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Scanlonian Contractualism

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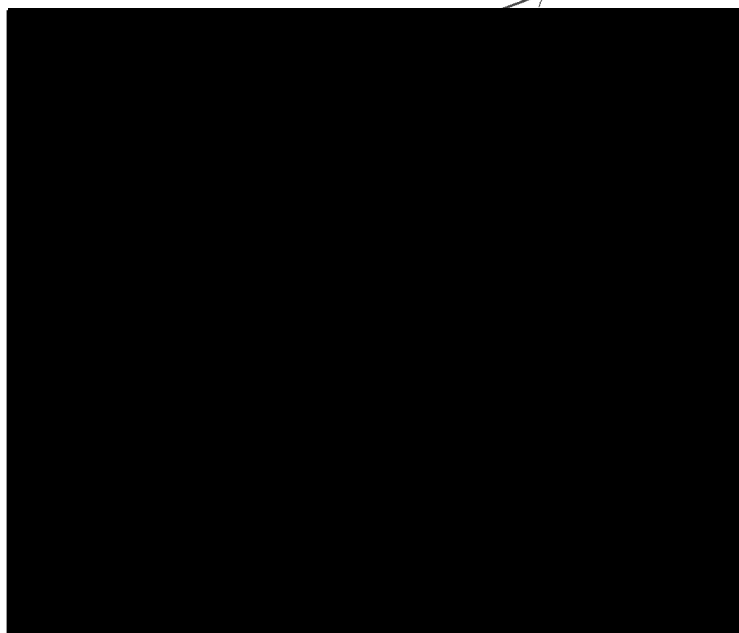
Ce sujet de recherche propose une défense du contractualisme philosophique. Le contractualisme est une variation plus précise du contrat sociale habituelle. Mon projet défend une nouvelle variation de ce contrat, le contractualisme de T. M. Scanlon. Ce nouveau contrat utilise la théorie de Scanlon comme base pour élucider la genèse et la nature des normes qui conduise nos comportements sociaux et variables.

This thesis proposes a defense of philosophical contractualism. Contractualism is a more precise variation on the familiar social contract tradition. My thesis defends a new version of this contract position, 'Scanlonian' contractualism. This new contract is 'Scanlonian' to the extent that it employs the resources of T. M. Scanlon's view as a base from which to elucidate the nature and origins of social norms, viewing these as both determinants and variables affecting social behavior.

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INTRODUCTION

This thesis offers a critical assessment of T. M. Scanlon's contractualism. It interprets contractualism as a two-level theory divided between normative and methodological concerns. The first level is the theory's normative level. It defends "mutual recognition" and "fairness" as the key normative notions that *any* moral theory must defend in order to be coherent. To negate these values in dealing with others is for Scanlon the essence of the commission of moral wrong. This minimal view of what morality requires (mutual recognition plus fairness) is buttressed by methodological minimalism at the second level. The methodology for distinguishing moral right from wrong lies in establishing two further criteria. First, what specific reasons is the person appealing to? Second, in what context does she appeal to these? These two questions concern the particular link Scanlon forges between formal and substantive forms of justification in ethics. This linkage figures prominently in what follows. The above structure is the essence of "contractualism" and is detailed most fully in Scanlon's *What We Owe to Each Other* (2000).

The thesis will argue that contractualism should be viewed primarily as an account of moral motivation, secondarily as an account of moral wrong, and thirdly an interpersonal account of the requirements of fairness, in that order. All three aspects of the theory are in turn instances of a wider category, that of practical reason. That is, each of the three aspects concern what it is most relevant to deliberate about when deliberating ethically on how to act.

Contractualism, by Scanlon's own admission, does not offer comprehensive answers to the questions above. Instead it prefers to offer robust guidelines on how one can come to deliberate about these issues for themselves. I view this personal and practical element of the theory as its novelty. I consider Scanlon's contractualism a practical exercise, in that it aims to improve our existing understanding of our entrenched moral and deliberative practices. The issue for Scanlon is not that of providing first principles. It is rather the yeoman's task of looking at moral practice as it is and of attempting to formulate rules and guides for making it more consistent and hence fairer in the end. It also addresses and takes seriously the claims of moral pluralism. For part of fairness is inclusion. To this end, contractualism is eminently practical. The influence of pluralism informs later parts of the thesis.

Contractualism introduces several improvements to standard theories of moral motivation. These seek to provide psychological explanations for the adherence moral agents exhibit toward mores and rules of conduct. Contractualism attempts to extrapolate an account of moral motivation working from the ground up. Instead of constructing a formal account of moral motivation, Scanlon takes as a fact that individuals are actually motivated to act on moral grounds. This assumption is held on empirical grounds and stands in contraposition to other purely formal theories.

His claim is not however that everyone already acts as they should. It is rather the claim that we do sometimes act according to proper moral reasons. And it is occurrences of proper moral reasoning that interest him.

A formal view would not take the actual (substantive) values that underpin the deliberative process into account. Scanlon's view does. For contractualism, our substantive values matters as much as our purely logical reasons do, for the two work in concert. Deliberation on the contractualist view, briefly put, amounts to coordination between values and procedures.

In contrast, the practical task for ideal theory would be to show that it accords with embedded moral life. For without this connection, ideal theory remains motivationally inert. Its moral "ought to" would have no force. The practical task for contractualism is to show that it is capable of criticizing the established moral norms and habits that it takes as its ground. Starting with what we actually do, contractualism has the advantage of already being in accord with (some) of our moral practices.

As Scanlon aims at providing a principled account of moral motivation and not of providing an endorsement for the status quo, he takes the notion of a 'reason' to be both primitive, in that it is not analyzable, and central, in that value is only attributable to agents via recourse to reasons. Only agents act and only agents attribute values. Any theory failing to do justice to this insight is for this a practical failure. "The idea of a reason should be taken as the central notion for understanding desire, motivation, value, and morality" (Scanlon 159 2003). In attempting to align moral practice and moral motivation, contractualism has done something uncommon.

It has created a hybrid between a formal, and hence procedural, account of moral motivation and a substantive account of it. Scanlon's hybrid, like his whole project, is an outgrowth of his view of his main problem.

The goal Scanlon wants to reach is that of erecting an ethic that is at once perspicuous and practicable. He views the obstacles to his success thusly. "Any explanation of how something can count in favor of something else either explains this in normative terms, in which case it may be convincing but does not explain reasons in general, or else offers a psychological explanation, in which case the normative force of reasons is not convincingly explained. Faced with this dilemma, I am inclined to think that our inability to explain how something could be a reason is not due to a weakness in our philosophical resources but rather to the fact that the relation of being a reason for is too fundamental to be helpfully explained in other terms" (Scanlon 177 2003). Three aspects make up this original set of problems. First, to "explain something in normative terms" is to offer a value judgment. As Scanlon notes, depending on the deliberative context, such a move may (or may not) be persuasive. Yet the core problem for contractualism remains. The offering of value (of substantive moral reasons) does nothing to illuminate the *origin* of those values. What deliberative process led one to endorse the particular values in question? The substantivist perspective is no help in answering this question. Second, the offer of "psychological explanation," typically on the order of Humean appeals to desire, has the opposite effect to that of appealing to values. Norms disappear.

In appealing to purely psychological explanations (to mostly formalistic procedures), the normative force behind moral actions falls out of the equation. To illustrate this, consider that in acting as I do, I do not first appeal to my desires in order to know how to act. I have those desires in virtue of the consequences and in virtue of the attributes of the states of affairs that my actions bring into being. I desire an object, for example, not because I desire it, but because of its exhibition of desirable properties. Placing desires at the center of psychological explanation is, from a contractualist viewpoint, wrongheaded. Reasons function in the other direction. I have reason to desire an object, in virtue of its attributes, so I do desire it. Desire does not arise in a vacuum anymore than reason alone could push or motivate us to act.

Accounts of the requirements of morality, often assume this psychologistic (procedural) form. A classical formulation of such a motivational requirement is found in Kant. For Kant, our reasons and our motivations are in lockstep. To be motivated to act against the dictates of reason is to be both irrational *and* morally corrupt. On Kant's top down view, we want what it is rational for us to want. Anything short of this pulls rationality and morality apart. The idea is that they are in some sense unitary. The social contract tradition that motivates Scanlon's own attempt is suffused with attempts to reconcile disparate elements of moral theory. Kant self-consciously attempts such reconciliation in his own philosophy. Kant wants to conjoin the "unity of reason" with the "primacy of practice" much in the way Scanlon does.

It is therefore worth examining what Kant, who along with Rousseau influences Scanlon, says about this relation.

> This [attempt] involves the questions of how the theoretical point of view and the practical point of view fit together and how legitimate claims of each form of reason are adjusted in a reasonable (and of course consistent) way. Kant believes that at bottom there is only one reason, which issues into different ideas and principles according to its application: whether to the knowledge of given objects or to the production of objects according to a conception of those objects. This is his doctrine of the unity of reason. An aspect of this unity is the primacy of the practical: the discussion of this leads to the idea of philosophy as defense (*Groundwork* Pref: 11 [391] Rawls 16 2000).

Scanlon's project is similar in many regards thought it is less ambitious than Kant's is. It is also uncommitted to the controversial doctrines Kant endorses. Scanlon calls this inchoate relation between normativity and rationality into question. While he agrees with Kant that reasons and rules influence each other, in ethics, as well as elsewhere, Scanlon does not believe that morality and rationality are interchangeable. Immorality for a contractualist is not irrationality, nor is the opposite true. There are occasions were acting against our desires is a perfectly rational thing to do. If I override my desires to act a certain way, and I do this because of good reasons, I am being responsible. The idea with a procedural account of motivation is to show that rationality requires a certain type of (responsible) conduct. Such conduct is rendered impossible by the desires-first view. "Attempts to explain how the fact an action is wrong provides a reason not to do it face a difficult dilemma. Understood in one way, the answer is obvious: the reason not to do the action is just that it is wrong. But this is surely not the kind of answer that is wanted: it simply takes the reason-giving force of moral considerations for granted" (Scanlon 149 2000).

Proceduralism faces the second horn of the dilemma. Substantivism for its part must deal with the first. It takes views wrong actions as *prima facie* wrong and therefore takes "their reason-giving force" for granted. In Kant's verbiage, utilitarianism and other forms of pure substantivism, fail because "utilitarians maintain that the principle of utility, by taking everyone's desires and inclinations into account on an impartial basis, treats everyone as ends-in-themselves and never as means only.

To treat persons as means only, they say, is to disregard their desires and inclinations, or not to give them an appropriate weight...for by viewing people as subjects of desires and inclinations and assigning value to their satisfactions as such, (classical utilitarianism is at odds with [proceduralist] doctrine at a fundamental level" (Rawls 198 2000 [Brackets mine.]). Scanlon hopes that by mixing the substantivism and proceduralism a comprehensive picture of moral deliberation will emerge, one that avoids both pitfalls. Now that we have seen the failing of substantivism, let us consider a benefit of affirming this view.

Substantivism "explains the reason-giving force of moral judgments by characterizing more fully, in substantive terms, the particular form of value that we respond to in acting rightly and violate in by doing what is wrong" (Scanlon 150 2000). Another example of a substantivist view is hedonistic utilitarianism. It focuses solely on substantive values (in the hedonistic case, happiness and the avoidance of pain) as individuals experience these. Therefore, both proceduralism and substantivism have something to recommend them. Yet as Scanlon points out, both also have blind spots.

