in situations where we can either save two people or save one other person, we (morally) ought to save the two. Scanlonian contractualism appears committed to a "Taurekian" requirement that the agent decide whether to save the two or to save the one by flipping a coin. According to Scanlonian contractualism, an act is wrong iff it is not permitted by a set of principles that could not be reasonably rejected for the general regulation of behaviour. A set of principles could not be reasonably rejected iff the strongest complaint against it from the relevant standpoints is weaker than the strongest complaint against some alternative set of principles. Scanlon stipulates that only generic, personal, and individual reasons are valid reasons for rejection because the justifiability of moral principles should be evaluated from generic, personal, and individual standpoints. Against a principle which requires that the agent save the two, the other one person could complain that, under such a principle, he would be left to die. The competing complaint, against the Taurekian principle which requires that the agent decide by flipping a coin, of each member of the group of two, is that, under such a principle, there is a 50% probability that he would be left to die. The reason "that there is a 50% probability that two people would be left to die rather than only one" is not an individual reason, and thus is irrelevant to whether the Taurekian principle could be reasonably rejected. Then, it seems the Taurekian principle could not be reasonably rejected, and Scanlonian contractualism requires that the agent flip a coin. This unintuitive result undermines the plausibility of Scanlonian contractualism.

Scanlon argues that the complaint of each member of the larger group against sets of principles that did not require saving the greater number have been understated. Each member of the larger group could complain that any Taurekian principle (which yields the Taurekian requirement) fails to treat his life as morally significant since it permits the agent to act as if his life were not at stake. Where behaviour is generally regulated by some set of principles including the Taurekian principle, an agent, it seems, acts identically when confronted with a situation where he can either save two people or save one other person and when confronted with a situation where he can either save one person or save another. In both cases, the agent chooses by flipping a coin. But this seems to treat the life of the additional person in the former case as if it were of no moral significance, since the agent seems to act, in the former case, as if this additional person's life were not at stake. Each person in the larger group would then complain that the Taurekian principle not only leaves a 50% probability that he would be left to die, but also treats his life as if it were of no moral significance. Then, perhaps, this complaint is stronger than the competing complaint of the single person against principles that require saving the greater number, hence the Taurekian principle could be reasonably rejected in favour of a principle that so requires. Then, Scanlonian contractualism would require saving the greater number.

It is simply not true that any Taurekian principle permits the agent to act as if the two groups were of equal size. The life of each member of the larger group is treated as (at least somewhat) morally significant by the Taurekian principle since, under this principle, the agent chooses differently in the 2-1 case compared to the 1-1 case. Where the two groups each consist of one person, the agent decides between saving one person and saving the other by coin flip. Where one group instead consists of two people, the agent decides between saving two people and saving the other one person by coin flip. If the agent were to entirely disregard the moral significance of the additional person's life, he would decide between saving one person in the large group and saving one person in the small group by coin flip.

Scanlon could respond that each member of the larger group's complaint against any Taurekian principle is not simply that such principles entirely fail to respond to the moral significance of his life, but that such principles fail to adequately respond to the moral significance of his life. But it is not clear why an adequate response to the moral significance of the life of the

additional person in the larger group requires that the agent always save the larger group. One suggestion could be that an adequate response to the moral significance of the life of the additional person requires that what happens to other persons is affected by the fact that the additional person's life is at stake, hence some adjustment to the probability of each other person's being saved is necessary. But we think that all persons in a 5-1 case should face the same odds of being saved were an additional person's life at stake, as in a 5-2 case.

It seems that no such sort of ingenuity could torture a requirement to save the greater number out of Scanlon's individualist contractualism. Otsuka presents and summarily rejects several other attempts that I neglect to mention for brevity. Perhaps then the contractualist should abandon the individualist restriction on reasons for reasonable rejection of candidate sets of principles in order to accommodate our intuition that saving the greater number is morally required. If candidate sets of principles could be rejected because of aggregation of individual complaints, then it seems that the aggregation of the complaints of each member of the larger group could offer stronger grounds for rejecting principles that do not require their being saved than the aggregation of the complaints of each member of the smaller group could offer for rejecting principles that require saving the greater number. Then, the complaint against the Taurekian principle that, under this principle, there is a 50% probability that a greater number die seems stronger than the competing complaint against some principle that requires saving the greater number, that under such principles, a smaller number would die. So the Taurekian principle could be reasonably rejected in favour of this alternative, and contractualism would require saving the greater number.

