



A UNIFIED MORAL TERRAIN?

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JOURNAL OF ETHICS & SOCIAL PHILOSOPHY

VOL. 2, No. 1 | JULY 2007

URL: WWW.JESP.ORG

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1 IN HIS BOOK *What We Owe to Each Other*, Thomas Scanlon offers what he calls a ‘contractualist’ analysis of moral reasons, according to which ‘our thinking about right and wrong is structured by... the aim of finding principles that others, insofar as they too have this aim, could not reasonably reject’ (p. 191).¹ Specifically, he argues for the correlative claims that ‘an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced general agreement’ (p. 153) and that ‘an act is right if and only if it can be justified to others’ (p. 189), where again the relevant kind of justification is by appeal to principles that could not reasonably be rejected. If Scanlon is correct, such a notion of justifiability is able to explain not only ‘the normative basis of the morality of right and wrong’ and to provide ‘the most general characterisation of its content’ (p. 189), but is also able to show both why moral considerations generally have priority over considerations of other kinds and why they have the importance they do.

There are, in effect, two parts to Scanlon’s contractualist thesis. The first is that the fact that another creature is rational generates particular constraints on how we may act towards it, and the second is that these constraints provide the basis for describing a non-arbitrarily restricted area of the moral domain. This second point is important, since one of the principal virtues of Scanlon’s discussion is that he does not attempt to provide any Procrustean regimentation of our ordinary notion of morality, whose ‘fragmentation’ he is careful to acknowledge. So, he contrasts what he takes to be the common use of ‘morality’ amongst moral philosophers — ‘to refer to a particular normative domain including primarily such duties to others as duties not to kill, harm, or deceive, and duties to keep one’s promises’ — with our broader non-philosophical use, according to which, for instance, one may think of as immoral particular kinds of sexual activity or someone’s failure to have a ‘special concern for the interests of his friends or his children’ or ‘to develop his talents’, or *if he* engages ‘in the wanton destruction of works of nature’, even when this does not deprive other people ‘of resources or opportunities for enjoyment’ (p. 172).

Whilst he does not believe that his contractualist analysis will explicate this wider conception of morality, he does think that it will work for the narrower philosophical conception. Nor does he think this limitation is prob-

¹ T.M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass., 1998). Unless otherwise stated, all page references in the body of the article are to this.

lematic: it should lead one to conclude neither that the wider conception is mistaken about the range of reasons that are to be classed as moral nor that his contractualism is itself mistaken because it fails to account for all the claims on us that we ordinarily count as moral. Rather, we should take his contractualism to characterise ‘a central part of the territory called morality’ even if that ‘does not include everything to which that term is properly applied’:

It is apparent that the values at stake in the examples listed above draw on sources of motivation that are distinct from the one that underlies the requirements of morality in the narrow sense, or “what we owe to each other.” These values are related to this central moral idea in important ways, but they are not reducible to it. (p. 173).

Scanlon’s flexibility here is important if he is to secure his claims about morality ‘in the narrow sense’. On the one hand, it means that one cannot attack his contractualism simply by finding cases where it would be correct to say that one has moral reason to do something but where these are not susceptible to contractualist analysis or explanation. On the other, it diminishes the danger that his contractualism will itself need to be made trivial in order to accommodate the whole range of reasons that we would ordinarily, and correctly, class as moral. It is not without dangers of its own, however.

For despite his formulation here, we should not, I think, read him as claiming to have discerned different senses of the term ‘moral’, so that any sentence containing it would need to be disambiguated before it could be assessed. Narrow morality is indeed a part of morality and narrowly moral reasons are still moral reasons. The notion of narrow morality is supposed to be achieved by restricting our ordinary, no doubt rather vague, notion of morality — and it is important for Scanlon’s project that the restriction should not be merely technical or stipulative. He needs to show, that is, that the borders of his core area of morality do indeed answer to natural contours of the moral terrain and are not just the result of a colonial imposition for administrative convenience. Of course, if his central claim that he is describing an area that has both a distinctive content and a distinctive ‘motivational basis’ can be made good, and if he can succeed in showing that it can be explained by securing the relevant kinds of moral reason in contractualist terms, then he will have gone at least a long way towards discharging that obligation.

2. It will help to label the two constituent claims of Scanlon’s contractualism:

(M) An act is right if and only if it is permitted by principles that cannot reasonably be rejected, and wrong otherwise.

(J) One ought only to act towards rational creatures in ways that would be allowed by principles that they could not reasonably reject.

(M) is a substantive thesis: it will be denied at least by militant particularists. On the other hand, since such particularism is at best pretty implausible, their rejection of (M) hardly shows it to be very substantive. How substantive it actually is will depend on what kind of thing Scanlon takes principles to be and how he thinks they are to be secured. It is the role of principles in determining what is right that seems to place Scanlon's account of morality within a broadly Kantian tradition, but that appearance is in some ways misleading. What Scanlon has in mind when talking of principles are not such rules as 'Don't steal' or 'Don't lie', but rather 'general conclusions about the status of various kinds of reasons for action' (p. 199):

When we judge a person to have acted in a way that was morally wrong, we take him or her to have acted on a reason that is morally disallowed, or to have given a reason more weight than is morally permitted, or to have failed to see the relevance or weight of some countervailing reason which, morally, must take precedence. Each of these judgements involves a principle in the broad sense in which I am using that term. (p. 201)

Scanlon is here using the notion of morality itself in order to clarify what he means by 'principles', and that is unproblematic, but if his account is to have any real explanatory upshot, it will need to be able to state the principles for action that govern right conduct independently of that notion. Clearly, 'do not act on a reason that, in the circumstances, is morally disallowed' will, if practicable, be a perfectly good principle for regulating moral behaviour, but it will not be a resource that allows a contractualist account of morality to prosper.

That this places constraints on how the contractualist's principles are to be justified can be highlighted by noticing that whilst (M) is a crucial element of Scanlon's position, it is not itself a distinctively contractualist thesis. As a bi-conditional, it expresses only a symmetrical relation between its constituent propositions and because of this does not secure the necessary determination of morality by the relevant kind of justifiability. As Scanlon himself acknowledges, 'the idea that an act is right if and only if it can be justified to others is one that even a non-contractualist might accept': so, a utilitarian, who thinks that an act is right 'only if it would produce a greater balance of happiness than any alternative available to the agent at the time,' will also 'hold that an act is right if and only if it is justifiable to others on terms they could not reasonably reject' (p. 189). What, according to Scanlon, distinguishes his contractualist account from, for instance, the utilitarian's is the explanatory relation between the two sides of the bi-conditional: 'For utilitarians, however, what makes an action right is having the best consequences; justifiability is merely a consequence of this'. On the utilitarian account, that is, an action is justifiable because it is right and right because it produces the greatest happiness in the circumstances. For the contractualist, in contrast, an

action is right (at least in the restricted sense) because it is relevantly justifiable.² Contractualism, then, requires not merely (M), but also:

(MEx) An action is right because it is permitted by principles that cannot reasonably be rejected and an action is wrong because it is forbidden by principles that cannot reasonably be rejected.

Now, according to Derek Parfit, Scanlon's commitment to an explanatory claim such as (MEx), though saving his position from vacuity, imposes severe methodological restrictions on how his principles are to be secured: 'when we apply Scanlon's Formula [i.e. my (MEx)], we cannot reject moral principles by appealing to our beliefs about which acts are wrong'.³ If Parfit is right that Scanlon's position commits him to what he calls the 'Moral Beliefs Restriction', this will, as he points out, have 'wide implications' for Scanlon's project. For instance, according to an earlier paper of Scanlon's, the strongest objection to act utilitarianism is that its implications are 'wildly at variance with firmly held moral convictions', but the Moral Beliefs Restriction would rule that objection *ultra vires*.⁴

Whether or not Scanlon himself thinks that he is committed to the Moral Beliefs Restriction, Parfit's argument for finding (MEx) to require the Restriction certainly looks compelling enough at first sight.⁵ So, he posits a candidate principle:

² Although this is helpful for clarifying what is distinctive about contractualism, it nevertheless seems to rest on a confusion between two different ways in which utilitarianism might be incompatible with a contractualist account of morality. One would be substantive and the other formal. In the latter case, the two theories would require contradictory accounts of the relation between justifiable principles and the rightness of actions. This is what Scanlon seems to be claiming, but it is not obvious what he takes to warrant this. If someone were to claim that the only unrejectable principle for action is 'always act to maximise utility', then he could hold with the contractualist that actions are right because they are permitted by unrejectable principles and also, with the utilitarian, that only actions that maximise utility are right. Of course, it might yet be that this principle is not unrejectable and the principles of a satisfactorily developed and substantive contractualism will not in fact be compatible with utilitarianism, but this will not show that the two theories are in principle incompatible. Perhaps Scanlon might argue that utilitarianism must require that what makes actions right is that they maximise utility and not that they are permitted by the principle 'always act to maximise utility', but it is difficult to see what would warrant that requirement. Matters are not made easier here by the fact that Scanlon runs the contrast between utilitarianism and contractualism by talking directly of the justifiability of actions rather than by means of the unrejectability of the principles that regulate them. See also section 9 below.