Further, contractualism claims that *all* monistic theories are prone to this undue partiality, not just those that subscribe to substantivist or proceduralist tenets. In focusing too closely on their favored criterion, "duty" in the case of deontology and "experience" in the case of utilitarianism, monist theories distort the practice of actual moral deliberation and this in undesirable ways. Inaccurate representations of these fundamental practical components will lead to inaccurate theories, Scanlon fears. In the end, contractualism seeks to overcome the aspect blindness that afflicts these and other prominent ethical theories by making place for genuine pluralism. The idea here, as in Kant, is to accommodate different standards at different times. Rightness and wrongness, for Scanlon, cannot be reduced to the formal criteria (or procedures) endorsed by a moral agent or group any more than the substantive values of a given community or individual. Yet his is not a relative doctrine either. He terms his view "parametric universalism" (Scanlon 339-341 2000). He explains its barebones this way. "All that that doctrine requires is that if we claim that X is a reason for one of these people to do A, but not for the other, then we are committed to the claim that there is some *relevant difference* between their situations" (Scanlon 178 2003 [Italics mine]). This "parametric" element in Scanlon's universalism opens a space for a *principled endorsement* of pluralism. Rather than adopting an "anything goes" attitude, Scanlon is committed to articulating a procedure for differentiating between morally relevant situations. Despite their failings, proceduralist and substantivist positions point out salient features of moral life.

Reliable procedures, for example, are required if we are to criticize our actions and the actions of others as we come to create societal rules of conduct. Yet to some ethicists, these procedural/substantivist moves are all that morality requires. To others however, this is but the beginning. Scanlon is the second type of ethicist. For him, a true moral dilemma confounds our best rules about how to act. It is the all too common disjunction, between prescription and action that motivates Scanlon to try to formulate new normative guidelines. These new guideline seek to split the difference between action and prescription. Parametric universalism attempts to splice the benefits of proceduralism together with those of substantivism. Above we saw the procedural element. I now turn to the substantivist element.

"This [i.e., parametric universalism] is [also] a substantive claim about reasons, which is likely to be more plausible for some values of 'X' and 'A' than for others. When one is choosing among two activities, each of which is worthwhile, the fact that one is "drawn to" one of these, but not the other, can be a good reason for pursuing it, because it indicates, for example, that one will be happier, or more likely to be successful in that pursuit. In other cases, however, it may be much less plausible to claim that the reasons a person has depend on how these considerations strike him or her" (Scanlon 178 2003 [Brackets mine]). So the central claim of this thesis is sustained by the fact that Scanlon himself grounds contractualism in willingness to do conceptual justice to everyday moral experience.

As Scanlon puts it, "the idea that an action is of a kind that there is reason to have discouraged is surely not unrelated to the idea of its being wrong" (Scanlon 2001 153). He goes on to write that for contractualism "the challenge is to formulate this [above] relation correctly and to spell out how believing an act to be wrong is connected to seeing a reason not to perform it" (Scanlon 2000 153 [Brackets mine]). Scanlon then rounds-out his account of the difference between formal and substantive views of moral motivation by saying that "what we need to do, then, is to explain more clearly how the idea than an act is wrong flows from the idea that there is an objection of a certain kind to people's being allowed to perform such actions, and we need to do this in a way that makes clear how an act's being wrong in the sense described can provide a reason not to do it" (Scanlon 2000 153).

On Scanlon's view, contractualism targets two goals vis-à-vis these concerns. The first goal is to criticize our moral practices on their own terms. The second goal is to explain moral wrong as a failure to act or to offer others reasons for our actions that they could not reasonably reject. Notice that both of these requirements target actual (and therefore practical) improvements, improvements in which practices we practice, which reasons we offer others, and what criteria we employ in deliberating about those same reasons.

The burden contractualism must meet, is that of explaining why we are generally motivated to abide by various norms in the first place. It must do this while offering an explanation of our norms that is recognizable in their own terms.

In short, contractualism wants to provide an independent standard with which to criticize and revise presently held norms. Nevertheless, it wishes to do this without distorting the norms or the practices that constitute its subject matter. Yet one may still wonder what "practicality" has to do with all this. Over and above the welcome (practical) influence that reflective reason-giving has over unreflective reason-giving, another element motivates Scanlon's account. Scanlon endorses contractualism in part because he takes moral pluralism, the distinctive mark of contemporary moral communities, seriously.

Taking pluralism seriously involves developing and endorsing a moral theory capable of bridging the gap between contradictory (normative) viewpoints while considering each side's respective concerns. Many debates concerning the role of religion in the public sphere take on this pluralistic character. And this taking of accounts, is precisely what contractualism does. Therefore, I think for the above reasons that it is fair to characterize the Scanlonian project as essentially an exercise in practical ethics.

Scanlon wants to address pluralism because failure to do so results primarily in actual (and not only conceptual) discord. While the thesis focuses primarily on Scanlon's methodology in what follows, it is the interplay between the various constitutive elements of contractualism that interests me. The chief relation characterizing these constitutive elements is a dual commitment on Scanlon's part; a commitment that echoes previously visited themes.

Mirroring its extra-methodological commitments, contractualism entertains two principal methodological commitments: the first is to proceduralism, the second is to substantivism. Several commentators have identified this two-part commitment, most notably Alfred R. Mele, Piers Rawling, Brad Hooker, and Bart Streumer. Yet Scanlon's attempt to accommodate pluralism, as well as the broader drive to establish a practicable ethic, goes largely unnoticed, even among these largely sympathetic commentators. My explication of Scanlon's project aims to correct this.

CHAPTER 1 .

The present interpretation of Scanlonian contractualism is defended via three avenues. I examine the roots of the social contract tradition that inspires contractualism. I also explicate the salient features of contractualism's structure. Finally, I assess the view against critiques made of it. By way of a conclusion, the thesis ends with a brief summary of contractualism's future fortunes as I see these. In the end, I judge the project to be incomplete in certain ways, misunderstood in others, and plausible overall. Its final plausibility turns out to be grounded in its pragmatic conception of moral motivation. I now continue frame working the central aspects in Scanlon's view. The excursus below leads to a broader consideration of the social contract tradition. Reasons play a key role in both the history and the development of contractualist ethics, as this chapter will make plain. Reasons are a core theme in Scanlon's overall project. Reasons are so fundamental to the contractualist project that Scanlon takes the role of acting as a reason within deliberation, whether pro or con, to be analytically primitive. By this, he means that reasons, unlike other objects of thought, cannot be broken down into elements that are more basic. So the project of constructing an ethic with reason at its center, a project synonymous with contractualism itself, cannot be properly understood unless the counterbalance between substantive values and abstract procedures are antecedently understood. The reason for this is that Scanlon's conception of reason is part of his conception of the formal and substantive elements underlying moral motivation.

Reasons play into Scanlon's commitment to proceduralism about matters of practical rationality as well as playing into his commitment to substantivism about practical reason. Scanlon's thesis about moral deliberation is holist in nature. Scanlon's characterization of moral deliberation rests entirely upon the interplay between substantivism and proceduralism, which in turn informs his view on moral motivation. Additionally, the practical aspects of his project come forward only once the above elements are seen in their proper conceptual space. Mele and Rawling illustrate the relevant "conceptual space" well. They describe Scanlon's outlook thusly. "According to *proceduralism* an agent is open to rational criticism for lacking a desire only if she fails to have a desire that she can rationally reach from her beliefs and other desires, whereas according to *substantivism* an agent is open to such criticism not only if her desires fail procedurally, but also if they fail substantively—where, for example, an agent who lacks the desire to take curative medicine might be substantively irrational in virtue of this lack, and yet be procedurally rational because she cannot rationally reach this desire from her beliefs and other desires" (Mele and Rawling 2004 6 [Original italics]). The balance of procedural concerns and substantive moral concerns open a space for appreciating a distinct kind of pluralism and one that interests Scanlon deeply.

For contractualism, every concrete act of valuing some state, some person, or some act, brings in its stead a distinct method of appraisal. Stated differently, every valuing (potentially) has its own metric associated with it.

Therefore, something of cultural or historical value (an artifact perhaps) will have a different standard of value than something idiosyncratic (a favored sports jersey). Yet both the jersey and the artifact have things in common. The jersey is itself an artifact. Moreover, sports competitions are not generally idiosyncratic pursuits. Still, the way we value an ancient vase and the way we value something of emotional value. What accounts for the difference? It is here that Scanlon's theory becomes plausible in a way unthought-of by his critics.

By looking at how people actually value the things they value, we get a better grip on what the reasoning behind some of their appraisals is. Those appraisals in turn speak not only to the object appraised (the jersey or the vase) but also to the motivations and beliefs of the appraiser. One may judge the vase differently if one thinks it is an original 1364 Ming vase rather than a 1644 Ming reproduction. What makes Scanlon's contractualism "practical" is his realization that these subtle shifts in evaluation and motivation matter to moral theory. Moreover, he attempts to explain these shifts where others paper over them. Contractualism echoes themes from the social contract tradition. One of contractualism's prime themes is the idea that in ethics the interests of individuals matter and that these matter equally.

Just how these interests are to be spelled-out and how "equality" is to be defined remain a point of contention within the tradition itself. Historically, the social contract tradition has stood at odds to other moral traditions. Older, more conservative, theories place established tradition, obedience to god, or other similar notions, at the center of morality.

This is obviously so in the case of medieval and Catholic morality. The later contractarian tradition in contrast, takes the relation of man to society as its respective starting point. I refer to non-Scanlonian contract theorists as "contractarians." This is to avoid potential confusion. "Contractualism" is the favored term for Scanlon's view.

Most traditional contractarians see the role of moral theory as that of mediator. The task on this conception is therefore to reconcile self-interest with group-interest. The trick is to do it without depriving either of its rightful place in moral deliberation. In contrast to the historical background, Scanlon's account is an attempt to bring methodological precision to the aims of the older contractarians. Another point of reference between Scanlon's theory and the views of older contract theorists is his acknowledgment of the importance of mutual recognition and reason. It is not enough for parties to the contract to admit that each has their respective interests. These said interests must be taken seriously within the deliberative framework itself.

Wholesale recognition of another party's position requires a commitment to taking on some of that party's values and perspectives. This is why one of Scanlon's tests of whether a given action is acceptable or not is "reasonable rejectability." Scanlon's contractualism is a technically demanding philosophical doctrine, its component notions of mutual recognition and reasonable rejectability are grounded in the phenomenology of moral life. Nevertheless, there are problems with the coherence of his account which we return to in the final parts of the thesis.

While a "practical outlook" animates the whole of Scanlonian contractualism, certain problems arise that I find insurmountable for him at present. In the end, Scanlon's is a mixed theoretical bag. Stated simply, I think the practical dimension of Scanlon's work deserves more attention than it typically receives. To this end, the thesis examines contractualism's practical side and attempts to show that it is indispensable to the theory overall. With some alterations, the practical aspects can one day come to full fruition. To explain the theory it needs to be placed it in its proper historical context; I therefore try to lay out the main features and commitments of Scanlon's contractualism in this first chapter.

This allows subsequent sections to flesh out subordinate features of his theory. They will highlight its strong points and (later) flag places where I think Scanlon may have gone astray of creating a fully practicable ethic. Once I properly explain the theory, I try to defend the warrant of my practical appreciation of it. Thankfully, the practical viewpoint has the benefit of underscoring the continuity between Scanlon's project and that of older social contractarians rather than of blurring it. "Contractarianism names both a political theory of the legitimacy of political authority and a moral theory about the origin and/or legitimate content of moral norms. The political theory of authority claims that legitimate authority of government must derive from the consent of the governed, where the form and content of this consent derives from the idea of contract or mutual agreement.