Otsuka argues that abandoning the individualist restriction is costly to Scanlon because this restriction follows from Scanlon's motivation to block unintuitive "tyranny of the majority" results. Scanlon's contractualism is individualistic in at least two ways. First, moral principles must be justifiable to each individual, i.e. an act is right iff it is permitted by some set of principles each individual could not reasonably reject, not, for example, iff it is permitted by some set of principles that a sufficiently large number of individuals each could not reasonably reject. Second, it is from the standpoint of each individual that complaints against candidate sets of principles are offered. The former aspect seems to be motivated by the apparent (to Scanlon) necessity of blocking "tyranny of the majority" results, such as that it is morally permissible to live in a utopian city which depends on the perpetual misery of an innocent child (as in "Those Who Walk Away from Omelas"). But this motivation also grounds the latter individualist restriction. If aggregated complaints ground reasonable rejection of candidate sets of principles, it seems the "tyranny of the majority" re-emerges.

I argue that Otsuka has misidentified Scanlon's motivation for the individualist restriction, and that once Scanlon's true motivation is understood, Scanlon's commitment to the "individualist restriction" is a mistake. For one, this motivation seems "methodologically" inappropriate. In the same way that we think the fact that rule utilitarianism yields more plausible results than act utilitarianism is not adequate reason to be a rule utilitarian rather than an act utilitarian, the fact that "individualist" contractualism yields more intuitive judgements is not adequate reason to impose this restriction. Scanlon's motivation for thinking that right action must be justifiable to each and every individual more plausibly flows from his identification of the "morality of what we owe to each other" as a distinct unified normative domain and as the subject matter of contractualist theory. In other words, Scanlon is concerned with what we owe to **each** other person, not what we owe to other persons qua other persons, as some sort of collective. Scanlon also takes morality to be about justifiability not least because this seems accurate to the phenomenology of wrongness and moral deliberation. Then, we make good on what we owe to each other person by acting in a way that is justifiable to each other person, not, for example, to the majority of other persons.

Thus understood, Scanlon's "individualist restriction" is simply one aspect of the personal reasons restriction, which restricts the reasons for rejection of candidate sets of principles to reasons which belong to persons in a certain meaningful way. Both restrictions, it seems, flow from contractualism's taking its subject matter to be "what we owe to each other". Scanlon's clearest (apparent) statement of the individualist restriction is that "the justifiability of a moral principle depends only on various individuals' reasons for objecting to that principle and alternatives to it". Scanlon does not explicitly give the personal reasons restriction, but does tell us that this restriction rules out the direct appeal to impersonal values. This means, for example, the reason that "under such principles, the world would be a less beautiful place" is not valid ground for rejection of some candidate set of principles, but the reason "under such principles, the world would be a less beautiful place, hence there would be far fewer opportunities for engagement with beautiful things, and my life would be greatly impoverished" is valid ground for such rejection. Then, non-individual reasons appear to also be non-personal reasons. For example, the reason "under such principles, more lives would be lost" seems to be an appeal to the impersonal value of human life (rather than the personal value of human life to the person whose life it is). Plausibly, this is because what Scanlon means by "individual" is "individual person", and Scanlon seems to think (and it is natural to suppose) that there is no non-individual person. If all non-individual reasons are non-personal reasons, then all the philosophical work that seems to be done by the individualist restriction is in fact done by the personal reasons restriction.