³ D. Parfit, 'Justifiability to Each Person', *Ratio* XVI (2003), 367-90, p. 370. (Parfit's formulation of what he calls 'Scanlon's formula' is 'An act is wrong just when, and because, such acts are disallowed by some principle that no one could reasonably reject', p. 367).

⁴ T. Scanlon, 'Contractualism and Utilitarianism', in Stephen Darwall, Allan Gibbard and Peter Railton (edd.), *Moral Discourse and Practice*, (New York, 1997), 267-286, p. 267, cited by Parfit, p. 371.

⁵ Parfit describes adherence to the Moral Beliefs Restriction as a 'feature of Scanlon's view', but it is not clear whether he takes Scanlon himself to accept it as such. When formulating

The Means Principle: It is wrong to inflict great injuries on some people as a means of saving others from greater injuries.

How might one defend that principle? “You might say that you have a right not to be seriously injured as a means of benefiting someone else. But in claiming that you have this right, you would be appealing to your belief that it would be wrong for us to injure you in this way”.⁶ So,

According to Scanlon’s Formula,

(3) if it is wrong to inflict such injuries, that is because the Means Principle cannot be reasonably rejected.

If you accept (3), you cannot also claim that

(4) the Means Principle cannot reasonably be rejected because it is wrong to inflict such injuries.

Combining these claims would be like pulling on your boot laces to hold yourself in mid air. If certain acts are wrong because they are condemned by some unrejectable principle, this principle cannot be unrejectable because such acts are wrong.⁷

And one trouble with this, as Parfit quickly points out, is that a plausible candidate principle such as the Means Principle may not be readily defensible against rejection unless one can appeal to beliefs about what is wrong to do to people.

Both Parfit’s (3) and (4) are explanations, and the claim that they are incompatible must rest on the thought that one cannot explain the fact that p by citing the fact that q and also explain the fact that q by citing the fact that p — one cannot, as we might put it, have explanations that are *symmetrical*. The difficulty with that thought, however, is that it relies on too generalised a notion of explanation. It may be that we cannot have two symmetrical expla-

the restriction, Parfit directs the reader to a couple of pages (pp. 4-5) of Scanlon’s book as if to support its attribution to Scanlon, but Scanlon there neither formulates the principle explicitly nor says anything to suggest that he accepts something like it. Indeed, whilst he does allow that his view gives ‘the subject matter of our judgements of right and wrong,’ the ‘appropriate degree of independence from our current first-order beliefs,’ as these will be revisable in the light of the principles determined by the theory, Scanlon nevertheless still seems to think that a candidate principle that had too extreme consequences on those first-order beliefs could be rejected for that reason: ‘those actions, such as wanton killings, that strike us intuitively as obviously wrong are also clearly wrong according to this account, since any principles that permitted these things could reasonably be rejected’ (p. 4). Of course, it might be that were Scanlon pushed on this, he might claim that accordance with our first-order moral beliefs can only be cited to confirm the propriety of principles that must first have been secured without making reference to those beliefs, but what he says is as it stands more naturally taken to indicate that one can properly test any candidate principle against the counter-intuitiveness of its consequences for what actions would be forbidden, permitted or required by it.

⁶ Parfit, p. 369.

⁷ Parfit, pp. 369-70.

nations of the same kind, but there is nothing to prevent symmetrical explanations of different kinds, and there wouldn't be anything in principle to prevent the contractualist from claiming that moral facts may be cited to explain the principles that give rise to them just so long as the resulting explanation does not require that the moral facts themselves give rise to their explanatory principles.

To make this possibility less schematic, we can take the example of the development of a truth-theory for a natural language within the kind of interpretationalist framework advocated by Donald Davidson amongst others. Such a theory has axioms specifying the semantic values of the sub-sentential parts of the language and these, together with rules that determine how sentences may be formed from these parts, will deliver theorems that specify the truth-conditions of the sentences of the language. It is a condition of success for such a theory that these theorems can be used to make sense of the speakers of the language when they utter its sentences. Crudely, if someone says something by uttering sentence S , and if the relevant theorem of the theory specifies that S is true iff p , then it should make sense to find that the speaker, in uttering S , said that p .

The truth-theory has a formal structure but is nevertheless empirically testable. What makes something an axiom is that it receives no formal support within the theory and not that there is nothing to be said in favour of positing it. The evidence for the theory comes from the utterances by speakers of the sentences of the language, and so positing any of the theory's axioms will need to be justified by appealing to (our beliefs about) what speakers are saying when they utter sentences. Thus, it may be true that 'Caesar' denotes Caesar because any sentence that contains 'Caesar' will express a proposition that is at least in part about Caesar. The theory itself, however, explains how sentences have their truth-conditions in virtue of the semantic properties of their constituent parts: for instance, it is because 'Caesar' denotes Caesar that any sentence which contains 'Caesar' in a referring position will express a proposition that is at least in part about Caesar. If we could not justify positing the axioms of the theory by reference to facts about what people say by uttering the sentences, we could not develop the theory: but clearly this should not be a bar to accepting that we can justify the assignment of truth-conditions to sentences by reference to the axioms of the theory.

Could this provide the model for a contractualism that wanted to preserve a role for citing moral facts (or the theorist's beliefs about the moral facts) to warrant the acceptance or rejection of candidate moral principles? There are certainly aspects of Scanlon's own discussion of the role of principles which suggest that he would not find it entirely uncongenial. So, he accepts that our judgements about the morality of actions are not generally the result of applying a known storable rule to a particular case: even the application of fairly straightforward principles such as 'keep your promises' requires 'appeals to judgement' (p. 199). Often, however, our moral judgements will

not be secured even in this way: some ‘principles we may never have thought of until we are presented with a situation (real or hypothetical) to which they would apply: but when this happens we can see immediately that they are valid’ (pp. 201-2). The moral evaluation of the particular case and the working out of principles, that is, go on together: ‘typically, our intuitive judgements about the wrongness of actions are not simply judgements *that* an act is wrong, but that it is wrong for some reason, or in virtue of some general characteristic... we rarely, if ever, “see” that an action is wrong without having some idea *why* it is wrong’ (pp. 197-8). Our moral judgements, that is, involve candidate principles that are then to be tested and refined in light of the fact that to determine whether a principle can be reasonably rejected requires one to take into account ‘points of view’ beyond those of the people affected in the case at issue (p. 203): a principle will not just warrant an action in some particular case but constrain the reasons that can regulate actions in all cases to which it applies.

It is not, then, that one could simply begin with a set of assumptions about which acts are right or wrong and think that these will determine the principles: rather, to judge a particular action to be wrong is already to think of it as wrong in virtue of its being forbidden by some unrejectable principle. I will not think that someone’s ϕ -ing is wrong unless I think that he improperly favours some reason for action over another — and to think that, it seems, is to think that there is some unrejectable principle regulating the status of reasons of these kinds which disallows his ϕ -ing. In the case of the truth-theory, the explanation of the axioms by reference to facts about what propositions are expressed by sentences uttered by speakers is effectively epistemological: that every sentence containing the name ‘Caesar’ expresses a proposition about Caesar gives one reason to accept the axiom that ‘Caesar’ denotes Caesar. (Of course, in advance of working out the truth-theory, both claims will be provisional and the theorist will be looking to each utterance of a sentence containing the name to confirm his generalisation over every such sentence, and his previous interpretations of such sentences will still be defeasible.) Similarly, if Parfit’s (4) is true, the wrongness of the relevant actions will provide a reason for accepting the unrejectability of the Means Principle and will do so because the Means Principle is needed to explain why those actions are wrong. That is, it is because (3) holds that (4) holds also.