The moral theory of contractarianism claims that moral norms derive their normative force from the idea of contract or mutual agreement. Contractarians are thus skeptical of the possibility of grounding morality or political authority in either divine will or some perfectionist ideal of the nature of humanity" (Cudd 2003). And it is these doctrinal differences that separate pre-17th century ethics from post-17th century contractarianism. Contractarians such as Kant and Thomas Hobbes also sought to connect their theories to the practical in ethics and politics. This means that Hobbes and Kant saw their respective social contracts as practical devices for inaugurating understanding and (indirect) political change. For Hobbes, "all persons have the private or personal end of their own happiness, or of their own security. These ends are, of course, not shared; they may be of the same *kind,* yet they are not the very same *end.* Hobbes's social contract establishing the sovereign does not involve a shared end, much less an end that everyone ought to share, except insofar as they are rational (as opposed to reasonable). Moreover, the state's institutions are a common end only in the sense that they are a means to each individual's separate happiness or security. Those institutions do not specify a form of public political life that is to be seen by citizens as right or just in itself and from which they are moved by their sense of justice to act. The society of *Leviathan* is a kind of *private* society" (Rawls 365 2000 [Original italics]). The classical contractarians did not intend their theories to function solely as hypothetical interventions. Kant for one, whose views differ markedly from Hobbes on this score, saw the relation in more social, less atomistic terms.

Kant "supposes that all citizens understand the social contract as an idea of reason, with its obligatory shared end that they politically establish a social union. On his doctrine, citizens have to have the *very same end* of securing for other citizens, as well as for themselves, their basic constitutional rights, and liberties. Moreover, this shared end is characterized by reasonable principles of right and justice; it is a form of political life that is reasonable and fair (Rawls 365 2003 [Original italics])." They also believed that once the theory allowed for everyone's interests, adherence to it would reduce disputes between citizens. A proper accounting would arise out of a cost-benefit analysis of each contracting person's needs and interests.

The contract device in Hobbes and Kant therefore acts as a filter of sorts. It filters out idiosyncratic individual wants and needs. It replaces these with public and consensus-driven values that are also acceptable on an individual level. Social contract theorists think that consensus contributes to the peace, stability, and well-being of all implicated citizens and contractors. These are bridge-areas between ethics and politics. Traditional contractarians saw themselves as providing an account of the nature of our moral norms. This account is intended to one both of their origins and of their potential (moral) justifications. Therefore, for Kant and Hobbes, the practicability of morality relies on the possibility of forging (actual) wide speared social cooperation. It is the grounding of such a project that is at issue and not the viability of project itself.

What is more, morality of this type relies on the transmission and reproduction of norms (typically norms of reciprocity for a social contract theorist) across a society. This usually occurs via socialization and both Hobbes and Kant make respective mention of this in the *Leviathan* and in *The Groundwork*. Without transmission and retransmission, social cooperation would be a burden rather than an aid. Social practices have to be in place so that cooperation can be effective. Despite these similarities between Kant and Hobbes, stark differences also exist. Kant was concerned with a moral contract predicated on securing social justice for all citizens and this on the shoulders of reason.

He saw all citizens as moral persons, born free and forced into social cooperation by the knavish circumstances of communal life. Hobbes for his part was concerned with the transfer of one's natural rights to a sovereign. This was done in exchange for peace under a social compact. Writing during civil war, Hobbes's views emphasize security over social justice.

While both men knew that explanatory, conceptual, and normative issues existed concerning their respective social contracts, they were also at odds about what to do with about these lacunas. Kant leaned in the direction of endorsing the normative side of contracting, seeing this as the most productive option and as the one that would stave off the ruthless self-interest often detected in Hobbes's account. Hobbes thought that the contract device explained away the troublesome normative elements. For Hobbes, normativity is nothing other than bargaining for one's advantage and satisfying one's desires.

As such, the normative question, of what one individual owes to another individual, either in virtue of his or her shared humanity or of his or her shared citizenship, never arises. In Kant, the focus on this issue is altogether different. For Kant, the collective will and reason of each individual contractor (as expressed through a social contract) yields better results than any individual can attain alone in society. By "better results," Kant intended a relaxation of pernicious competition and a more peaceful and productive society for all. This is an alternative ruled out it by Hobbes's view of human nature.

In Hobbes, communal life can (and often does) lead to petty competitiveness and sometimes to disaster or death. The state of nature was often viewed as barbarous because it is naturally bereft of morality and thought that all that was "good" was the result of a productive socialization in which individuals were taught to consider the well-being of others. Natural man on both views is in constant competition with others, but his "will" is different. This is a notion shared by both Hobbes and Kant thought their draw very different conclusions from it.

Because security against various threats (whether they are natural or social threats) is best established by banding together with other (similarly situated) individuals, a contract that details permissible conduct in society is indispensable. The social contract in question is an agreement toward equalizing these "peaks" of cooperation while minimizing the "valleys" of discord that afflict social life.

Therefore, the difference between Hobbes and Kant on these questions of social justice versus individual security boil down to the fact that for Hobbes such contracting is all there is to the nature of morality. We wish to diminish discord while maximizing personal advantage for Hobbes and that is all. Kant takes a different view.

> Kant's analysis of commonsense ideas begins with the thought that the only thing good without qualification is a 'good will'. While the phrases 'he's good hearted', 'she's good natured' and 'she means well' are common, 'the good will' as Kant thinks of it is not the same as any of these ordinary notions. The idea of a good will is closer to the idea of a 'good person', or, more archaically, a 'person of good will'. This use of the term 'will' early on in analyzing ordinary moral thought in fact prefigures later and more technical discussions concerning the nature of rational agency. Nevertheless, this idea of a good will is an important commonsense touchstone to which he returns throughout his works. The basic idea is that what makes a good person good is his possession of a will that is in a certain way 'determined' by, or makes its decisions on the basis of, the moral law. The idea of a good will is supposed to be the idea of one who only makes decisions that she holds to be morally worthy, taking moral considerations in themselves to be conclusive reasons for guiding her behavior. This sort of disposition or character is something we all highly value. Kant believes we value it without limitation or qualification (Johnson 2004).

While the above characterization of Kant's conception is reminiscent of Scanlon, Hobbes does not explicitly appeal to a pacific component in human nature, save for localized fellow-feeling and occasional compassion. In fact, he more often alludes to man's darker nature. Kant does however recognize a strong civilizing aspect in society that Hobbes remains skeptical toward. The social contract in Kant sets the (idealized) conditions for membership in society in a way that it does not in Hobbes. For Hobbes fellow feeling and other non-cognitive aspects of human psychology do that for us. Yet despite these differences, traditional contractarians, in the mold of Hobbes and Kant, distanced themselves from the ancient idea that man's nature makes him intrinsically moral. Kant and Hobbes argue that ethics is a matter of mutual agreement between free agents.

.This freedom renders the agreement a true "contract" rather than being something tradition compels man to or that nature makes him unable to resist. These classic Hobessian and Kantian views are both deeply antiauthoritarian. This is so particularly regarding church authority and forms of state authority that denies natural talents and freedoms to individuals. Their view of such forms of authority is extremely critical. Individualism, unsurprisingly, looms large on both accounts.

The psychological makeup of the individuals in Hobbes and Kant's accounts remains ambiguous. There are few distinct pointers as to this psychology's nature. Nor to a distinct and persuasive link to the form of individualism, they both (differently) endorse. In the end, what separates Hobbes from Kant is Hobbes's view of moral agents as wholly self-interested. Kant views man, as an intrinsically social creature in a way that Hobbes never does. This divergence does not vitiate the fact that both philosophers think of morality as a predominantly social phenomenon. Each theorist uses a "state of nature" argument to remove the fetters of socialization and of tradition from their abstract conceptions of a single contractor. This abstraction from actual social arrangements is necessary for both. Without such an abstraction, individual contractors would simply fall back on old allegiances (familial, tribal, or other) or on other entrenched patters of social cooperation. What Kant and Hobbes wanted to do was to analyze these existing patters of cooperation.

The only way to do that with perspicuity is to allow potential contractors to image an initial moment of founding, one in which allegiances and pacts are first established. What people will choose is up for grabs in a thought experiment such as this. Because of this, Hobbes and Kant offer divergent answers. This is unsurprising if one recalls that their respective accounts of basic human psychology are different. Kant's account is tacit and ill explicated. Hobbes's view, for its part, is dire and minimal with survival taking the center stage.

One sees social cooperation as likely (Kant) while the other views it as evil but unavoidable (Hobbes). Norms, in Hobbes, are about maximizing individual interests. Moral agents are to navigate whatever antagonisms arise and to employ compromise when necessary. While allowing for the influence of fellow feeling, overall Hobbes is less optimistic about social cooperation than is the Kant of *The Groundwork*. The contract tradition that Kant influences sees the debate over human nature differently. For Kant, and for Scanlon whom he explicitly inspires, the legitimacy of the social contract originates within individuals. The contract attains legitimacy chiefly by disciplining the psychological and the moral motivations of social actors.

This disciplining procedure begins with the simple recognition that all similarly situated individuals are worthy of respect as they are distinct persons with goals and hopes such as ours. However, this respect of another's personhood comes at a price. That price is a widespread mutual recognition among contracting moral actors that needs to be earned.

To earn respect as full participants to Kant's contract procedure, individuals needed to display a willingness to justify their acts and to tame their aforementioned interests. They can do this by pitting their interests against the interests and the actions of the other contractors. The willingness to compromise and to take each contractor's interests at face value is only strategic at best in Hobbes and forms no part of the contractor's individual psychology for him.

In Hobbes, the issue is one of satisfying the needs and desires of the agents in the contract. It is never an issue for a Hobbesian of justifying beliefs or desires to others. Each agent is a separate entity and is to be treated as such. Hobbes view of man is instrumental in the pejorative sense of that term. For contractarians of all stripes, a social arrangement (or an ethical contract) is legitimate only if the object of the agreement is the person who is subject to it. In other words, persons are the final court of appeal in the social contract tradition. This hypothetical contract is then the basis for a collectively enforced system of cooperation among persons. Each person affected by the contract has reasons for abiding by it. These reasons can be Hobbesian ones of mutual self-interest and self-preservation or Kantian reasons based on mutual recognition and mutual respect. Contractors also have reasons for insuring that other contractors, who are similarly situated, will abide by the social contract. This is a second commonality among all forms of contractarianism both old ones and new ones.

Scanlon's contract however is more explicitly 'ethical' than the "political" contracts of either Hobbes or Kant. The difference is that for Hobbes and Kant, issues of coercion form the core concern occupying their fictive contractors.

CHAPTER 2

It is the potentially coercive phenomena in social life that contractors should be concerned to adjudicate, at least according to the classical social contract view. In Scanlon's case, he believes that all moral dilemmas relating to what he calls the morality of "right and wrong" exhibit the same structure. The structure is as follows: a failure to discern the contextual/practical features of the dilemma, a failure to accord mutual respect appropriately, and a failure to identify the key values at play for each of the moral actors embedded in the dilemma. The political credentials of an ethical dilemma are of no import for him.

'Rightness and wrongness' are about the relations individuals occupy in each other's lives. As such, the nature of these relations forms the proper domain of study for ethics. The most important elements in ethics to Scanlon are mutual recognition and the establishment of a comprehensive and respectful account of the status of persons. Unlike his classical contemporaries (Hobbes and Kant) Scanlon sees both a positive and a negative aspect to contracting. Negatively, the classical contractarians used the contract device to fend off undue coercion. For Scanlon, this negative application of the social contract is but half the moral story. The positive element of a social contract also requires attention. That positive element is the creation of real social bonds, bonds that conjoin contractors beyond narrow self-interests. Scanlon views social bonds such as patriotism, local pride, professional courtesy, and others as instances of "positive contracting."