What does the personal reasons restriction suggest about the requirement to save the greater number? A reason is a personal reason, hence is relevant to the morality of what we owe to each other, if it is one that, in a meaningful sense, belongs to a

person (a member of "we" and "each other"). For example, the reason "that such principles would permit actions that hurt Smith" is not a personal reason, but the reasons "that such principles would permit actions that hurt me, Smith" and "that such principles would permit actions that hurt my friend, Smith" are personal reasons. This is because, from a personal standpoint (even Smith's), that Smith is hurt is meaningful, i.e. is something this person (whose standpoint it is) has reason to care about, only if Smith means something to this person, i.e. Smith is someone this person has reason to care about. In other words, we care not about Smith qua Smith, but about Smith qua me, or qua my friend. But we have reason to care about not just ourselves and our friends, but also about our fellow (living) human beings, as such. This, surely, is acceptable to the Scanlonian contractualist, who believes that we have reason to care (mutually recognise) about other persons as such, because our being persons and our being living humans seem to be similar sorts of considerations. So, for example, the reason "that such principles would permit actions that hurt my fellow man, Smith" must be valid ground for rejection of candidate sets of principles within the contractualist mechanism. Then, the strongest complaint against some set of principles which does not require saving the greater number is something like "under such principles, it would be permissible to leave me (a member of the larger group) and a greater number of my fellow human beings to die". This seems strong enough to defeat the opposing complaint that "under such principles, it would be required to leave me (a member of the smaller group) and some (admittedly smaller) number of my fellow human beings to die." So contractualism would require saving the greater number.

[Read Joe Horton, Parfit "Justifiability to Each Person", and Frick]

[Tom: One worry is that our reason for caring about our fellow man is a moral reason, so this strategy feels question-begging. I am inclined to respond that our reason for caring about our fellow man is almost irrelevant. It could well be an entirely contingent fact that we do care about our fellow man. Contractualism still requires saving the greater number because the justifiability of principles is evaluated in general terms. We do simply care about those around us and those like us, including those stranded on rocks with us who, like us, require saving.]

[Tom: Either not sufficiently robust result or we care about our fellow man because it is morally required. If it is morally required to care and to care in an aggregative way, this begs the question.]

## **Demandingness**

Scanlonian contractualism blocks interpersonal aggregation of moral considerations, hence it appears to have the resources necessary to block the demanding obligations that certain forms of consequentialism appear committed to. According to Scanlonian contractualism, an act is wrong iff it is not permitted by a set of principles that could not be reasonably rejected for the general regulation of behaviour. A set of principles could not be reasonably rejected iff the strongest complaint against it from the relevant standpoints is weaker than the strongest complaint against some alternative set of principles. Scanlon stipulates that only generic, personal, and individual reasons are valid reasons for rejection because the justifiability of moral principles should be evaluated from generic, personal, and individual standpoints. Certain forms of consequentialism appear to yield implausibly demanding obligations. For example, maximising act utilitarianism would require that an agent sacrifice his life by throwing himself in front of an out-of-control trolley to save the lives of two strangers because utility is thereby maximised. Scanlonian contractualism would not demand this. The strongest complaint against such a demanding principle governing aid is the agent's complaint that such principles require that he sacrifice his life. The strongest (generic, personal, and individual) complaint against any less demanding alternative is the complaint of each stranger, that such principles permit his being left to die. The reason "that two lives would be saved" is not an individual reason, and thus is excluded from the contractualist mechanism. Plausibly, the complaint of the agent is stronger than the complaint of each stranger, so such a demanding principle of aid could be reasonably rejected, and Scanlonian contractualism would block the demanding obligations that maximising act utilitarianism appears committed to.

Scanlonian contractualism appears committed to principles of aid that are very demanding on those in a position to give aid. The complaints of persons in "dire straits", who are in need of aid, and whose basic interests are at stake, against less demanding principles of aid seem to be stronger than the complaints of persons in positions to give aid against more demanding principles. Consider for example Chronic Global Poverty. Billions of people around the world suffer from chronic poverty, which threatens their lives. A great number of relatively affluent people have the means of alleviating this poverty through effective charitable donations. The strongest complaint against a less demanding principle of aid which does not require each relatively affluent person to give aid would be some poor person's complaint that, under such principles, he would die. The strongest complaint against a more demanding principle of aid which requires each relatively affluent person to give aid seems to be that, under such principles, because giving aid is costly, the cumulative cost of giving aid over a lifetime that he incurs would be significant. Surely it is worse to die than to spend a lifetime giving aid, so the former complaint is stronger than the latter complaint, less demanding principles of aid can be reasonably rejected, and Scanlonian contractualism is committed to very demanding principles of aid.