Such complementarity of symmetrical explanations holds in the case of the truth-theory, however, only because what such a theory does is to articulate a structure abstracted from an entirely conventional practice. It may be a constraint on a natural language that it provides its speakers with the resources to be able to say things about the world, but there are no relevant worldly constraints on how it does this. There is no sense to be made of the idea that when the practice of speakers generally is such that it entitles the theorist to posit some axiom, the axiom may yet be false because the speakers themselves have got the language wrong — as if the language were some

independently existing and complex abstract object whose nature its speakers were attempting fallibly to discern. In contrast, it is perfectly intelligible to think that a candidate principle might explain all the relevant moral judgements that we have made and yet turn out to be reasonably rejectable. Any principle, then, must ultimately be accepted or rejected for reasons that are independent of our moral judgements. (3) and (4) are not complementary after all, and Parfit's Moral Beliefs Restriction must be kept in place. As I shall argue later, this has graver implications for Scanlon's project even than those Parfit recognises.

3. (MEx), unlike (M), is a distinctive and substantive contractualist claim. Unfortunately, if (M) was too weak to serve Scanlon's purpose, (MEx) is too strong. As we have seen, in allowing that morality is fragmented, he concedes that reasons may properly be counted as moral even though they do not arise from contractualist principles — so, although he says that his concern is to explain the normative basis of 'the morality of right and wrong', he rightly does not claim that the use of 'right' and 'wrong' is, or even should be, restricted to expressing judgements within or about his central moral terrain. Some actions, that is, will be wrong even though they are permitted by contractualist principles, and it may even be that some are right even though they are not so permitted. (MEx) thus needs to be replaced by a different claim that will not be so vulnerable to counter-examples whose force is not in dispute. To restrict the scope of (MEx), it will help to introduce some predicates for suitably restricted moral concepts. Let us use the predicates 'right_C' and 'wrong_C' for expressing evaluations in or about the core area, and 'right_B' and 'wrong_B' for expressing evaluations in or about the moral realm outside it. What Scanlon needs to show, then, is not (MEx), but rather

(MEx_C) An action is right_C because it is permitted by principles that cannot reasonably be rejected and an action is wrong_C because it is forbidden by principles that cannot reasonably be rejected.

Now, (MEx_C) is clearly not vulnerable to the counter-examples that beset (MEx). The danger, though, is that this is only because it is true merely by stipulation. So, although I have introduced the new predicates as those which express judgements within the central moral area, the propriety of that description is as yet moot. Of course, if Scanlon can isolate his core area of morality independently of explaining its distinctive values or reasons or judgements in contractualist terms, then it will be possible to show that 'right_C' and 'wrong_C' have senses that will allow (MEx_C) to be a substantive claim. Since it is precisely in question whether Scanlon does succeed in discerning that core area, however, it must also be in doubt whether he provides the resources for defining 'right_C' and 'wrong_C' other than through (MEx_C) itself — and, importantly, if he does not, it is far from obvious that rightness_C and wrongness_C can be considered moral properties of actions at all.

The potential difficulty of this can be seen if we turn our attention to the status of (J). I have given this as an independent constituent thesis of Scanlon's contractualism, but this might have seemed mistaken. For whilst Scanlon does argue for (J), claiming that it is secured by a proper understanding of what it is to respect the value of human life, that argument might well have seemed supererogatory. Whilst there would be a definite theoretical elegance in showing that a principle secured in this way can then explain the core requirements of morality, (J) is not in fact hostage to the success of that strategy. Given the surely plausible principle that one ought not to do what it is wrong to do, both (M) and (MEx) entail (J). If to act morally is to act in ways that are relevantly justifiable, then whatever reason there is to act morally will be reason to act in ways that are permitted by reasonably justifiable principles. It is not, of course, that (J) is a dispensable claim for the contractualist, only that he does not need to establish it independently of establishing (MEx).

(MEx_C), though, unlike its predecessors, does not entail (J). That one ought not to do what it is wrong to do is an intuitively compelling principle, but for obvious reasons intuition is silent about whether one ought not to do what it is wrong_C to do. With (MEx) replaced by (MEx_C), then, it becomes a more critical matter for the contractualist to establish (J). Not only is (J) now unsupported, without (J) it will be in doubt whether (MEx_C) succeeds in characterising a property of actions that is of moral relevance. At least if (J) is true, this will both show why rightness_C and wrongness_C are indeed moral notions and will also secure the contractualist's claim that when an action is such as to affect other people, whether it is right_C or wrong_C will determine its moral, and not merely its moral_C, status.

4. 'Appreciating the value of human life,' according to Scanlon, 'is primarily a matter of seeing human lives as something to be respected, where this involves seeing reasons not to destroy them, reasons to protect them, and reasons to want them to go well.' The focus of such respect, however, is not human life in 'an abstract sense', but rather 'a matter of respect and concern for the person whose life it is' (p. 104). What is distinctive about persons is that we are creatures who have both 'the capacity to assess reasons and justifications' and 'to select among the various ways there is reason to want a life to go' — and appreciating the value of the life of such a creature 'must involve recognising and respecting these distinctive capacities' (pp. 105-6). It is the need to respect the capacity for this kind of rationality that Scanlon takes to support (J): 'respecting the value of human (rational) life requires us to treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they, too, were seeking principles of mutual governance which other rational creatures could not reasonably reject' (p. 106). This is a claim that has full generality — it is to regulate all one's dealings with other people. To appreciate what is valuable about human life is to respect the capacity of other people to be assessors of reasons,

and to do this requires that one should only act towards them in ways that, in effect, are justifiable to them as rational creatures.

There are obvious echoes here of Aristotle's *ergon* argument in I.7 of the *Nicomachean Ethics*. There the idea is that if one wants to lead an excellent human life, one has first to know what it is to lead a human life (what, in other words, it is to be human), and this requires one to identify whatever capacities are distinctively human. For Aristotle too — at least on one reading of what he says — the distinctive human capacity is that of practical rationality, i.e. the ability to deliberate about how to act in the light of reasons.⁸ It is perhaps not a huge step from that to the thought that to recognise the humanity of other people is to treat them as rational (and hence as responsible) agents. It is clearly a much greater step to think that the way to do this is treat them only in ways that would be allowed by principles that they could not reasonably reject. What, on Scanlon's view, secures that step?

He presents his contractualist articulation of the need to respect the value of human life as the better alternative to a more straightforward understanding. Since what will be the object of respect is a particular person's life rather than human life in the abstract, one will need to determine what the value is of that life. When we do focus on what makes a particular life valuable, this may be 'identified with the reasons one has for living it', and so 'we might say, then, that recognising the value of human life is a matter of respecting each human being as a locus of reasons, that is to say, recognising the force of their reasons for wanting to live and wanting their lives to go better' (p. 105). This, however, is rejected by Scanlon on two grounds. First, 'it is open to an "ideal observer" interpretation, which takes appreciating the value of human life to be a matter of recognising the force of all the reasons that various human beings have,' and 'unless more is said, this is impossibly unwieldy, since we cannot respond to or even contemplate all these reasons at once' (p. 105). Second, it fails to recognise the distinctive capacities that rational creatures have not only to be motivated by but also to assess reasons.

His contractualist alternative then is offered as one that meets both these objections:

We cannot respond to all the reasons that every human creature has for wanting his or her life to go well; so we must select among these reasons; and we should do this in a way that recognises the capacity of human beings, as rational creatures, to assess reasons and to govern their lives according to this assessment. In my view the best response to these two considerations is this: respecting the value of human (rational) life requires us to treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject...⁹ This responds to the prob-

⁸ That reading can be found in my 'Aristotle on Nature and Value', in S. Everson (ed.), *Ethics* (Cambridge, 1998), 77-106. It is, I confess, some distance from orthodoxy among Aristotle's interpreters.