Friendship and promise keeping are also aspects of positive contracting. As an amplification of ethics, politics falls within this ambit. Our responsibilities toward each other are the same whether in political matters or in moral matters.

Unlike the older tradition of Kant and Hobbes, which was trying to present a historical account of how citizens came to have the responsibilities they had toward each other. Scanlon follows John Rawls in adopting a modern view of how moral contracts function. For them, the device of the social contract aims to answer the questions: "Why should I obey the law?" "Why should I be moral?" "Why should the plight of others concern me?" The contract acts as a frame within which such questions can be asked and answered. The advantage of the contractual framework is that it answers questions in a principled rather than a contingent manner.

A difference between Rawls and Scanlon is that Rawls seems to view the contract in question as a hypothetical matter. For Scanlon the contract is real in a qualified sense. The issue separating the two is not whether citizens factually agree to the idea of a social contract as it is presented. What binds Scanlon's account to Rawls's, is the idea that if asked contemporary citizens would answer in a way that is compatible with contractualist principles. This tacit reliance on established practices and understandings gives Scanlon's work a practical focus often lacking from other similar contractarians' views. Therefore, the contract in Scanlon is hypothetical in that it does not require empirical verification. It trades on the intuition that most citizens can supply contract-like justifications for the social cooperation they experience daily.

Put differently, it is crucial for Scanlon that the individuals affected by the contract device are aware of the benefits and burdens that such a contract makes them party to and responsible for. The fact that most of find ourselves within social systems that dole out burdens and benefits, and that we tacitly agree to the dictates of this arrangement, is empirical mooring enough for the contractualism of Rawls and Scanlon. Therefore, the hypothetical aspects of the contract are persuasive, because they accord with our everyday experience of social life, while the contingent parts have some empirical basis.

The contract device is married to a constructivist conception of legitimacy. Rawls and Scanlon see the legitimacy of the contract device as a function of its structure, and not as a device rooted in something external to the contract situation. Therefore, our social compact is legitimate because of the reasons advanced in its defense. The contract is legitimate because the agreement of which it is a product was itself arrived at by legitimate means and for legitimate ends. For Hobbesians, the contract is simply a matter of protecting and advancing the preexisting interests of the contractors. For Rawls and Scanlon the idea is that through the negotiation of the contract we come to realize how we value what we value.

Drawing on preexisting values and commitments for contractarians of Rawls's type is tantamount to bargaining without allowing for the concerns of other contractors. This cannot stand. For, the structure of legitimacy that the social contract device exploits turns on everyone subject to the contract thinking that it is in his or her interest to obey it.

If I know that my fellow contractors will not respect my interests and values, then I have no real reason for contracting. If however, I am confident that we are taking seriously and actively enforcing everyone's respective interests and values equally, then I have more reason to submit to the contract than I would otherwise. Rawls works with this realistic aspect of the hypothetical contract. Scanlon for his part sees the contract as actual and practical from the beginning. He thinks the contract device portrays our actual reasoning and motivations for submitting to the dictates of the social contract.

Contractualism as Scanlon understands it begins from the observation that "we all believe that some actions are morally wrong" (Scanlon 2000 1). Scanlon wishes to know what kind claim or judgment we are making in labeling an action "wrong" (Scanlon 2000 1). Where Scanlon breaks ranks with other ethicists is in his contention that "judgments about right and wrong cannot be straightforwardly understood as factual claims about the empirical world or about our own psychology" (Scanlon 2000 1). The radical nature of this claim lies in its upending of our traditional notion of right and wrong. For many traditional moral theorists, particularly those of an orthodox utilitarian bent, an act is wrong precisely in virtue of its empirical consequences. For traditional deontologists, it is our psychological states and our duties to others that make acts noteworthy or blameworthy. Contractualism rejects both explanations as partial and therefore as unsatisfactory.

This rejection is not because empirical or psychological considerations do not bear on moral decisions. Rather, it is because moral judgments are a factor of the deliberations entertained by a single agent. If this is so, as Scanlon contends it is, then psychological dispositions or empirical consequences are importantly subordinate to reasons in moral decision-making. His rejection of these traditional explanations is commonsensical. A moral agent can easily have the right type of psychological disposition (a sympathetic disposition) and all the same arrive at the wrong judgment. Likewise, a moral act can have empirically desirous consequences for one agent, while illegitimately disadvantaging another agent (as instances of nepotism). One would be hard-pressed to describe these arrangements as straightforwardly moral.

Other explanatory options of course exist. Rather than adopt the view that no moral basis for judging acts exists (amoralism) or for a view that thinks of moral judgments as essentially emotional expressions (emotivism) Scanlon opts for another form of explanation. Against amoralism, Scanlon writes that judgments about right and wrong "do seem to make claims about some subject matter, claims which are capable of being true or false" (Scanlon 2000 1). Against emotivism, deontology, and utilitarianism, he notes that "while certain kinds of experience can be important in putting us in a position to make moral judgments, making these judgments themselves does not seem to be a matter observation" (Scanlon 2000 1). In denying that psychological experiences are necessary and sufficient for forming moral judgments, Scanlon downgrades mainstream deontological claims of a certain type.

In refusing to accept that moral judgments, are necessarily or sufficiently a matter of empirical observation *tout court*, he denies certain aspects of mainstream utilitarian thought. Further, Scanlon states explicitly, that for him "we arrive at the judgment that a certain action would be wrong simply by thinking about the question in the right way, sometimes through a process of careful assessment that it is natural to call a kind of reasoning" (Scanlon 2000 1 [Emphasis added]).

By foregrounding the importance of reasoning about certain types of moral judgments, Scanlon moves away from simple versions of emotivism. The directness of Scanlon's view stems from his conviction that moral judgments are like other forms of judgments in that all judgments display the same logical structure. Attempting to short-circuit some common misunderstandings of his account, Scanlon argues, "Moral judgments have the form of ordinary declarative sentences and obey the usual laws of logic." And adds that "we should take these judgments at face value, as making claims about their apparent subject matter, right and wrong" (Scanlon 2000 1). We should accept moral judgments at face value for Scanlon because there is no special problem facing moral action. All action for Scanlon is of the same type and exhibits the same structure upon examination.

This view breaks with a view in contemporary philosophy that construes moral action as special and as a problematic form of action. Against traditional concerns with specifying the nature of moral acts, Scanlon simply offers the following analysis.

The respective traditions of Bentham and Kant mistakenly embroiled themselves in metaphysical questions over the nature of moral judgment. Metaphysics preoccupied these traditions with arcane questions concerning the alleged relation between moral judgments and moral facts. Most of the issues centered on the question of whether moral judgments correspond to moral facts in some way, or whether moral judgments are simply descriptions.

While these metaphysical questions have a rich history of their own, they are not part of contractualism's purview. Much misunderstanding has arisen from critics assuming that this swath of questions is Scanlon's intended area of study. It is not. "What drives me to look for characterization of the subject matter of judgments right and wrong that goes beyond the trivial [problematic] mentioned above, is not a concern about the metaphysical reality of moral facts." This is because Scanlon's interest is purely methodological.

He wants to isolate a method by which we can adjudicate our reasons for acting morally. A proper understanding of how we adjudicate these reasons can only be had by recognizing the role that psychological and empirical factors play in ethical reasoning at large.

As Scanlon explains, "if we could characterize the method of reasoning through which we arrive at judgments of rights and wrong, and could explain why there is good reason to give judgments arrived at in this way the kind of importance that moral judgments are normally thought to have, then we would, I believe, have given a sufficient answer to the question of the subject matter of right and wrong as well.

No interesting question would remain about the ontology of moral facts - for example, about the metaphysical status of moral facts" (Scanlon 2000 2). A key feature of Scanlon's account is his orientation toward the practical. By eschewing the common strategy of grounding moral judgment on metaphysical claims regarding the alleged connection between moral facts and moral norms, Scanlon employs another avenue. He believes that we can ground our moral judgments by appealing to the various reasons we, as moral agents, already entertain for acting as we do in morally relevant situations. Scanlon denies the implicit skepticism that informs much of ethical theory. He takes the sociological fact that we do reason about our actions in distinctive ways as reason enough to bother analyzing the class of reasons (reasons related to morally relevant action) that we take to be binding in those situations.

He writes, "in contrast to everyday empirical judgments, scientific claims, and religious beliefs that involve claims about the origin and control of the universe, the point of judgments of right and wrong is not to make claims about what the spatiotemporal world is like. The point of such judgments is, rather, a practical one: they make claims about what we have reason to do" (Scanlon 2000 2). Contractualism's viewpoint subsumes metaphysical issues to practical ones, given that morally relevant circumstances typically involve calls to action of various sorts. Scanlon specifies this commitment in stating that 'metaphysical questions about the subject matter of judgments of right and wrong are important only if answers to them are required to show how these judgments can have this practical significance" (Scanlon 2000 2).

Thinking of ethics without this practical and agential component is counterintuitive. What purchase would norms have on us, as moral agents, if they did not commit us to act in some way? I am using the notion of an "action" expansively here. It is this intuition about moral action and others like it that Scanlon uses in laying the groundwork for his contractualist ethic. Rejecting metaphysically based skepticism about norms, the contractualist for Scanlon need not affirm that "a metaphysical characterization of the subject matter of morality" is needed "to establish that moral judgments are about something 'real'" (Scanlon 2000 2).

It seems that the opposite conclusion seems warranted. Metaphysical questions of this ilk carry the burden of proof to contractualist eyes. This is because they trade on the multiple meanings the word "reality" has. Since they do not typically specify, "what kind of reality is at issue and why it is something we should be worried about" Scanlon argues for their sidelining (Scanlon 2000 2).

On the view Scanlon advances "it is enough to show that we have good grounds for taking certain conclusions that actions are right or are wrong to be correct, understood as conclusions about morality, and that we therefore have good grounds for giving these conclusions the particular importance that we normally attach to moral judgments" (Scanlon 2000 3). The pragmatic element informing his thinking is both persuasive and undeniable. Doubt for a contractualist like Scanlon, requires as much epistemic justification as belief does. One need not (therefore) privilege the moral skeptic from the outset.

So far, we have however taken moral judgments to have a certain import. Are we justified in this belief? This second challenge to the grounds of his theory is one that Scanlon takes more seriously than the first. His response to it, in short form, is as follows. "The view I will defend takes judgments of right and wrong to be claims about reasons - more specifically about the adequacy of reasons for accepting or rejecting principles under certain conditions" (Scanlon 2000 3).

A common objection to this view is the charge that Scanlon is appealing to "reason" without explaining what reasoning is supposed to be or what work reasons are supposed to do. This criticism is unfair. Scanlon attempts to provide an account of reason regarding his ethical theory, claiming that "as long, therefore, as we have suitable ways of determining whether there would or would not be good reasons for rejecting a principle under the relevant circumstances, and as long as we have reason to care about this result, a characterization of judgments of right and wrong in terms of such reasons provides a satisfactory account of the subject matter of these judgments" (Scanlon 2000 3). Scanlon parses right and wrong similarly. He analyzes the meaning of the terms "right" and "wrong," dissects its methodology, and finally, examines what he calls its "reason-giving force" (Scanlon 2000 3). Scanlon's analysis turns mostly on the question of what, if anything, gives moral reasons (if such reasons exist) their probity and import. In Scanlon's case, a version of Rawls's method of wide-reflective equilibrium serves as his guiding method.

In time, I will explain each of these terms of art and show how they function in Scanlon's view. For the moment, I will continue laying out Scanlon's project as he sees it. Actions, reasons and facts, interact in specific ways on Scanlon's view. The facts form a frame of reference. They allow the moral actor to select possible courses of action.