Because the demandingness of Scanlonian contractualism, under the above argument, turns on the relative strength of complaints against more demanding principles and complaints against less demanding principles, one might worry that the complaints of those in dire straits against less demanding principles of aid have been overstated. Granted, under less demanding principles, the costs incurred by those in dire straits, due to their being left unaided, are great. But under more demanding principles, those in dire straits also incur significant costs due to their being, on other occasions, in the position to give aid, hence subject to demanding obligations. Then, their complaints against less demanding principles would be something like "under such principles, while the costs to me of giving aid would be greater, this is outweighed by the benefits to me of receiving aid should I require it". Their complaints against less demanding principles would be, in part, tempered by the fact that they would have significant complaints against more demanding principles.

The argument that the costs of meeting the demands of more demanding principles of aid intrapersonally offset the benefits of receiving such aid does little to temper the demandingness of contractualism. As Ashford argues, in certain contexts, like Chronic Global Poverty, the costs of meeting the demands of more demanding principles of aid to those in dire straits will be low because their ability to give aid is (relatively) very limited, hence they face very limited demands to give aid, which scarcely (if at all) (intrapersonally) temper their complaints against less demanding principles. In Chronic Global Poverty, the persons whose lives are threatened by poverty would not incur significant cumulative costs in regulating their behaviour by a more demanding principle that requires, for example, that one give aid when doing so prevents significant costs befalling others at modest cost to oneself, since they would face few such demands in the course of their lives. Their complaint against any less demanding principle would be only minimally tempered, it would be something like "Sure, I would then be marginally better off because I am called upon to give aid on fewer (but not by much) occasions, but such principles permit my being left unaided, and that leaves me far worse off." This is surely still a stronger complaint than that of those most called upon to give aid. So Scanlonian contractualism is still committed to making great demands of such persons.

One might instead worry that the complaints of those who face demanding obligations have been understated. Kumar argues that under such demanding principles, agents must not only give aid when called upon, but stand ready to give such aid, and that such readiness is highly costly. Scanlon would remind us that general regulation of behaviour by some set of principles imposes costs on persons beyond the costs incurred in the acts required by such principles. In Scanlon's words "the general authorisation or prohibition of a class of actions can have significance that goes beyond the consequences of the actions that are performed or not performed as a result." Demanding principles of aid require not only that each person give aid when so called upon, but that each person stand ready to do so. This requires that persons diligently pay attention to situations of need where his aid may be required, entertain some degree of insecurity in his possession of goods which he may be called upon to sacrifice in giving aid, and relinquish some degree of control over his life in making himself responsive to the needs of others. But to do all this is costly, a life so regulated would be deprived (to a greater or lesser extent), for example, of meaningful engagement with the value of achievement, beauty, friendship, familial love, etc.. Such costs ground a strong complaint against extremely demanding principles of aid from the standpoint of those most called upon to aid. Scanlon also maintains that the reasons for rejection of candidate sets of principles need not be grounded in considerations of well-being. For example, a person could complain that some set of principles treats him unfairly, and such a complaint could be adequate grounds for reasonable rejection of that set of principles. Intuitively, we think that it matters to whether our acting in some way is justified if a person raised such complaints as "that would be unfair to me". Then a person on whom extreme demands are made by more demanding principles of aid could complain also that such principles fail to treat him as a person whose life is his in a meaningful sense which entails that he has a certain degree of autonomy over his life, since under such principles, this person cannot fully exercise his autonomy unless he acts impermissibly. The worry then, is that such complaints are stronger than the competing complaint, i.e. it is worse to live a life so empty of meaning and to be treated other than as a person whose life meaningfully belongs to him than it is to live a merely materially impoverished life. Then, intuitively excessively demanding principles of aid could be rejected on such grounds.

Even if the complaints of those who face demanding obligations against more demanding principles are grounded not only in the costs of giving aid but also in the costs of standing ready to do so, it seems the complaints of those in dire straits against less demanding principles are stronger still. In Chronic Global Poverty, the lives of the poor are not merely materially impoverished. A life so jeopardised and undermined by poverty is a life over which the person whose life it is has little to no meaningful control, since how this person acts is determined by material necessity, rather than by this person in a meaningful sense (or by moral necessity). Such persons, too, are insecure in their possession of various goods, and deprived of meaningful engagement with achievement, beauty, friendship, familial love, etc.. So it seems their complaints are stronger than the competing complaints of those most burdened by more demanding alternatives. Then, Scanlonian contractualism is still committed to unintuitive demanding obligations.