⁹ The full formulation is just that cited in the first paragraph of this section.

lem of selecting among reasons in a way that recognises our distinctive capacities as reason-assessing, self-governing creatures. (p. 106)

(J) is thus offered as a solution to a practical problem: given that there are too many reasons to take into account when deciding what value someone's life has, how can one select among what reasons there are so as to be able to decide this? Not only does (J) solve that problem, it does so in a way that respects the capacity for critical practical rationality of the person whose life is in question.

This is puzzling in various ways. Take the case of a potentially criticisable suicide. A suicide will be criticisable, according to Scanlon, if his action manifests 'a failure to see the reasons... to go on living, reasons provided, for example, by... their possible accomplishments, by the good they might do for others, and by the pleasures they could attain' (p. 105). So, if someone has sufficient reason, or sufficiently many reasons, to go on living and he nevertheless ends his life, he will have acted badly. Presumably, if he has no reason to end his life, any reason to go on living will be sufficient, but in the more normal case when suicide is taken to be a practical option, it will be a matter of balancing whatever reasons there are for suicide against those for survival. Let us accept Scanlon's claim that in any such case the range of such reasons is too wide for anyone to take in, so that, whether in deciding to take one's own life or in evaluating someone else's suicide, one can only appeal to a limited number of those reasons.

A first problem is that it does not follow from this last point that one must *select* amongst the reasons that obtain, at least given a rational or critical notion of selection. For if what makes it necessary to select a subset of some set of items is that one cannot identify or take notice of all the items in that set, clearly one cannot employ as a selection criterion a rule such as 'choose only those items that are *F* if one has to judge of each item whether it is *F*'.¹⁰ If one could apply that criterion, there would be no need to apply it. What complicates matters here is that Scanlon seems to introduce (J) as a solution to a practical problem (given limited time and mental capacity, which reasons should one bring into one's deliberation?) but then offers it as something that will determine what is right to do. This will only work if the reasons it manages to exclude from one's deliberative view are not relevant to the correctness of the deliberation — but it is difficult to see how this could be so. On Scanlon's own account, one is selecting among *reasons*, and so what will be excluded from deliberative consideration are themselves reasons. If some-

¹⁰ So, one could apply a criterion for selection such as consider only the first 20 reasons you identify — a criterion that would allow one to exclude reasons without considering them, but whose obvious arbitrariness would clearly make it unsuitable as a basis for deliberative correctness. There may be some who would think it not arbitrary to restrict the reasons for consideration to those recognised by the person whose life is in question, but Scanlon cannot be among them since he rightly allows that someone's suicide may be criticised because of a failure to recognise or give due weight to the reasons he has for going on.

thing is a reason for someone to go on living, how could it not be relevant to the question of whether he should take his own life, and how could someone who failed to take it into account not thereby run the risk of deliberating incorrectly?

Nor, in any case, is it obvious how appeal to (J) would allow one to reduce the number of reasons to be considered. Within Scanlon's system, the role of principles is to weigh reasons and not to generate them. If someone is in unremitting pain but he is an essential member of a team that is in the process of finding a cure for some disease, then whether he would be right to kill himself will depend upon what relevant principle will be reasonably acceptable. In contrast, that his unremitting pain is a reason for him to take his own life does not depend on this. Even if it is true that an action will be right only if it is permitted by principles that cannot reasonably be rejected — and this, of course, has still to be shown — an agent who deliberates without knowing all the reasons that he has to act or not to act will not be applying the right principle for the case. One cannot, that is, know which principle will govern a particular action without knowing what are the reasons for and against acting.

Even if Scanlon is correct, then, and in assessing the value of a particular life, there are too many reasons for and against preserving it for one to be able to take account of them all, this does not cast doubt on the straightforward view he attacks. And whilst the straightforward view is not tailored to assessing the value of rational lives, its application in any particular case will be sensitive to those reasons that only rational creatures could have. It is difficult to see why that should not be thought enough to recognise the value of a rational life. As for the requirement that one should respect that value, this would seem either to place constraints on one's ability appropriately to intervene (so that to prevent someone from committing suicide might be to infringe the autonomy he should enjoy in this matter as a rational agent) or to emphasise that as a rational agent, he is subject to criticism for his action. At least in his discussion of the value of human life, Scanlon does not show why more is required than this, and so (J) is left without independent support.

5. For the sake of brevity, let us say that principles which cannot reasonably be rejected are contractualist principles. According to (MEx_C), then, right_C actions are those that are permitted by contractualist principles. We also know, from elsewhere in Scanlon's book, that contractualist principles only deal with what he calls 'personal' reasons, i.e. those 'grounded in the moral claims or the well-being of individuals'. Not all reasons are personal: 'Many people, for example, believe that we have reason not to flood the Grand Canyon, or to destroy the rain forest.... simply because these things are valuable and ought to be respected, and not just because acting in these ways would be contrary to the claims or interests of individuals' (p. 219). In deciding what it is right_C to do, however, one may not appeal to such impersonal reasons to reject a principle that is otherwise acceptable. That question

is one that concerns only those reasons that are grounded in the interests of persons. According to Scanlon, this should be unsurprising given that the ‘contractualist formula is meant to describe one category of moral ideas: the requirements of “what we owe to each other”, and ‘by definition, impersonal reasons do not represent forms of such concern’ (pp. 219-20).

Now, this would seem to provide just the materials needed both for answering the concerns raised at the beginning of this paper and for showing how (ME_{x_C}) is a substantive moral thesis. The challenge raised at the end of Section 1 was to show that narrow morality could be characterised as a non-arbitrary part of morality — i.e. by means of notions that, whilst narrower than that of morality itself, are recognisably moral notions. Since one way, but only one way, in which an action may be wrong is in the agent’s failing to behave towards others as he owes it to them to, Scanlon’s formulation here seems to achieve precisely that. Moreover, this will allow the senses of ‘right_C’ and ‘wrong_C’ to be specified independently of (ME_{x_C}) itself: what it is for an action to be right_C will be for it to be consistent with what is owed by the agent to other people and what it is for an action to be wrong_C will be for it not to be so consistent. It will then be a substantive, and, if true, theoretically revealing claim that any action that is right_C will be so because it is permitted by contractualist principles.

We should, however, note the possibility of a slightly different and, in some respects, more promising strategy. For the notion of owing something to another person is not a basic moral notion: not everything to which one may owe something is itself a rational creature.¹¹ Thus, while I may owe it to my students to turn up and give the lectures I have agreed to do, I may also owe it to my university to do this. Similarly, having acquired a pet, I can owe it to the animal to look after its welfare. Intuitively, at least, it makes as good sense to talk of owing it to an institution, a country or an animal to do something as it does to talk of owing it to other people. It would have been open to Scanlon, then, to have focused on the notion of someone’s owing something to another party, which he could still explicate in terms of the contractualist formula. So, I would owe it to my university to give lectures if no one could reasonably reject the principle that requires me to do this. In such cases, the reasons that the principle regulates would not be restricted to personal reasons, whilst when what is in question is what someone owes to another person, they would be so restricted.

There is certainly nothing in the role he gives to principles themselves that would block this. ‘The emphasis that contractualism places on justifica-

¹¹ Some might perhaps argue that the primary notion here is that of someone’s owing something to another person and that this is extended to include duties to other kinds of entity. Scanlon could not hold this, however, since his understanding of that notion is such that it could not be so extended. He would rather have to maintain that the predicates in ‘I owe it to my students to give lectures’ and ‘I owe it to my university to give lectures’ express quite different relations.

tion, hence on reasons and principles,' he says, 'captures a central feature of everyday judgements of right and wrong' — the feature, noted before, that when we judge something to be wrong, we judge it to be wrong 'for a reason, or in virtue of some general characteristic' (p. 197). This is no less true when we judge something to be wrong because it goes against reasons secured in impersonal values than because it improperly harms other people. The contractualist may emphasise the role of principles in moral justification, but he cannot appropriate it for his theory. Nor would the demand that contractualist principles should not be reasonably rejectable seem to restrict them to those that regulate purely personal reasons. If there is some principle that correctly expresses the relative status of certain impersonal reasons, so that it would be wrong_B to act in a way not permitted by the principle, how could it be reasonable to reject that principle?