As actions have consequences, some of which can affect the prospects of others, our actions for Scanlon need to be constrained and structured by a particular type of reasoning. What makes Scanlon's view interesting is the practicality and clarity with which he explicates what types of reasons moral actors require and to whom they owe reasons of this type. He spells these conditions out, most notably by explaining that "when I ask myself what reason the fact that an action would be wrong provides me with not to do it, my answer is that such an action would be one that I could not justify to others on grounds I could expect them to accept" (Scanlon 2000 4). Scanlon then pinpoints the area of morality with which his account concerns itself. Given that he views morality as a disparate field, this is a necessary step. Not everything we intend by the term "morality" can always be adjudicated in the same way or by using the same standards or measures. The complexity of each moral episode demands a reevaluation. While our contractualist principles remain *unchanged* from episode to episode and predicament to predicament, the concerns of others will always for Scanlon temper our reactions and decisions concerning morals.

"This leads me" he writes "to describe the subject matter of judgments of right and wrong by saying that they are judgments about what would be permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject" (Scanlon 2000 4).

An act is therefore considered wrong "if and only if any principle that permitted it would be one that could reasonably be rejected by people with the motivation just described" (Scanlon 2000 4). In other words, to be moral is to want to reach certain ends in certain ways. Attempting to abide by principles that others, with whom you are attempting to agree, will find unacceptable is pointless. Therefore, to the extent that parties to the moral contract that Scanlon is discussing want true accord, the principles appealed to in negotiating right actions from wrong ones need to be agreeable to all involved. In this way, one allows for everyone's interests equally, when this is what the circumstance warrants. The practical purpose Scanlon wishes to achieve is well attained by tying motivation and moral wrongness as he does. This way, first-order moral beliefs are of a piece with the psychological motivations that drive us (as moral agents) to act as we do. Scanlon's account would of course disallow any principle that allows for the commission of nefarious acts, through the entertainment of nefarious motivations or otherwise. Because he sees motivation and action as conceptually unified, acts that bring harm to others without obvious benefits (such as acts of wanton killing) are overruled by the reasonable rejectability criterion that Scanlon has already established (Scanlon 2000 4).

A benefit of adopting this unified conception of moral motivation and moral action, is that "this description of the subject-matter of our judgments of right and wrong also has the appropriate degree of independence from our current first-order beliefs, since it leaves open the possibility that some of these beliefs are mistaken and that the authority that we now attach to those beliefs in fact belongs to others instead" (Scanlon 2000 4).

What contractualism does is translate judgments of right and wrong into what Scanlon takes to be notions that are more tractable. These successor notions are judgments of reasonableness and judgments concerning epistemic justification. So epistemic concerns come to frame concerns over what reasons one has to act or refrain from acting in a certain way at a certain time. Rightness and wrongness become translated as questions of context, motivation, and reasonableness, thus rendering moral issues more clear-cut according to Scanlon. "[Contractualism] describes judgments of right and wrong as judgments about reasons and justification, judgments of a kind that can be correct or incorrect and that we are capable of assessing through familiar forms of thought that should not strike us as mysterious" (Scanlon 2000 4 [Brackets mine]). Scanlon's appeal to "familiar forms of thought" is echoed throughout *What We Owe to Each Other*. His descriptions of these "familiar forms of thought" ground his project in our everyday moral decisions. The widespread use of such descriptions throughout his works, serve to underpin my own thesis, which is that Scanlon's overriding concern is with justifying the practical aspects of his contractualist program vis-à-vis everyday morality.

Scanlon realizes that reasonable rejectability can be an attractive ideal, even to those who think its appeal lies outside the immediate concerns of Scanlonian theory. What is more, reasonable rejectability is intuitively comprehensible. Unlike with complicated theories of motivation, moral agents can intuitively understand why another agent, one who is concerned for their own well-being, might reject a given course of action. The fact that some act is wrong is morally prior for many individuals to its acceptability or rejectability by others. Put differently, an act may be both rejectable and morally wrong, but its factual nature gives us guidance. Scanlon's view wants to overturn this seemingly commonsensical staple of ethical thought. From the contractualist stance, we do not know what is right and wrong before reasoning about it. The factual/commonsensical view faces this predicament according to Scanlon. Commonsense tells us that society morally prohibits certain actions but it does not always tell us why this is the case. A contractualist tack is one that analyzes the action in question via a consideration of who could find the commission of the act reasonably rejectable on moral grounds. It then analyzes the aspects of the act itself, seeking to find what element(s) make the act acceptable or rejectable. Only after this procedure has taken place, can contractualism label a given act morally wrong or right. All such attributions will be case dependent, at least until there are enough similar cases from which to derive a principle that allows or disallows their commission. Scanlon's contractualism extends not just to the nature of various acts but to the motivations underlying them as well.

Scanlon writes: "[Contractualism] holds that thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject" (Scanlon 2000 5 [Brackets mine]).

For Scanlon the reasonable rejectability criterion "determines the shape of more specific moral notions such as murder or betrayal." It also explains why "we have reason to avoid actions that could not be justified in this way accounts for the distinctive normative force of moral wrongness" (Scanlon 2000 5). The motivational aspects of Scanlon's view are what both separates it from solely self-interested versions of contractarianism (such as those inherited from Hobbes) and what ties it to Kant's deliberative version of the social contract. This preference for Kant over Hobbes is not as controversial as it may initially appear. There is no sense, on Scanlon's view, of attempting to reason about ethics with irrational people. An individual is irrational to the extent that they see themselves as not bound by reasons they admit as valid. So too it is invalid for two or more individuals seeking to agree to attempt to advance their own respective advantage. *What We Owe to Each Other* is preoccupied with providing a justification for the ethical motives underlying right and wrong actions. Its first section, comprising chapters one through three, lays out Scanlon's account of practical reasoning. Here is a schematic presentation of that account followed immediately afterwards by a detailed accounting of each component idea (reasons, values, and well-being). Specifically, Scanlon presents us with an account of how values and practical reasons intersect.

This intersection is covered in his discussion of the topic of well-being, which contrary to utilitarian theory, Scanlon sees as but one value among others. These first three chapters of section one is paramount because together they form the bedrock of Scanlon's contractualist account. Because Scanlon is neither a strict deontologist nor a strict utilitarian, his reinterpretation of value, well-being, and practical reason, carries with it important implications for how he interprets various aspects of morality.

I will attempt to clarify why Scanlon feels that reinterpretation is necessary in this section. Scanlon's account of practical reason is an account based on reasons rather than on desires. Value is treated in chapter two of *What We Owe to Each Other* where Scanlon defends his buck-passing account of value against more standard teleological accounts. Finally, Scanlon sums the results of chapter one and chapter two in the discussion of well-being that takes pace in chapter three. For him, there is no non-moral conception of personal well-being on offer.

As such, ethicists should not rely on non-moral analyses of well-being when discussing its structure. Scanlon denies that well-being can function as a bridge between evaluative descriptions of people's actions and non-evaluative purely empirical descriptions. Scanlon insists on this because he believes that there is no non-question-begging way to defend appeals to non-moral factors when discussing what motivates a moral agent to act as she does.

Another factor animating Scanlon's analysis of practical reasoning is his deep dissatisfaction with the existing consequentialist and deontological alternatives. Neither approach he thinks does justice to the pluralist nature of morality. If desires are truly what motivates moral actors to act as they do then, in Scanlon's estimate, the only role left for moral theory is the promotion of states of affairs that promote well-being and fulfill the individual desires of moral actors. This is a popular position that he rejects as inattentive to the vagaries of actual moral deliberation. If instrumental considerations best fulfill the desires of individuals then other forms of moral deliberation (non-instrumental considerations) will be shut out. This for contractualism is a mistake, chiefly because desire does not and should not have the primacy that consequentialists accord it. This is where values come into play. If the teleological view of value is true, as consequentialism takes to be, then the most practical moral view is the one that promotes and amplifies well-being.

The problem with this argument from the contractualist viewpoint is that it occludes other (morally relevant) reasons from view artificially. Scanlon argues that consequentialists and utilitarians take value to be deductively teleological. That is, they do not present any arguments to this effect. Consequentialists and utilitarians for him presuppose this fact about moral reasoning. This presupposition is one he rejects. On his view, deliberation from an inductive stance is the only way to affirm or to deny the truth or falsity of the teleological view of values. As well-being is obviously an important value, teleological accounts are intuitively attractive. Scanlon recognizes this and warns against it.

For him focusing on well-being alone leads one to think of consequentialism and teleology as more attractive and more plausible than they really are. Reasons do produce evaluatively relevant results and consequences do matter significantly to Scanlon. However, he objects to well-being being considered the epicenter of moral deliberation, a commitment held by many utilitarians. By including other reasons and other values, we get a different picture of moral life and reasoning from the classical utilitarian one, or so Scanlon argues below:

> Succeeding in one's main aims, insofar as these are rational, must be a component in any plausible notion of well-being. But this idea serves as an evaluative Trojan horse, bringing within the notion of well-being values that are not grounded in it. From an individual's own perspective, which takes his or her main goals as given, what matter are these goals and other particular values, not the idea of well-being that they make-up. From a more abstract perspective, taking these goals as not yet determined, we can say that a life goes better if the person is more successful in achieving his or her main rational goals (whatever these may turn out to be), but the conception of well-being that can be formulated at this level is too indeterminate, and too abstract, to be of great weight (Scanlon 2000 132-3).

We once again see the stress on commonsense rearing its head in these comments. Scanlon must defeat utilitarianism to make his account seem plausible. This is because much of our everyday reasoning revolves around cost-benefit type analyses of benefits and burdens. In addition, while this type of reasoning is undoubtedly moral (in at least one sense of the word) Scanlon wants to say that it is not the whole story of how reason about what to do. I turn now to the topic of reasons in contractualism.

A crucial feature of Scanlon's view is his distinction between reason *simpliciter* and operative reason. For him, "there is a difference between asking what reason there is for believing that P and asking what a given person's reason for believing it was. (I will refer to the latter as the person's *operative* reason) (Scanlon 2000 19 [Italics in original]). Operative reasons are reasons individuals already have and on which they act. Reasons *simpliciter* for Scanlon are reasons upon which we deliberate and these reasons are structurally and logically and prior to the operative reasons we use when acting toward the achievement of some particular goal. Stated differently, an operative reason is a guide toward something we want whereas a reason *simpliciter* is a reflection on what renders various available options attractive or unattractive to us as moral actors. While we all have dispositions that make us deliberate and act in certain habitual ways we also have what Scanlon calls judgment sensitive attitudes, attitudes that give us pause and force us to reflect on our very preferences before acting decisively.

'In order for a consideration to be an operative reason for me, I have to believe it. In addition, I have to take it to be a reason for the attitude in question. There are separate attitudes' (Scanlon 2000 56). This is part of Scanlon's rejection of desire as a central normative *cum* motivational notion in the ethics of action. Reasons attach to attitudes for Scanlon but they are different from acts.

An action can be justified only by appeal to deliberation and to a weighing and counter-weighing of the attendant consequences of acting a certain way. Otherwise, the moral actor in question is acting blindly if he only acts on his desires and nothing more. This is the mutual respect and regard he owes to those whom his actions would affect. This is a buck-passing view of value because non-operative reasons are underlying the desire in question (whatever it may be). These non-operative reasons actually make us act; at least this is so according to the contractualist viewpoint. Thus, we value the composing elements of an action, or the intended change brought to an unsatisfactory state of affairs for Scanlon, but we certainly do not act simply out of desire.