Ashford argues that the demandingness of Scanlonian contractualism (in this sense) ought not to count against the plausibility of Scanlonian contractualism because any plausible moral theory must be equally demanding given the "vast scale of extreme and easily preventable suffering". According to Ashford, we should reject our intuition that the demands of Scanlonian

contractualism are excessive. Because any plausible moral theory must treat each person as having equal moral status, the "drastic and irrevocable impact on others of not being helped", under any plausible moral theory, must ground a strong obligation to help these others. Because of the vast scale of suffering, the cumulative cost of meeting such obligations will be extremely high.

I argue that we should reject the intuition that contractualist requirements in cases like Chronic Global Poverty are implausibly demanding also because this intuition is grounded in the mistaken but understandable assumption that the current state of the world is, in the morally relevant ways, similar to Chronic Global Poverty. It seems we think contractualist requirements in Chronic Global Poverty are implausibly demanding because we think we would have similar obligations in the current state of the world, and that this is implausible. In Chronic Global Poverty, the suffering of the poor is "easily preventable". If, instead, we assume that the plight of the poor is some sort of inevitability, and that, to some extent, there is not much (more) the relatively affluent can do, then contractualism would demand far less of the relatively affluent. I argue that in the current state of the world, this is the case. Efforts to aid the poor are frustrated by bureaucratic inefficiency, the corruption of institutions in poor countries, crime and violent conflict. Plausibly, given these limitations, there is only so much we can do. [Incomplete]

## Social Risk

Ashford argues that Scanlonian contractualism yields implausible prohibitions of intuitively permissible risky practices. Scanlonian contractualism appears to yield such judgements because Scanlon stipulates that the complaint against some principle which permits some risky practice of a person harmed by this practice is not diminished by the improbability of this person's being harmed. Consider, for example, the practice of Medical Experimentation, in which some small number of persons are selected at random to be involuntary subjects of lethal medical experiments, which in turn yield life-saving medical discoveries. Under Scanlon's stipulation, the strongest complaint against any principle governing risky practices which permits Medical Experimentation is each involuntary subject's complaint that under such a principle, he would die. But, given this stipulation, contractualism yields implausible prohibitions of intuitively permissible practices. Consider, for example, the practice of passenger air travel. This practice poses a risk for persons who do not stand to benefit from it. For example, there is some risk that a plane crash kills an Amish person who resides below a high-traffic flight path. Such persons would each have a strong complaint against any principle governing risky practices which permits passenger air travel, namely that under such a principle, he would die. The strongest complaint any person could have against any alternative principle which prohibits passenger air travel is presumably that under such a principle, he would be significantly inconvenienced. Then, it seems that any principle which permits passenger air travel can be reasonably rejected, hence passenger air travel is morally impermissible. The argument for the impermissibility of passenger air travel generalises to other intuitively permissible risky practices where persons who would not benefit from the practice suffer significant harm with low probability (and there are sufficiently many such persons that it is virtually certain at least one person suffers the significant harm). But it is extremely unintuitive that such risky practices as passenger air travel are impermissible. So if contractualism is committed to this result, it seems extremely implausible.

Scanlonian contractualism appears committed to such unintuitive judgements because Scanlon maintains that the standpoints from which principles governing risky practices are to be evaluated must be "ex post", in the sense of being subsequent to the identification of the persons who are harmed or burdened by the risky practice. Scanlon here seems motivated to block unintuitive permissions such as in the case of Medical Experimentation. The thought that the relevant standpoints are ex post could also be motivated by the thought that knowledge of the identities of the persons who are harmed is morally irrelevant. [Incomplete]