What this suggests is that (MEx) might be salvageable after all, since contractualist principles can in principle regulate reasons of all kinds. Even its final constraint of explanatory asymmetry will allow principles that regulate impersonal reasons. It might be wrong, say, to cut down trees to produce paper for pornographic magazines because one could not reasonably reject the principle that one should not use up finite natural resources unless the results of doing so have considerable aesthetic value. One could surely justify that principle by appealing to the relative strengths of the values in question rather than by having to say that unless one accepted the principle one would allow actions that are wrong. In this respect, the resources for justifying personal and impersonal principles seem entirely on a par. If this is right, then there is the possibility of a more ambitious contractualism than Scanlon himself feels able to offer.¹² That is, it would seem to be open to him to claim that whilst his own discussion establishes a contractualist account of narrow morality (a morality concerned only with determining what to do in the light of personal reasons), this does not preclude extending its reach to cover the whole moral terrain — and if the contractualist could thus show (MEx) to be true after all, this would avoid all the concerns raised here about the interest and relevance of (MEx_C).

The point of noticing this possible contractualist strategy is only to highlight Scanlon's own rejection of it. Whether or not he thinks that narrow mo-

¹² Though we should note that it is no longer obvious that it is enough. Given that the notion of owing something to another party does not itself determine a relation that holds only between rational creatures, Scanlon needs to show that in restricting it to rational creatures, this is not a morally arbitrary restriction. Of course, if he is right, then questions as to what we owe to each other will be distinctive in that they can be settled only by appeal to personal reasons — but since the distinction between personal and impersonal reasons is itself secured on the distinction between persons and other kinds of things, this would not provide much if anything in the way of theoretical backing. What would be needed, then, to provide that backing would be the claim that what distinguishes narrow morality is that only its claims are explicable in contractualist terms — so that the scope of narrow morality would not, after all, be characterisable independently of contractualism itself.

rality can be characterised independently of its susceptibility to contractualist explanation, he certainly thinks that the ‘contractualist formula’ is sufficient to ‘describe’ the category of moral ideas that constitute narrow morality. In my terms, this is to affirm that (ME_{x_c}) is true and that (ME_x) is not. What is not yet clear is why he thinks this. Why is it that an action could not be $right_B$ because it was permitted by principles that cannot reasonably be rejected or $wrong_B$ because it was forbidden by such principles? What is it about contractualist principles that makes them such as to exclude impersonal reasons (as they must if the contractualist formula describes a category of moral idea whose sole concern is with personal reasons)?

Here Scanlon’s own, more elaborate, formulation of the principle I tried to express by my (J) is suggestive: one should ‘treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they too were seeking principles of mutual governance which other rational creatures could not reasonably reject’. With that final qualification in place, what is in question is not whether a principle is reasonably rejectable *simpliciter*, but whether it can be reasonably rejected by those who are affected by one’s actions — and, of course, one obvious difference between justifying a principle that balances personal reasons and one that balances impersonal reasons is that in the first case but not the second those whose interests are affected can be parties to the process of justification. If I act so as to affect someone else, my action may not merely be justifiable but justifiable *to him*. This presents the possibility of a rather different model of how contractualist principles are to be justified from that which has so far been assumed here. What I have taken to be distinctive of Scanlon’s contractualism is its taking the justifiability of principles to be explanatorily more basic than the rightness (or, as it has turned out, the rightness_c) of the actions permitted by any justifiable principle. This, as we have seen, has the consequence that one cannot appeal to facts about the rightness and wrongness of actions to secure or reject any contractualist principle. Other than that, however, contractualist and non-contractualist principles will be subject to the same kind of justification: deciding whether a principle is justified or whether it may reasonably be rejected is a matter of determining what are the reasons for and against accepting it and deciding how these are to be balanced. This is not a process in which those who would be affected by an action allowed by the principle have any particular role or standing. On this model of deliberation, there would indeed be no relevant difference between personal and impersonal reasons. If, however, Scanlon intends to secure not merely a distinctively contractualist account of the relation between rightness_c and justifiability, but also a distinctively contractualist account of justifiability for those principles which determine rightness_c, this might provide exactly what is needed to exclude impersonal reasons from consideration.

6. Consider in this context Scanlon’s apparently innocuous remark that ‘each of us might prefer to be exempted from the requirements of any valid

moral principle requiring people to help, or to take care not to hurt, others in certain ways' (p. 211).¹³ In supposing that someone may intelligibly have the *aim* of ending up with a principle that is as favourable to himself as possible, this treats the deliberation over which principles to adopt as if it were something like the negotiation of a contract or the rules of a club, where the concern of the parties is to promote their own interests (perhaps consistently with securing the joint enterprise to which they are parties). Now, to think of moral_C deliberation in terms of an idealised form of negotiation will not in itself restrict the reasons in play either to those secured in the welfare of the negotiating parties or even to personal reasons. In actual negotiations, people work to further their concerns and not just their interests: one may seek to constrain the behaviour of others so as to protect the natural environment, say, or works of art. If moral_C deliberation can only appeal to personal reasons, the model of negotiation which it reflects will have to be idealised in a particular way. Scanlon does this by endorsing 'what Parfit has called the Complaint Model' of contractualism — 'a person's complaint against a principal must have to do with its effects on him or her, and someone can reasonably reject a principle if there is some alternative to which no other person has a complaint that is as strong'. This, according to Scanlon, captures 'a central feature of contractualism', that is 'its insistence that the justifiability of a moral principle depends only on various *individuals*' reasons for objecting to that principle and alternatives to it' (p. 229).¹⁴

This does indeed seem to present a very different model of deliberation from the one I had been assuming. On my model, anyone might attack any principle by appealing to a reason of any kind. If I tell a friend that my treatment of my students is regulated by some principle, he may object to it because it fails properly to balance the reasons that need to be balanced. On Parfit's formulation at least, my friend has no standing to criticise that principle, since whether it is accepted or rejected has no effect on him. Of course, as Scanlon's reformulation of the 'central feature' makes clear, the idea is not that principles may only be deliberated by the potentially affected parties: rather, the reasons that may be adduced in such deliberation are to be limited to those that could be raised were the affected parties themselves to negotiate the issue under Parfit's constraints. This does serve to exclude the possibility that one might reject a principle on general grounds and so precludes appeal to impersonal reasons in the justification of principles. On this indeed highly

¹³ In fact, he goes on to deny the propriety of principles that allow for individual exemptions, on the ground that they would be unfair, but this does not affect the point at issue here. Note also: 'From the point of view of those who will be its main beneficiaries, there may be strong generic reason to insist on the principle and to reject anything that offers less. From the point of view of the agents who will be constrained by it, or of those who would be beneficiaries of an alternative principle, there may be reason to reject it in favour of something different' (p. 213).

¹⁴ Parfit introduces this in 'Equality or Partiality?', The Lindley Lecture (Lawrence, 1991). In 'Justifiability', Parfit calls this the 'Individualist Restriction' (p. 372).

contractualist model of how principles are to be justified, it makes sense to talk of a principle's being justifiable to those who are affected by one's action rather than its being merely justifiable *tout court* — and this does mark a contrast with principles that regulate impersonal reasons.

Scanlon's commitment to this relational account of justifiability is perhaps most clearly manifested in his attempt to extend it to cover mentally incompetent people and nonhuman animals. He can readily accept, of course, that we have moral_B reason not to inflict unjustified suffering on any sentient creature:

Pain — whether that of rational creatures or nonrational ones — is something we have prima facie reason to prevent, and stronger reason not to cause. Appreciating these reasons is central to understanding the value of sentient beings. Given the plausible assumption that responding appropriately to the value of other creatures is part of morality in the broad sense, this accounts for the intuition that it is a serious moral failing to be indifferent to the suffering of nonhuman animals, and hence morally wrong in the broad sense of that term to cause them pain without adequate justification (p.181).

In the case of normal adult humans, however, since we are rational as well as sentient, it may not be merely wrong_B to cause them pain, but wrong_C: 'Since human beings have reason to avoid pain, they could reasonably reject principles that allowed others to inflict pain on them without good reason, or to fail to relieve their pain when they could easily do so. There can thus be more than one kind of reason to respond to a human being who is in pain: his pain is bad, and we may owe it to him to help relieve it' (p. 181).