We do not only weigh the pros and cons of actions but also question whether a given type of deliberation is itself fruitful; we cannot rest content with the desire-based view of ethics that consequentialism brings. We do not simply have reason about which we deliberate says Scanlon. We also deliberate about which reasons should count within deliberation and over how they should count or if they should sometimes count at all. We include or exclude reasons, just as we exclude or include facts from deliberative consideration, and this is done as the deliberative context warrants.

What Scanlon provides, he claims, is both a formal and a substantive account of how we are to decide. Contractualism is a guide to figuring out what should count when deliberating morally and what should not. The substantive part of this view is Scanlon conviction that mutual respect for others matters and matters always. The formal element is the demotion of desire-based models of practical reason and their replacement with reason-based modeling.

In articles after *What We Owe to Each Other* Scanlon has eased this distinction between desires for acting and reasons for action. His current work nevertheless retains a privileged place for practical reasoning and deliberation that stands quite apart from the desire-based model. Next, I turn to Scanlon's account of values (chapter two). Consequentialists and utilitarians tend to value states of affairs. He glosses their view in stating that: "as [moral] agents, our relation to states of affairs lies in being able to realize them, to prevent them from occurring, or to make their occurrence more or less likely. What we have reason to do, on this [consequentialist] view (at least as far as questions of value are concerned), is to act so as to realize those states of affairs that are best - that is, have the greatest value. This teleological structure is often taken to be a formal feature of the ideas of "goodness" or "value" rather than part of some substantive view about which things are good (Scanlon 2000 79-80).

So various facts, other than the fact that we want a given outcome, determine what is substantively good for contractualist theory. The fact that a given individual is found pleasant, trustworthy, or intelligent, will explain why we act as we do toward that individual.

No state of affairs intrudes here according to Scanlon. We respond to particular substantive values and choose both how to deliberate about subsequent actions on our part and about how to value the individual or object in question appropriately. "Appropriately" here comes to mean with mutual recognition, which works as Scanlon's master value throughout *What We Owe to Each Other*. Respect for mutual recognition among similarly situated and motivated individuals acts as the theory's anchor. Value for contractualists is a double-sided notion.

As moral actors, we have compelling reasons for valuing the things we value. We can value states of affairs, traits, objects of art, or people or things that inspire us. When we so value objects, we use reasons, according to Scanlon that are closely tied to the inherent values that are part of the person or object we are evaluating. For all these distinct (but related) ways of valuing something or someone, Scanlon nevertheless rejects pure teleological accounts. While Scanlon does not exclude states of affairs from value consideration, he does reject the traditional teleological conception of promoting the state(s) that yield the most satisfaction or happiness. He explains that his: "Concern [...] is with the abstract thesis that value has a teleological structure rather than with [...] other features that teleological conceptions often share. Nevertheless, it is nonetheless important to bear these other features in mind, since the appeal of particular teleological views, and their distinctness from methodological alternatives, often depends upon them.

Indeed, one may wonder whether, once it is recognized that a teleological conception of value can assign intrinsic value to actions *as well as to their consequences*, and that this value need not be impartial or additive, there is any content left to the bear idea of a teleological structure" (Scanlon 2000 81 [Ellipsis and italics mine]). At bottom, Scanlon is trying to provide a unitary description of what renders wrong action "wrong." He is not interested in morality at large. Rather, he is spurned by the desire to respect projects of individual moral agents as well as respecting collective endeavors of a type that require mutual respect (and mutual recognition) on the part of moral actors.

It is imperative that we distinguish the central issues in Scanlon from ancillary concerns raised by *What We Owe to Each Other*. The book both advances two distinct frameworks. One is a substantive theory, particularly displayed by chapters four and five. These chapters deal with what a contractualist morality requires of moral agents in terms of their actions. However, the book also attempts to answer ancillary issues of moral motivation and of epistemic methodology. These are more formal, less morally substantive, issues in general philosophy. Scanlon's tacit commitments in these areas (moral psychology and epistemology) are partially explicated in his endorsement of wide reflective equilibrium and Kantianism.

While these general concerns are important issues in their own right, Scanlon is far from conclusive when it comes to formulating his own philosophical commitments toward these. It would therefore be beyond this thesis's scope to attempt a comprehensive presentation of the said issues.

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Instead, I concentrate on the issues that Scanlon treats directly, issues such as reason, value, and well-being, found in his first three chapters. At issue is whether he successfully connects these observations from the early part of the book with his the doctrine he later endorses (in chapters four and five).

Reason in contractualism is a "primitive" notion. Scanlon treats it so because he thinks no better explanation of the function of reason exists. A reason is something that counts in favor of an act or of an appraisal. The act or appraisal is itself evaluated based on the component elements providing its make-up and/or by the consequences for mutual recognition that its commission or its non-commission would entail. Therefore, in this, and despite his protests, Scanlon is a commonsensical consequentialist about reasons as these affect the relation of mutual recognition and respect he believes all morally worthwhile episodes between individuals should exhibit. This relation of respect and of recognition extends to nonhuman objects as well, such as artworks, and to more complex relations, like those involving distinct social roles.

Professions, such as teaching, law, medicine, and others, display virtues of this type (virtues such as acting professionally or listening attentively) according to Scanlon. This observation helps clarify why Scanlon thinks he can make due with a spartan notion of reason. What is innovative in his treatment of reason is his refusal to provide overt restrictions upon what can and cannot count as a valid moral reason. This is because mutual recognition among contracting agents serves as an inbuilt corrective to any wayward reasoning brought into the contract by either party.

This is partially to show the resilience behind the idea of mutual recognition and to display Scanlon's skepticism about the possibility of providing context-less criteria for reasoning.

While actions require reasons, the converse is not always true. This is another point brought out by Scanlon's unwillingness to commit to a single constrictive notion of practical reason. As actual moral deliberation never exhibits a unitary structure, Scanlon finds it misleading to advance a simpleminded account of moral reason. Considerations for Scanlon come in positive and negative varieties and he sees no reason why practical deliberations about norms should be any different. These practical concerns determine whether an action is right or wrong. No further more muscular notion of reason is required according to him.

The attempt to provide such muscular accounts does not erroneously assimilate concrete and particular considerations that people may have to an abstract notion of "reason." This for Scanlon is needless. We do better to attend to the existing considerations that actual individuals in actual situations entertain. A reason, for Scanlon, is a desire or a psychological disposition toward a given outcome or state of affairs. Employing a pragmatic criterion, Scanlon thinks of reasons as considerations. Considerations do the actual work in moral reasoning in his view. The difference between careful moral deliberation and carelessness is one of degree and not one of kind. In Scanlon's estimate, people commit moral errors when their reasoning is either too narrow, too general, or off the mark in some other way.

Contra his critics, he does not believe that moral errors are the result of having a faulty comprehension of what "reason" requires. Scanlon takes it that no such requirements exist (in the abstract).

All that is relevant to quotidian deliberation, moral or other, is that the affected agent takes careful consideration to deliberate about all the relevant factors before committing to acting in a certain way. Nothing, for Scanlon, is gained by invoking reason or constraints on reason. The moral agent who deliberates well, and does so as a matter of habit, will continue to make the right moral decisions regardless of his ascription or agnosticism regarding the nature of practical reason. Practical reason is "practical" specifically in that it relies heavily on convention and on prior experience. It uses only evidence that is present to hand. What practical reason does not rely on is a metaphysically or epistemically thick notion of reasoning.

In order to know whether a moral agent is acting morally or not Scanlon applies a double-faceted test. First, he asks if impacted individuals can reasonably reject the outcome at hand. Secondly, he asks if the proposed act exhibits a reciprocal form of respect for those affected by its consequences. This second facet is general enough in scope to include the damage done to impersonal entities (such as the environment) and thus evades the charge that contractualism is pejoratively anthropocentric. Scanlon's view of reason is lean but it is not as meager as some critics, like Onora O'Neill, have suggested.

His primitive conception of reason allows him to "make judgments drawing whatever distinctions there are between those considerations that are (good) reasons for action and those that are not" (Scanlon 123 2004). Scanlon does not doubt that rational criteria can be mustered for distinguishing between which reasons are relevant when. Rather, he doubts "whether it is possible to state general criteria from which these [distinguishing] judgments (let alone all valid judgments about reasons for action) follow (Scanlon 123 2004 [Brackets mine]).

Scanlon can eschew general criteria for distinguishing which reasons are reasons for action and which are not. This is so because his contractualism already employs a built-in distinction between *operative reasons* and *standard reasons*. Allowing for the possibility of error, Scanlon does not take an agent's "operative reason" to be authoritative. The reasons that agents take to be good ones for acting in some way, may not actually be the best (objective) reasons available to them. Contractualism does not rule out all possibilities for error, nor is it designed to. It does however present moral agents with a test of whether their actions are in fact defensible or not.

Just because a moral agent prefers a given act and therefore proceeds with its performance does not render that act right. If the act is acceptable by all affected by its commission, and if said commission does not directly conflict with the mutual recognition criterion, then an act can be said to be defensible. Therefore, while Scanlon's definition of "reason" is intentionally left primitive, the work it enables moral philosophy to do is not primitive.

Contractualism can robustly favor or disfavor an act without requiring Scanlon to provide a full account of what practical reason requires in all potential cases. To explain why agents act as they do, moral philosophers have often appealed to three notions: reason, motivation, and desire. According to Scanlon, while desire and motivation have been the most attractive of the three options he finds this favoritism misguided. *What We Owe to Each Other* can be read as an assault on the very idea that desire and motivation should (respectively) figure as the central notions that underpin any plausible normative ethic.

The very idea of a "desire" is shown by contractualism to be little more than a motivational state like any other, thus loosing its special motivational status. Just because I have desires does not mean I act on them. Just because I act in a certain way does not mean I intend or desire all the consequences of my actions. Reasons intercede at every turn. Moreover, this is exactly Scanlon's point. I can act on the wrong reasons without being irrational. Moral agents make mistakes because they are not omniscient, and not as some orthodox Kantians and others have it, just because of irrationality. Actual moral practice, Scanlon's touchstone, shows this latent rationalism to be empirically mistaken.

In addition, motivation Scanlon alleges is "an unstable combination of a purely psychological idea (a state that causes an action) and a normative one (a consideration that makes action rational)" (Scanlon 124 2004). Features and not desires are what actually make moral agents act as they do. The features of the desired object (or of an expected outcome) propel one into action.

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Desires are mere corollaries of these features on the contractualist view. This insight is the basis of Scanlon's rejection of the desire-based model of moral motivation.

If the outcomes of our actions, or the features of desired objects, were altered so as to remove the attractive feature or consequence from the mix, it is highly unlikely that we would act as intended. This of course presupposes that in acting a certain way we (as moral agents) wish to increase its overall presence. Classical utilitarian theory advances that we should always act to produce as much value as possible through our acts or to maximize various states of affairs as these contribute to well-being. If Scanlon is right then the attractiveness of this simple picture is greatly diminished. It is not that we should be indifferent to valuable objects or states of affairs. It is rather that by contractualist lights, you cannot know what is valuable or beneficial to your well-being before deliberating about it. To think this is to fall back into a pernicious rationalism.

Scanlon concedes that desire may play a role in determining how one act, but such determination only arises as far as an individual's operative reasons are concerned and they never function alone but always in concert with features that the agent takes to be worthwhile and attractive. It is unfortunate that Scanlon employs the terms "desire" and "motivation" as their common meanings in English do not display the pernicious effects he carefully enumerates. "Desire" in common speech is a term of *degree*. It is also an expressive term signaling approval or disapproval to other speakers.