Scanlon argues that his contractualism would not prohibit intuitively permissible risky practices such as passenger air travel because against a more restrictive principle governing risky practices, which requires that beneficiaries take such burdensome precautions to eliminate the risks to non-beneficiaries, beneficiaries would have strong complaints grounded in the burdens they would be required to bear. Scanlon thinks that such complaints are strong enough to ground reasonable rejection of any excessively restrictive principle. Scanlon maintains that permissions for intuitively impermissible risky practices, such as Medical Experimentation, could not be grounded in a similar argument. The thought here is that the cost of eliminating the risk posed by practices like Medical Experimentation is small, compared to the cost of eliminating the risk posed by practices like passenger air travel, presumably, because it is easier to refrain from intentionally harming others as in the former case than it is to avoid unintentionally harming others as in the latter case. So a principle which prohibits risky practices, where harms are (randomly) intentionally inflicted, could be reasonably rejected, but a principle which prohibits risky practices, where harms are an unintentional consequence, could not be reasonably rejected.

Scanlon's argument is unsuccessful because it is premised on an over-estimation of the costs of precaution. In the case of intuitively permissible risky practices like air travel, taking the utmost precaution to avoid harming non-beneficiaries involves no more than cessation of the practice. Then, the cost of precaution to beneficiaries is not particularly high. For example, the cost

of the cessation of passenger air travel is at most tremendous inconvenience. The cost to the person most inconvenienced by the cessation of passenger air travel is surely less than the cost to the person most harmed, who is killed by a falling plane. The former has a weaker complaint against any principle which prohibits passenger air travel than the latter has against any principle which permits it, so passenger air travel remains impermissible. If Scanlon's argument appeared plausible at all, it is because it obscured the magnitude of the former cost.

Scanlonian contractualism appears committed to such implausible prohibitions because of Scanlon's stipulation that the justifiability of principles governing risky practices is to be evaluated "ex post" rather than "ex ante", i.e. from standpoints where the identity of the luckless few is known rather than those where it is not. An ex ante contractualism appears to permit the intuitively permissible risky practices that ex post contractualism struggles with. Under an ex ante contractualism, the complaints of persons harmed against the risky practice which resulted in his being harmed is discounted by the improbability of his being harmed. For example, in the case of passenger air travel, from an ex ante standpoint, the strongest complaint against a principle which permits this practice is a non-beneficiary's complaint that, under such a principle, there is some vanishingly low probability that he would be killed by a falling plane. From an ex ante standpoint, even a person who does end up killed by a falling plane could have no stronger complaint, since that he is killed is not known to him. Then, the competing complaint, against any principle prohibiting passenger air travel, that such principles impose tremendous inconvenient, seems stronger, and thus sufficient to ground reasonable rejection of such prohibitive principles. Then, contractualism would permit passenger air travel and other intuitively permissible risky practices.

It is simply false that knowledge of the identities of the persons who are harmed is morally irrelevant. This appears intuitively plausible because the specific sort of knowledge that is relevant has not been made sufficiently clear. In the case of risky practices, the relevant sort of knowledge is each potential victim's knowledge that he would be harmed or burdened by the risky practice. [Incomplete]

An ex ante contractualism appears to yield implausible permissions for intuitively impermissible risky practices. For example, from an ex ante standpoint, the strongest complaint a person could have against some principle permitting Medical Experimentation is that under such a principle, there is a vanishingly low probability that he would be killed. Then, the competing complaint, against any principle prohibiting Medical Experimentation, that under such a principle, he would die because discoveries that would save his life would not be made, seems stronger, and thus sufficient to ground reasonable rejection of such prohibitive principles. Then, contractualism would permit Medical Experimentation and other intuitively permissible practices.