Now, this distinction between the reasons not to inflict pain on other people and those not to do so on animals generally is exactly what the contractualist should maintain — and what Scanlon's sophisticated version of contractualism allows him to maintain. For his acceptance of the fragmentation of morality — that not everything wrong is wrong_C — means that he is not forced into the position of maintaining that because animals cannot deliberate about principles it is a matter of moral indifference how we treat them. Nor indeed would such a distinction appeal only to those who already share Scanlon's theoretical commitments: it is, after all, a claim familiar from animal-rights debates that because one cannot ascribe duties to animals one cannot ascribe rights to them either.¹⁵

¹⁵ That is not quite the same claim as the contractualist's, and no doubt it is too theoretical to count as a moral intuition, but it is closely related to the claim that it can be wrong_B but not wrong_C to harm animals, and it is certainly found convincing by many who could in no way be accused of having any developed moral theories. In this respect it is like the belief that moral judgements are subjective (whatever that means): it is a belief that could only be reasonably held on the basis of theory, but which nevertheless many hold as if it could be just obviously true.

It is sign of Scanlon's intellectual honesty, as well perhaps as of his theoretical ambition, that he is not content with this account. For he both acknowledges the intuition that we can feel guilty towards animals for causing them pain, as we can to other people, and believes that his version of contractualism can accommodate that intuition, even though it 'suggests that the requirement of *justifiability to others* should be extended *to include all creatures*' (pp. 182-3).¹⁶ So, in the terms of the present discussion, if one feels guilty towards an animal for having harmed it, this presupposes that one's harming it was wrong_C. It can only be wrong_C to harm something, however, if the principles regulating actions can be justifiable to it — and this requires, as we have seen, that it be capable of bringing objections to any candidate principle. How, then, could one intelligibly extend 'the requirement of justifiability to others' to include creatures which, though sentient, are irrational?

Scanlon's solution to this is to introduce the notion of a trustee: 'in deciding which principles could not reasonably be rejected we must take into account objections that could be raised by trustees representing creatures in this group who themselves lack the capacity to assess reasons' (p. 183). The idea, of course, is not that for an animal to gain the moral_C status enjoyed by people, it needs to have someone to guard its interests in any actual deliberation over principles for action, but rather that if we think of nonrational animals as creatures whose interests can be represented by trustees, this will be sufficient to secure their place as objects of moral_C status. This is clear from what he says about the case of nonrational humans, for whom he thinks the device has greater theoretical security than it does even for the case of non-human animals:

The beings in question here are ones who are born to us or to others to whom we are bound by the requirements of justifiability. This tie of birth gives us good reason to want to treat them "as human" despite their limited capacities. Because of these limitations, the idea of justifiability to them must be understood counterfactually, in terms of what they could reasonably reject if they were able to understand such a question. This makes the idea of trusteeship appropriate in their case, whether it is appropriate for the case of nonhuman animals or not (pp. 185-6).

The device of positing a trustee is a way of bringing the interests of the non-rational into play for the justification of principles: one cannot justify a principle to someone or something that is not capable of grasping a justification, but one can justify a principle to a rational subject whose concern would solely be to make whatever objections the nonrational creature would make if it were rational.

With this in place, Scanlon seems to have provided just what was required to provide a theoretically illuminating account of a nonarbitrarily defined part of morality. To give a contractualist explanation of what it is to

¹⁶ I have added the italics to emphasise that justifiability is relational here.

wrong someone (or something) is to explain a central part of morality, but not all of it. One way, but only one way, in which an action may be wrong is when the agent wrongs someone (or something). The notion of wronging someone is not a technical one, nor is its status as a moral notion in any way dubious. It can now be used, moreover, to give a sense to the technical predicates ‘right_c’ and ‘wrong_c’ independently of (MEx_c): what it is for an action to be wrong_c is for it to be, as we might say, a wronging of someone and what it is for an action to be right_c is for it not to be a wronging of any person or animal. (MEx_c), then, is not true merely by stipulation, which is why it is, if true, theoretically illuminating.

At the same time, Scanlon is able to avoid too lax an understanding of contractualist principles by treating justifiability as a relational property of principles — something that also allows him to provide the first step in an argument for (J): ‘if we have reason to care about the justifiability of our actions to other rational creatures, but not to nonrational ones, then our actions toward them are governed by a further class of reasons’ (p. 182). It will only be in respect of reasons of that further class that one can justify the principles that determine whether anyone is wronged by what one does. To get to (J) from there requires accepting only the not implausible claim that any action that is a wronging of someone is thereby wrong. Although Scanlon does extend the range of creatures whose interests are to be taken into account in the justification of contractualist principles, his doing so by means of introducing rational trustees is precisely intended to preserve this central connection between those to whom a principle is to be justifiable and those whose interests have standing to provide reasons for rejecting the principle.

7. The trouble is, of course, that this is not what he succeeds in doing: if one’s actions, and the principles which regulate them, are justifiable to anything, they are justifiable to the animal’s trustees and not to the animals themselves. At best, all that has been done is to extend the range of reasons for which some people are able to object to principles: those who are trustees of a nonrational creature can object to a proposed principle not only by appealing to reasons secured in their own welfare but to those determined by the welfare of any nonrational animals for which they are trustees. By permitting some individuals to reject principles by appealing to impersonal reasons, Scanlon has now effectively abandoned the Complaint Model of justification, and for no other reason than to preserve our intuitions about the range of creatures that may be wronged by our actions. And that, of course, violates the Moral Beliefs Restriction.¹⁷

¹⁷ Why could one not similarly think of trustees for, say, features of the natural environment or the national heritage, who would be permitted to appeal to the relevant kinds of impersonal reason to reject principles? Clearly, if one could, (MEx_c) would lose all its contractualist bite. The obvious objection to this would be that whilst one can, it seems, make sense of wronging animals, one cannot make sense of wronging works of art or places of beauty (see

It will no doubt be objected, and rightly, that this cannot be what Scanlon intends. For if we understand him in this way, whether an animal's interests can be taken into account when determining principles will depend on whether it actually has a trustee, and most animals do not. As a means of accommodating our intuition that we can wrong animals (and indeed children) when we act against their interests, this would clearly be hopeless, and is obviously not what Scanlon intends. Rather, his point must be that when assessing some candidate principle that allows actions which would cause pain to animals, we are to *imagine* someone to put forward reasonable objections to it based on the interests of his ward. However, whilst this honours the fact that whether an animal is wronged will not depend on whether it has a trustee to complain on its behalf, it entirely subverts the relational understanding of justifiability on which Scanlon's contractualism is secured.

For the real objection to that manoeuvre is not that Scanlon succeeds only in securing a relation between principles and rational creatures, when the hope was somehow to extend it to cover all sentient creatures, but that it does not allow him to think of justifiability as a relation at all. A relation that is supposed to hold between principles and imaginary people is not a genuine relation. Trustees, as Scanlon conceives them, are not actual people with actual responsibilities, but mere deliberative devices, personifications of requirements of ordinary practical reason. Since the agent has to consider only what a *notional* trustee *would* say in assessing some candidate principle, there is no reason why he should not assume that role himself.¹⁸ But now it is obvious that thinking in terms of an animal's having a trustee generates no further reasons than does the simple fact of its having interests that need to be taken into account when one acts in a way that affects it. In order to bring all animals within the sphere of moral concern he is attempting to characterise, then, Scanlon must understand justifiability (and the related notions of acceptability and rejectability) in a way that would leave any of the versions of

Scanlon, pp. 179-80). No doubt that is correct, but again the contractualist cannot appeal to this to exclude one kind of impersonal reason from moral_C deliberation whilst including another without violating the Moral Beliefs Restriction — for which see section 2 above. The non-contractualist, of course, can find the fact that we do believe that we can wrong creatures to which our actions cannot be justified to be another indication the borders imposed by the contractualist on the moral landscape are arbitrary ones.