The psychological *cum* normative view that Scanlon takes issue with is not as apparent in everyday usage and lack of transparency masks the practical side of his project.

Much the same situation afflicts the word "motivation." A "motivation" can be any feature of the environment that spurs an organism into action. It need not carry the pernicious associations Scanlon detects in "desire." Nevertheless, as these are his terms, I am committed to using them as well. These misgivings aside, his points against creeping rationalism, remain convincing. It is a mistake to ignore the fact that, 'When I desire to go indoors because it is cold outside, my reason for going in is my discomfort (and the fact that going in will relieve it) not the fact that this is what I desire (Scanlon 124 2004).

Desires have a role to play but Scanlon is correct to counsel against overstating their motivational case. The same holds true of operative reasons and other genres of unchecked motivation. The form of social contract that Scanlon outlines in *What We Owe to Each Other* is peculiar in that an actual agreement among individuals plays no explicit role in justifying the theory. Only agreement on standards of conduct is required. His view is based on both constructivist and contractarian principles. A constructivist theory is one based on a given conception of reason. With this conception, one can figure out what reason would require one to do or refrain from doing.

As we have seen, Scanlon provides only a primitive theory of reason and this on purpose. Therefore, while his views exhibit some constructivist

attributes, it is not a full-blown form of moral constructivism. Individuals within the contractualist framework have reasons for agreeing to certain principles, but they do not need to subscribe to a particular definition of reason to attain reasonable results. What we have in Scanlon is a theory of mutual recognition and a sketch of what mutual respect entails, morally speaking. We do not have a substantive normative theory based on the dictates of reason alone. This would be to abandon the practice of reason-giving for the faulty picture of reasoning displayed by moral rationalism. Scanlon's theory not only combines modified contractarianism with partial constructivism, but it also combines some hypothetical contracting with some actual contracting.

As Scanlon indicates, 'What people do, as a matter of fact, agree to (like what individuals have, as a matter of fact, consented to) can be morally relevant in certain cases. But neither actual agreement or actual consent plays a fundamental role in morality as I describe it (Scanlon 125 2004). A central notion in contractualism, in addition to the notion of mutual recognition, is that of well-being. The failure of consequentialist theories inspired by classical utilitarianism for Scanlon is that they can only make sense of an agent's moral life from two mutually opposed viewpoints: The private and the public. This is not because the private and the public are distinct moral realms. According to Scanlon, consequentialist theories are misadvised because they do not accord mutual respect its rightful primacy in moral deliberation.

By extending mutual respect to each individual, we display recognition of each individual's personhood. This matters on the contractualist view because if

the well-being of individuals is overestimated then our ability to construct acceptable political theories will be compromised. If individual preference-satisfaction is our metric then we cannot reconcile the desires of each individual with needs and responsibilities of a society. Classical hedonistic utilitarianism and some versions of contemporary consequentialism make exactly this mistake for Scanlon. On the other side, if one adopts an impersonal utilitarianism on the model of Bentham, then the individual interests of some can be sacrificed to the interests of the many. This too has dire consequences.

For Scanlon cautions, allowing numbers to dictate what is morally permissible or impermissible leads to a devaluation of each individual's personhood. Moreover, part of each individual's well-being is bound up in a common respect for his or her person. This series of tradeoffs is seen as unacceptable to Scanlon. In their stead, he proposes his conception of mutual recognition. By respecting and holding each individual's person to be as valuable as any other is we can both construct a normative theory focused on personal well-being as well as found a political philosophy that provides acceptable standards of conduct for social life. A key problem with the weight traditional utilitarian theory puts on the notion of well-being is the utilitarian's insistence that the notion is clearly demarcated. Scanlon disagrees. Comprehensive well-being requires many variegated components. Desire satisfaction is only one.

Chief of these components is the satisfaction of various teleological aims and the fulfillment of personal projects. However, as Scanlon notes, one's aims need to be both rational and reasonable. Achieving irrational ends will not

increase a person's well-being. Further, unlike hedonistic utilitarianism, one way of promoting or achieving well-being may be through altruism. A parent can aid a child through some sacrifice on the parent's part.

This sacrifice is worthwhile for the parent because it accentuates or advances other aims that a parent might have (such as seeing one's child succeed in life). As straightforward as this is, Scanlon is nevertheless cautious about endorsing well-being as a master value to be promoted. His misgivings are chiefly due to uncertainty. He writes, "But while success in these aims [aims that increase well-being] makes one's life better, there is no clear answer to the question of how much it does so" (Scanlon 125 2004). It is the task of generating a theory capable of encompassing private and public aspects of our moral lives that animates at this stage contractualism. Intuitions, some of which we may have before deliberating about what morality requires and about what others are owed, have little normative bearing for Scanlon. These are simply issues outside the ambit of a methodologically serious moral theory. Pre-moral notions of well-being also do not count. The aspects of each individual's life that Scanlon has selected for scrutiny are for him the most relevant ones, ethically speaking. He does not deny that others exist. Rather he denies that their inclusion or their analysis will yield great results. Once each person's willingness to see her life go well has been taken into account, little remains for moral theory to do.

Once deliberation shows that the respect and recognition we want for ourselves is also owed to others in equal measure, little remains to bicker about. Or so Scanlon wants to convince his readers. He concedes that perhaps: "An

adequate measure needs to reflect more fully the degree to which a person is successful in achieving his or her main aims. If so, however, the question to be answered in devising an alternative is the moral question of how just social institutions must aid individuals in the pursuit of their aims, not the pre-moral question of the degree to which success is an aim (in providing for one's children, for example) contributes to person's own well-being" (Scanlon 125 2004). An obvious problem for Scanlon is that part of his theory can be inverted. Scanlon claims that evaluative properties can usually be explained via recourse to some reason. Nevertheless, he has already indicated that reasons are primitive in part, as they always point to some property outside themselves. Any act I find appealing to perform will be attractive in virtue of some property it has. We can call such properties 'evaluative properties' as they influence and guide our evaluation of them.

Now, Scanlon wants to claim that it is not the property alone that makes me want to act toward its promotion or achievement. ('Promotion' here should not be taken to imply aggregation as in classical utilitarianism). It is also, he claims, the reasons for so acting that in fact make me act when I do and as I do. While intelligible, this maneuver seems arbitrary. It would be simpler to drop the primitive notion of reason and instead claim that we act in accordance with the properties we detect in state of affairs or in objects.

There seems no easy solution to this quandary for Scanlon because in morality most of the properties people will act on will be properties that have evaluative import. Joseph Raz levels a similar criticism toward Scanlon.

Scanlon's response is that while, "Raz may think this [use of evaluative properties] is always possible because a reason (at least a reason for action, which is the kind under discussion) can always be explained by citing the evaluative property on which it is based. I, on the other hand, believe that evaluative properties often need to be explained by citing reasons. For example, the claim that something is good is made intelligible by citing the properties, often non-evaluative ones, that give us reason to pursue it, promote it, or whatever" (Scanlon 127 2004).

There is a difference between claiming that evaluative properties are always implicated in moral reasoning and Raz's claim that contractualism is vacuous because "its test yields results only by presupposing moral views which can only be established independently of it" (Scanlon 128 2004). I side with Scanlon on this question but against his idea that reasons trump evaluative properties. Scanlon can defeat Raz's second objection by claiming that it is not 'moral views' that contractualism presupposes, but rather intuitions. All moral theories appeal to some intuitive pre-theoretical judgments. What contractualism does (*pace* Raz) is to interpret these pre-theoretical intuitions through the key notion of justifiability to others. That is not a vacuous test, as a person's intuitions can be altered via novel interpretation.
So long as a similarly situated individual could find those interpretations legitimate, Scanlon is in his rights to claim that he has avoided contradiction.

What is problematic is that Scanlon cannot provide a standard capable of assessing the relative strength that various reasons can have for obtaining from

within his view. He can only reject, or insist that given reasons be kept in mind, by other similarly situated contractors. There is no mechanism for making fine-grained and relative evaluations in the whole of Scanlon's contractualism. In addition, this I think counts against its best quality, namely contractualism's (otherwise) practical merits. His view is intuitively plausible in a way that utilitarianism and deontology may not be.

However, it is also vague in a manner that consequentialism (which should be distinguished from utilitarianism) is not. Consequentialism can account for the relative strength of various actions and principles. If a proposed principle or action will have worse consequences overall, it is rejected. If the consequences are good on the whole then the principle or action is to be lauded. An entire calculus of the relative strength of various actions and principles can be erected. I do not see how contractualism as Scanlon presently presents it can do the same. Scanlon is aware of this shortcoming but instead views it as a recommending feature of his theory. He takes it that its quietism on relative-strength type questions is a symbol of its inherent flexibility. I do not see how relative-strength type questions can be eluded in this way.

For in determining which grounds we as moral agents have for either accepting or rejecting an act, a course of action, or a set of principles, we need to know the relative benefits and burdens of these acts and principles. There seems no easy way out of this lacuna for Scanlon. Scanlon tries to answer this lingering concern by allowing for more than one interpretation of contractualism and by

noting that harms in the face of small aggregative gains (for example) are prohibited on his view. This however does not answer the worry. In moral deliberation, there are often small tradeoffs that are significant and that yet cause no harm and provide only some with benefit. The problem is that equalizing these out or simply not providing a metric for adjudicating between them seems wrong.

Often these small tradeoffs are the deciding factors in our actions. An example of this is the choice of which career to engage in or which major to pursue in university. The choice between majoring in sociology or philosophy may evince a "smaller" lifestyle gap than the choice to become a dentist rather than a stunt pilot, but it is for all this a serious choice for the one contemplating it nonetheless. This is because while these are not choices about aggregation in the typical utilitarian sense. They do contribute to one's well-being (at least in the long term) and for this reason, they cannot be set aside. No direct harm comes from choosing one profession over the other, but if the stunt pilot option disallows one from studying the aspects of social life that one finds the most intriguing (say that this is so because of a lack of time) then a "loss" of a sort has surely occurred. Contractualism does not address such lacunas effectively.

Scanlon sees this type of potential problem and writes, "That conclusions that appear to flow from a natural way of understanding reasonable rejectability conflict with clear moral intuitions" (Scanlon 129 2004). The problem is that so far no answer has been forthcoming save for some *ad hoc* solutions. The closest Scanlon comes to providing some guideline toward correcting his oversight is to

offer a partial response. Scanlon responds that if "an action of a certain type can be avoided only at significant cost to the agent and, if performed once, will impose trivial costs on each of a large number of people. But if actions of this type are performed frequently, the costs to each of these others add up and become very significant–greater (for each victim) than the cost (to each agent) of avoidance. In such cases, it seems clear to me that permissibility of the action depends on whether a restraining principle is needed–that is to say, on whether there is good reason to believe that, in the absence of some principle of restraint, such actions will be widely performed" (Scanlon 132 2004).

This partial response misses the point of the criticism. It is not that repeated commission of the act will harm others. It is that even small rarely performed acts can have lasting consequences. Others need not be harmed or disadvantages by the types of acts in question. The issue is not one of harming some for the small benefit of others. It is rather an issue of small divergences in choice resulting in (potentially) life-altering outcomes for the agent making the choice. I do not want Scanlon to eradicate contingency from moral deliberation. Nevertheless, an account of the relative strength of various choices and outcomes is owed.

Otherwise, mutual respect and recognition is acting as a master-value beyond other values. This poses a problem for Scanlon claims repeatedly in *What We Owe to Each Other* to be a pluralist about value. This privileging of mutual recognition over all else seems to land Scanlon in some type of malformed consequentialist position.