Kumar suggests that an ex ante contractualism need not permit such intuitively impermissible risky practices because complaints could be raised against principles which so permit, not only on the ground of the harms that persons would then suffer, but also on the ground that such principles violate constraints such as those to do with bodily autonomy. Scanlon maintains that the reasons for rejection of candidate sets of principles need not be grounded in considerations of well-being. For example, a person could complain that some set of principles treats him unfairly, and such a complaint could be adequate grounds for reasonable rejection of that set of principles. Intuitively, we think that it matters to whether our acting in some way is justified if a person raised such complaints as "that would be unfair to me". Kumar's suggestion is that on the grounds of such complaints, sets of principles which fail to include certain constraints could be reasonably rejected, and such constraints could prohibit intuitively impermissible risky practices. For example, consider some set of principles which fails to include a principle which prohibits the killing of an identified person (that includes reasonable exceptions for self-defense, the punishment of criminals, and the prevention of catastrophes, etc.), as in the case of Medical Experimentation. Against such a set of principles, a person who would be so victimised under such principles could complain that such principles permit others to (kill him and) disregard his status as a human being whose life and whose body belong to him in a meaningful sense which entails his having the right to a certain degree of control over his life and over the way in which his body is treated. Plausibly, this complaint is strong enough to ground reasonable rejection of any set of principles which fails to include such a constraint. Then, because Medical Experimentation involves this sort of offensive killing while passenger air travel does not, an ex ante contractualism (given that it incorporates reasonable constraints) would prohibit the former and permit the latter. Kumar's strategy appears to correctly identify the morally relevant difference between Medical Experimentation and passenger air travel, and thus appears to be a promising strategy for solving the general problem of risky practices.

Frick argues that Kumar's suggestion is not sufficient to meet the objection that ex ante contractualism permits the intuitively impermissible. Consider the practice of Two-Stage Treatment. In the first stage, a doctor administers a preliminary treatment to 100 paraplegic children. The preliminary treatment is effective for a Lucky 90% of children and ineffective for a Luckless 10% of children. In the second stage, because a follow-up drug is in short supply, the doctor either administers a follow-up treatment to the 90 Lucky children or administers a follow-up treatment to the 10 Luckless children. If treated, the Lucky children are cured of their paraplegia, otherwise, they remain paraplegic. If treated, the Luckless children remain paraplegic, otherwise, they die. The doctor administers the follow-up treatment to the 90 Lucky children. Consider also the practice of



Risky Treatment, where a doctor treats 100 paraplegic children. For each child, there is a 90% chance that he survives the treatment and is cured of his paraplegia, and a 10% chance that he dies. Intuitively, Risky Treatment is permissible but Two-Stage Treatment is not. But there seems to be no reasonable constraint that is violated by Two-Stage Treatment but not by Risky Treatment. From an ex ante standpoint, where the identities of the luckless few are not known, in each case, it seems no person has a particularly strong complaint against any principle which permits the risky practice, but each child has a strong complaint against any principle which prohibits the risky practice, namely that he would be deprived of a treatment which, on balance, would be good for him. So ex ante contractualism (even understood as incorporating reasonable constraints) would permit intuitively impermissible risky practices like Two-Stage Treatment.

Frick argues that a stage-wise ex ante contractualism better tracks our intuitions regarding both intuitively permissible and intuitively impermissible risky practices. A stage-wise ex ante contractualism refines Scanlon's mechanism for evaluating whether some candidate set of principles could be reasonably rejected. On this refinement, whether some set of principles could be reasonably rejected depends on the comparative strength of complaints from standpoints at each "distinct causal stage [which] involves the voluntary action of some agent". So the relevant complaints against Two-Stage Treatment include not only those from standpoints prior to the preliminary treatment but also those from standpoints prior to the follow-up treatment. From one of the latter standpoints, a Luckless child could complain that any set of principles which permits his being left untreated would permit his being left to die. This complaint, it seems, would be stronger than the strongest competing complaint against some alternative set of principles, namely the complaint of some Lucky child that such principles permit his being left to live with paraplegia. Then, the Luckless child, from a standpoint between preliminary treatment and follow-up treatment, could reasonably reject any set of principles that permit Two-Stage Treatment, hence a stage-wise ex ante contractualism would prohibit Two-Stage Treatment.

Even a stage-wise ex ante contractualism does not fully align with our intuitions regarding risky practices. In particular, it seems any sort of contractualism which involves ex ante evaluation of principles implausibly requires that we save one identifiable life at the expense of any number of statistical lives. (See Frick, 2015, pp. 212-219.)

In the case of Gareth the miner, what seems to go wrong is that the scope of Scanlonian contractualism is narrower than the scope of interpersonal morality. We have reasons to sacrifice identifiable lives for statistical lives in some cases that Scanlon cannot recognise.