¹⁸ Consider here what Scanlon says about how the trustee for a nonrational animal might object to one's treatment of it: 'objections based on experiential harms such as pain and distress *seem* to have a moral force that is independent of appeals to other aspects of the good of a creature. *We see* pain as something a trustee for a creature could reasonably object to not because it is incompatible with a creature's natural functioning, or because it is something the creature tries to avoid, but because of how *we take it* to feel to the creature' (p. 184, italics added). This requires no more of an agent than that he take the pain he will cause to an animal to be relevant to the question of whether he has acted morally_C. In respect of contractualism's roots in what we owe to other rational creatures, however, it is entirely arbitrary to allow only this kind of impersonal reason to be relevant to the justification of contractualist principles.

the ‘contractualist formula’ without any contractualist content. Would it not then be better for him to resist the urge to extend the requirement of justifiability to others to include creatures that are sentient but not rational — especially since the Moral Beliefs Requirement precludes the contractualist from determining principles, or the criteria for deciding between principles, by appealing to our moral intuitions. If this would leave him with a workable account of the moral_C relations between rational creatures, and so perhaps also of what it is for one rational person to wrong another, it would surely be a necessary retrenchment.

I shall return to consider whether this would allow Scanlon to salvage a coherent understanding of the justifiability of principles in the next section. What will be immediately clear, though, is that it would completely undermine his claim to have captured what it is to wrong someone. For not only will he have to remove animals from the range of those towards whom we can behave in ways that are wrong_C, he will also have to remove incompetent humans. Even if he is right that the notion of trusteeship is more securely applicable to such humans than to animals, it is no less problematic for the contractualist’s understanding of justifiability. Whilst the idea that one can wrong animals may be revisable, the idea that one can wrong children and the mentally incompetent is surely not.¹⁹ If it turns out that one can indeed only act in ways that are wrong_C towards creatures that are sufficiently rational to deliberate over principles for action, whatever it is that one does when one wrongs_C someone it is not to wrong him.

In fact, the problems run deeper even than this. Consider again Scanlon’s argument, so far unchallenged, for denying any role to impersonal reasons in the justification of contractualist principles:

If the value of the Grand Canyon gives me reason to want it to be preserved, for example, why does it not also give me a good reason to reject a

¹⁹ Someone might perhaps try to appeal to the fact that whilst no cat or dog can understand justifications of principles, some humans can make sense of taking principles to be justifiable to irrational humans but not, for instance, to irrational cats and dogs. Even if one were sympathetic to a strategy that gives a moral status to all members of a species in virtue of attributes possessed only by some, for reasons that will be made clear in the following section, this is certainly not a strategy available to the contractualist in this case. We should perhaps also note that people can at least acquire obligations towards animals, as Scanlon’s notion of a trustee perhaps unintentionally highlights. For if someone were to take on the role of trustee, whilst this would not generate obligations on the part of people in general towards the animal in his trust, it would generate obligations on his part. It is by no means absurd to think that those, for instance, who buy animals thereby take on a duty of care towards them and so owe it to the animals to protect their welfare. If an animal is in pain, no doubt everyone who can help it has reason to do so, but its owner will be judged more harshly if he fails to do so than will other people. Those who think that one should not employ such notions as ‘duty’ and ‘obligation’ in describing our moral relations with animals must find a way to describe and explain this difference in other terms. Certainly, there is nothing in Scanlon’s discussion that would do this.

principle that would license others to neglect this value in deciding whether or not to build a dam on the Colorado River? In answering this question it is important to bear in mind the limited range of the part of morality we are trying to characterise. The contractualist formula is meant to describe one category of moral ideas: the requirements of “what we owe to each other.” Reasons for rejecting a principle thus correspond to particular forms of concern that we owe to other individuals. By definition, impersonal reasons do not represent forms of such concern. They flow from the value of those objects themselves, not (at least in the first instance) from anything having to do with my relation to other people. (pp. 219-20)

It is perhaps because of the talk here of ‘forms of concern’ that this argument looks as innocuous as it does. Clearly, if one’s concern were for the welfare of other people, then one would not need to look beyond considerations about the welfare of others in order to pursue that concern — just as, if one’s concern were for the welfare of one’s family, one would not need to look beyond considerations about the welfare of its members to pursue that concern. These concerns are not moralised concerns, however, whereas that described by Scanlon is: and whilst pursuit of a concern for the welfare of others will not, in itself, require one to take notice of anything other than personal reasons, it is much less obvious that the concern to conform to the requirements of what we owe to each other can exclude impersonal reasons so blithely.

At least much of our practical deliberation requires us to balance reasons in favour of some course of action with reasons against it. Some of these reasons are to do with the interests of rational creatures and some, as Scanlon acknowledges, are not. A simple view would have it that what we do in such cases is to make fully substantive comparisons: working with a sense of how important the various reasons are — how important are the various things that are at stake — one decides how to act. So, as the manor house burns, one has reason to save everything that is worth saving, including both the Gainsboroughs and the children sleeping upstairs, and if one cannot save both, then one should no doubt judge that it is more important to save the children than to save the paintings. But the balance need not always be like this: to appeal to a familiar example, we might properly resist cutting down ancient trees along a road even if we knew that lives might be saved by our doing so. In such cases, aesthetic considerations can properly take priority over those of human well-being and survival.²⁰

In both these examples, it would be appropriate to put the question ‘what would it be right to do in these circumstances?’ and the answer in the

²⁰ Intuitions, I know, differ in this particular case, and certainly some people think that no trees could be more important than even a single human life. Nothing turns on this: the point is just that to think that it is always wrong to favour some impersonal value, however important, over any personal value, however trivial, would be deeply counter-intuitive.

one case is that it would be right to save the children and, in the other, that it would be right to save the trees. Let us accept that within the wide-ranging considerations that are germane to deciding what to do, there is a subset that concerns the interests of other people: the children have an interest in being saved, and drivers have an interest in being able to drive more safely (no doubt they also have an interest in being able to drive along beautiful rather than ugly roads, but we can put that to one side for the moment). Now, according to Scanlon, these reasons are regulated by contractualist principles: in determining how one should behave in respect of other people's interests, one has to determine which principles apply in the circumstances such that they might meet the condition of reasonable acceptance. To do this is to determine what it is right_C to do, and in doing it, one can only appeal to personal values as grounds for rejecting them — and the effect of this is that deciding the balance of the reasons that derive from personal values has to be done antecedently to deciding how to act in the light of all the reasons that obtain. One has, that is, first to determine the principle, grounded only in personal values, that applies in the particular circumstances and then to look to determine whether that principle is to be followed in those circumstances when placed against any other competing reasons for action. This principle will tell one what is right_C to do, and then it will be a matter of judging whether, in this case, one should act accordingly — something for which one will need to determine a principle that regulates the status of reasons generally. Having determined what is the right_C thing to do, it remains open what one should do — indeed, what is the right thing to do.²¹

It is important here not to be seduced by one paradigm for conflict between moral principles and reasons of other kinds — that where the conflict is between moral reason and reasons of self-interest. The possibility of that kind of conflict could arise if one took a very crude view of the content of moral principles. Say that someone, for instance, believed that it is always wrong to lie or to break a promise. It is then very easy to imagine circumstances in which the agent will have compelling reasons of self-interest to act against principles such as those: can the mother, having promised her daughter to take her to the theatre, break that promise in order to go to the hospital to have the dangerous splinter removed from her own eye? Of course, the answer must be yes, but this cannot plausibly be taken to be a case where one may act against moral reason in order to pursue one's self-interest: rather it is a case that shows the implausibility of the candidate principle itself. It will be morally permitted for the mother to break her promise — it would not be

²¹ Note that the difficulty for Scanlon here is not dependent upon the need to find a second principle to determine what it is right to do: even if he could show that principles have a role only in regulating personal reasons (thus saving (MEx_C)), his account would still be unable to provide a satisfactory description of how we can decide what it is right to do when there are both personal and impersonal reasons for action.

wrong for her to do so — and this is because her interests — or, better, interests of that kind — cannot be ignored in formulating the governing principle. What is required is a principle that will require promise-keeping except in kinds of circumstance that will include those of the example. This is just the kind of principle that Scanlon's account will generate, for the point of that account is that one must take into account all relevant interests in determining what would be right_C , and wrong_C , to do.²² By the time one has arrived at a principle, one will have taken into account the agent's own interests that might conflict with the reason delivered by the principle itself. It is not, of course, that there will not be conflicts between what it is right to do and self-interest, but only that to pursue the latter in such a conflict will not be justified, since the judgement that it would be wrong to pursue one's own interests will already have weighed those interests against whatever else is at stake. Within this model, then, a claim of the universal priority of moral reasons might have some plausibility. That plausibility, however, rests on using our ordinary untechnical predicate 'moral': the claim is not plausible if it is replaced by ' moral_C '. For whilst the agent's interests will indeed have been taken into account in working out what it is right_C to do, this will not be true of all morally relevant reasons.