The relative strength of reasons play a dominant role in interpersonal justification. Scanlon agrees that this is the case and goes as far as to say that this problem, "is most naturally understood within the context of a view that makes conclusions about right and wrong depend on the relative strength of the reasons that individuals can offer in the process of interpersonal justification" (Scanlon 133 2004). In this quote, the view in question is his contractualism. Yet little is explained and even less is clarified by Scanlon's granting of the "relative strength" problematic.

The issue remains and either "reasonable rejectability" or "mutual recognition" requires modification in order to deal with it. Neither notion can be overhauled without the basic tenets of Scanlonian contractualism being drastically altered. Scanlon is reluctant to make this move toward correction because he sees "morality [as] drained of its special significance if it is taken to be simply about the relative strength of the reasons that there are. It is important, in order to account for the special significance of moral conclusions, to recognize that what is at stake are the reasons we can offer one another in a process of mutual justification" (Scanlon 133 2004).

While this is true, mutual justification and mutual recognition cannot trump the relative strength that various reasons have. The best one can do, it seems, is to splice an account of mutual justification like that found in Scanlon's contractualism with the ability to rank the relative strength of various reasons and outcomes as found in consequentialism. In treating normative notions as on a par with natural kind terms, Scanlon has made a mistake. His analogy between

them is imperfect and leads to problems like the one above. While Scanlon has acknowledged this, his refusal to provide an alternate conception of his project, one that does not concern itself with "moral properties" as if these were on all fours with "natural properties," takes away from the eminently practical thrust that contractualism has as an account of moral motivation.

At best, the focus on "moral properties" is a distraction; at worst, it leads to severe, if unnecessary, conceptual muddles. If the "properties" analogy is dropped, the contractualist project will go more smoothly. It should instead be replaced by two distinct projects. One project is the explication of the idea that contractualism is (first most) a method for adjudicating competing interpersonal moral claims. This first project can be supplemented by a second project, one that seeks, at a substantively normative level, to offer an interpretation of what mutual respect for all moral agents looks like. Anything short of this, does not, and cannot work. The advantage of the consequentialist theories that Scanlon hopes to best, is that they are internally coherent, in a way that contractualism is not yet.

Perhaps it will reach such coherence in the future. If it does, it will only do so on the strength of recognizing the pervasive and irreducible role that consequences play in moral reasoning. The appendix below demonstrates how Scanlon applies his theory to concrete case. The case is that of the military dictatorship that rule Argentina. The aim is the reformulation of retributivism and the advancement of a consensual theory of punishment. Here Scanlon focuses on consequences more so than in *What We Owe to Each Other*. He also

shows, by picking the Argentine context, how heavily pluralism eighs on his mind. The problematic element of the Argentine case is that of accomodating the viewpoints of all the moral players to the drama. A society cannot demand justice at any social cost, but nor can it ignore justice completely.

APPENDIX: SCANLON ON PUNISHMENT

In "Punishment and the rule of law," T. M. Scanlon pursues a line of inquiry initiated in the work of Carlos Nino. The work of both Nino and Scanlon, consists in the task of "building a legal order that preserves the rule of law and provides remedies for victims of past human rights abuses" (Scanlon 219 2003). The link between the two comes from an article of Nino's. Nino submitted an article to *Philosophy and Public Affairs*, which Scanlon was the associate editor

of. Nino's "A Consensual Theory of Punishment," forwards the view that court imposed criminal penalties, should avoid appeals to retributivism. For Nino, systematic penalties cannot be justified on grounds of deterrence, deterrence being the prime justification for retributivism.

Scanlon, who is in general agreement with Nino, notices that the bracketing of retribution has unintended practical consequences. To discuss punishment productively for Scanlon, we need two things: first, a theoretical justification for punishment, and second, an institutional limit on its application. Once this distinction is made, between the justification for punishing and the limits of its application, we can turn to the practical challenges. Scanlon detects four such challenges. I will go through these in turn. It bears keeping in mind that these are *practical* limits thought not necessarily *conceptual* limits. The first practical limit is a prohibition on retroactive punishment. A comprehensive account of punishment, cannot allow for unlimited retroactive punishment. Such an allowance would be impractical.
It could also create a culture of rampant litigation, one that could undermine the legal order we are trying to repair. The second practical limit bears on the state of mind of the offender. This requirement is crucial, as it affects what can count as the precondition of legal guilt; more on this later (Scanlon 219 2003).

The third limit is a limitation on selective punishment. This limit is self-explanatory. No legal regime can arbitrarily punish some offenders, and not others, while retaining its claim to legitimacy. For Nino, the third limit was paramount. He detected a great failing in retributivism at just this point.

Retributivism on his view, requires the punishment of "*all* of those believed guilty of given offence" (Scanlon 220 2003 [Original italics]). Practically, this retributive requirement reduces the role that judges can play in meting out punishment. If deterrence is the goal, as it is often assumed to be by advocates of retribution, then *everyone* must be punished if found guilty of an offence. Other views of punishment, according to Scanlon and Nino, leave room for political interventions. Political interventions or suspensions of punishment may be requisite in certain situations. Genocides, juntas, and other "abnormal" political occurrences may force judiciaries to find alternative forms of punishment. Often this is the case where punishment of an entire subset of a society, its military for example, may be detrimental to social order. The fourth, and last, practical limit to theoretical reflection on punishment, concerns the status of victims. When someone is victimized, his or her claim to legal response undergoes two processes. The claim is first interpreted and then it is either legitimated or else rejected.

What Scanlon wants to show is that each of these limits is analyzable into (specific) moral reasons. He wants to show that ethical concepts underpin political concepts in a specific way. I turn to this discussion next.

Scanlon defines retribution "as an account of the rationale for legal punishment" (Scanlon 220 2003). It is a two-part notion. Part one argues that the commission of a moral wrong should be met by a loss of some sort. Part two argues that punishment boils down into a relation between desert and welfare. The role of legal institutions for the retributivist is to make these two parts

coincide into one. Therefore, if you harm someone, your welfare should be degraded. If your welfare is degraded, the perpetrator "merits" a punishment. Retributive theory seeks to make these concepts (i.e., desert and merit) inter-translatable. Retributive punishment is an extra-institutional form of punishment. Its basis rests on victims having been *morally* mistreated.

While institutions can mistreat people, the retributive model is standardly not geared toward addressing such violations. This is a tricky idea, but its force lies in decoupling criminal law (which is an institution) from moral wrong (which is a moral notion). The criminal law for Scanlon has one justification, namely social order. While retributivism, with which criminal law is often associated, exemplifies another justification. Retribution works on moral, not institutional grounds. Scanlon, inspired by Nino, rejects retributivism. He does so because it is premised on faulty reasoning. It is simply not the case that moral desert should entail suffering. It desert can entail loss, but it *need* not entail suffering. There is simply no conceptual necessity here. Moreover, even if we want criminals to suffer for their crimes, suffering for Scanlon is no basis for a political institution. Institutions like courts, aim to be deliberative bodies. The enforcement of law is to be principled, not merely brutal. We do not need courts to enforce brutality.

What makes Scanlon's interpretation of Nino interesting is his concession that while retributivism is institutionally weak, something like the retributive view is hard to avoid (on a moral level). We do not after all want to allow criminals to act without punishment. In thinking of Argentina's military junta

(1976-1983) Nino was struck by how attractive retributive thinking was. Scanlon too wonders if we can fully negate its value in extreme situations such as these. Why should retroactive punishment not obtain? Why should the junta's kidnappers and torturers not be punished? Should all such acts not be punished? Is this type of retribution not justified in the eyes of the victims (Scanlon 221 2003)? Perhaps the attractive feature of punishment is not *retribution* itself but rather *deterrence*. Deterrence addresses past injustice by attempting to prevent future injustices. This seems a more plausible basis for establishing criminal justice than by retribution does. Surely, we want to discourage more crime. Less crime seems better, even if getting it means sacrificing some retribution.

As Scanlon says, "the deterrence account appeals to the need, first, for a general practice of punishing human rights offenders [as in the junta case] even if their actions were allowed by the legal and political order in place at the time they were committed, and then, second, to the justifiability of punishment in particular cases as something that must be required by any such system" (Scanlon 221 2003 [Brackets mine]).

However, Scanlon detects a problem with the notion of a purely deterrence-based account of punishment. Noticing a theme originally raised by Joel Feinberg, Scanlon advances that affirmation of the victim's position is left to one side with pure deterrence. Returning to the case of the junta in Argentina, Scanlon notices that there is a tension between law and extra-institutional morality. The generals responsible for the junta argued that their actions were

moral because law allowed them. The victims argued that despite the letter of the law the actions of the generals were immoral. There is a sense in which the victims of Argentina's military dictatorship are clearly right. Law cannot legislate immorality. Yet it appears as if of all the available theories of punishment, only retributivism gives full weight and affirmation to the voice of the victims.

How can this be so? Can the rights of victims be asserted outside of a retributive framework? Questions of this nature, questions that pick apart the roots of differing concepts, form the core of what philosophical theory can accept to accomplish in practical arenas. Affirmation, Scanlon believes, can perhaps do some of the work that retribution is often miscredited with doing. For in the case of the junta, it is not that the generals were not made to suffer that displeased the victims. Rather, it was the fact that their acts were not even seen as criminal after the trials.

There was no stigmatization and no shame associated with the immoral acts perpetrated by the dictators. Yet the victims had been stigmatized and shamed by these same actions.

Scanlon explains his amendment as follows. 'Like retribution, affirmation is an aim that responds to the past and is addressed in the first instance to each particular case. Nevertheless, it also provides a reason for having a system in which particular claims to be wronged can be recognized and given a form in which they can be publicly expressed and responded to. Having such a system is also relevant to the aim of deterrence, understood in a general sense of

discouraging future crime, rather than the narrower sense of doing this by threatening retaliation"(Scanlon 223 2003).

If the law does not represent right and wrong in a manner that is accessible to those it serves, they will have little stake and hence little interest in it. A call for affirmation as a central political and ethical value may make a first step toward shoring-up the rule of law. From an institutional perspective, public hearings are a provision with just this sort of reasoning in mind. There are many forms of punishment. Not every crime or transgression needs to be met with the same mode of punishment.

A tension exists in Scanlon's account however. He wishes to advance fairness as another value that is crucial to a well functioning practice of punishment. Yet fairness, as Scanlon notices, seems to require that all similar crimes be punished similarly. On the other hand, he sees the political value of occasionally allowing some crimes to go unpunished.

Stated differently, there are political cases where a different kind of sanction may serve the greater interest of all and such cases, Scanlon reminds us, may require amendments to fairness. This is an example of what Scanlon means by the idea that morality underpins politics. We must be careful not to allow deterrence to become mere expediency. For Nino as well as for Scanlon, the answer lies in a consensual theory of punishment, one that comes with limits on the application of punishment built-in. A consensual theory is one that states the following. "Those who commit crimes thereby consent to the normative consequences of their actions" (Scanlon 226 2003).

Legal contracts function much like this. By entering into a contract, you forfeit certain freedoms and gain new ones. This loss of one freedom for another would not occur had you not consented to the contract. The same mechanism is at work in consensualism. The basic assumption of such a view of punishment is that the consequences of certain actions be known, and this to all in a public fashion. One the consequences are known individuals can enter or fail to enter into various "contracts."

The advantage of consent as a master value is that it can accommodate both political and moral contexts. It can do so without contradiction and can do so at both an individual and a collective level of application. How you act, in other words, defines what you can demand. This edict, it appears, can serve as the ground of a theory of punishment that is not at odds with itself, or with its institutional embodiments. What more can one ask legitimately ask for.

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