Scanlon does try to palliate his account by emphasising that where there are things of impersonal value, these will often give rise to corresponding personal values. So, in the case of the trees along the road, what are centrally at stake are the aesthetic value of the trees and the cost in lives of preserving them. But, as Scanlon points out, there will usually be a personal value of aesthetic enjoyment that is distinct from, but dependent on, an object's impersonal intrinsic aesthetic value. Both these values will be relevant to deciding how much it is worth sacrificing in order to preserve the object. An object which is of tremendous aesthetic value may be worth sacrificing a great deal to preserve even if it is so situated as to give rise to little aesthetic enjoyment — if it is at the North Pole, say, or has to be kept enclosed in order that it should not decay. Alternatively, it may be worth preserving an object of much lesser aesthetic value if it is able to provide much aesthetic enjoyment. In the case of the trees in the example, clearly these are highly accessible (not least at high speed), and so we should need to take into account both their intrinsic and their derived aesthetic value in deciding whether to cut them down.

Within Scanlon's taxonomy, of course, the derived value is a personal value and one may appeal to it in deciding whether to accept or reject some candidate principle for determining what is the right_C course of action. In contrast, the intrinsic value is an impersonal value and may not be appealed to as a reason for rejecting a moral_C principle. So, it seems that we first have to decide what is the right_C thing to do by considering the various interests

²² See his discussion of the obligations imposed by promises, pp. 199-201.

that provide the criteria for deciding what will be the relevant principle for action, and such interests will include those of drivers not to die on the road and those of drivers and local inhabitants to enjoy the beauty of the trees. Let's say that, as things are stacked, we properly decide that it would not be morally_C permissible to leave the trees standing, so that the right_C thing to do will be to cut them down — and this is because we owe it to the drivers to reduce the danger of the road.

Now we know what is the right_C thing to do. We do not know, however, what is the right thing to do. We don't know, that is, what we *should* do, and this is because we have yet to consider the force of the relevant impersonal reasons. Let's imagine that by itself the aesthetic value of the trees is insufficient to countermand the harm we would do to the drivers in letting the trees stand — so that appeal to the impersonal value in this case would not provide sufficient reason to fail to do what is right_C. The trees are beautiful, but not sufficiently beautiful to be worth the deaths. It is consistent with that, however, that the combined intrinsic aesthetic value of the trees and the enjoyment to which this gives rise is worth the deaths. Are we to allow appeal to this aesthetic enjoyment, this 'personal' value when we come to decide whether we should do what we have decided it is morally right to do? It is not clear to me either what Scanlon's answer would be, nor what it should be — but there is here, I think, the making of a dilemma for his account. We have, of course, already appealed to that personal value in deciding what moral_C principle should regulate our choice — and hence what will be right_C to do here. The question is now whether that value should be, as it were, double-counted. There is strong reason to think that it should be: for as this example shows, if it were excluded, we should make the wrong decision. If the combined impersonal and personal aesthetic value of the trees is worth the lives the trees cost, then we should not cut them down. Unless we can appeal to the value of the aesthetic enjoyment they afford in deciding what we should do, then our decision will not reflect the relative values of what we are deciding between.

The difficulty for Scanlon, I think, is not that he must block appeal to personal values in determining how one should act, but rather that unless he does block it, it is difficult to see what role there is for the first stage of the deliberation here — for the question 'how should I act?' will be answered independently of the answer to the question 'what is morally_C permissible/required of me in this situation?': the considerations to which one may appeal in answering the first may include all those that one appealed to in answering the second, and will be the one that has practical authority — and if it seems odd that one may find that one should do what has been found to be morally_C impermissible, then this in fact only demonstrates once again that the notion of moral_C permissibility in play is a technical and, from the moral point of view, an arbitrary one.

For now, at last perhaps, it should be more obvious why the question I have pressed so hard — what reason is there to think that the concepts of right_C and wrong_C are moral concepts? — is not a trivial or pedantic one. When we make judgements about the moral status of our actions, we can do so about actions that affect a wide range of things and in the light of a wide range of values. There can be no presupposition that by restricting the range of actions or the range of values in just any way, this will deliver a restricted kind of moral evaluation rather than just a different, and morally irrelevant, kind of evaluation. One might, for instance have restricted the range of action to those that affect members of the agent's immediate family and the range of reasons to those personal reasons determined by the welfare of the agent's family members. It would certainly be a mistake, however, to think that one could thereby determine what anyone owes to his close relations. One cannot determine what one owes to one's brother, say, without taking into account how pursuing his welfare in some way would affect the interests of those outside the family. To find that it would be $\text{wrong}_{\text{FAM}}$ not to bribe a university into giving him favourable treatment could simply have no bearing on whether it would be wrong to do so. Clearly, one does not owe it to one's brother to do this for him, nor will he be wronged if one does not. Judging an action to be $\text{wrong}_{\text{FAM}}$ is no form of moral evaluation at all, — something that is, of course, entirely consistent with the fact that sometimes the only relevant considerations to determining whether an action is right are those which are determined by the interests of members of the agent's family.

Similarly, whilst there may well be actions whose moral status depends only on the balance of personal reasons, this does not mean that there is a restricted form of moral evaluation that excludes impersonal reasons on principle. Moral deliberation has no place for judgements as to whether an action would be right_C or wrong_C and even the more restricted questions of what someone owes to other people and whether another person would be wronged by harming him in some way cannot be settled within the limited terms of Scanlon's contractualist formula.²³

8. (J) is now lost. Had Scanlon been able to show that wrong_C actions are actions of wronging someone, he would have been able to secure (J), at least given the not implausible claim that an action of wronging someone is thereby a wrong action. If, as it has turned out, whether an action is wrong_C does not bear on its moral status, there will not be even a presumption that one should not perform actions that are wrong_C . What is not yet lost is Scan-

²³ This provides a different kind of incentive for the contractualist to bring nonrational animals and children into his proposed moral sphere: for unless he does so, not only would he be forced to maintain that neither can themselves be wronged by our actions, he would also have to exclude appeal to their interests in deciding whether people have been wronged. To deprive an animal- or child-abuser of access to his victim will be to harm his interests, but there will be no temptation to think that one has wronged him in doing so.

lon's claim that dealings between rational creatures are regulated by reasons of a special kind secured in the fact that we have reason to care about the justifiability of our actions to rational but not to nonrational creatures. For Scanlon himself, this is the central source of moral motivation:

When I reflect on the reason that the wrongness of an action seems to supply not to do it, the best description of the reason I can come up with has to do with the relation to others such acts would put me in: the sense that others could reasonably object to what I do (whether or not they actually would do so). (p. 155)

For many, I think, this is indeed what provides the underlying intuitive appeal of some kind of contractualist account of morality. Most simply put, the idea is perhaps that we see the need to regulate our own behaviour to take account of the interests of others because we recognise that we are answerable to other people for how we act.²⁴ When someone is harmed by one's action, one owes it to him to make sure that what one did should be justifiable to him.

These intuitions, however, fall well short of providing any firm support for contractualism. It is one thing to think that we are answerable to those who are affected by our actions, and another to think that the need for such answerability will itself set the terms for what can count as a satisfactory answer. As we saw in section 6, it is crucial if Scanlon is to be able to show that (MEx_C) has contractualist force that the notion of justifiability (as well as those of acceptability and rejectability) in play is a relational one: the principles on which one acts should be justifiable *to* those who are affected by one's actions, and it is only if a principle is justifiable to a creature that its interests can count when the principle is justified. This, of course, is partly what led Scanlon to introduce trustees to represent the interests of animals and children — a move which turned out to deny the very understanding of justifiability that partially motivated it.

His other motivation was to achieve the coincidence of those whose interests would be relevant to working out the acceptability of contractualist principles and those who can be wronged. Now that that latter motivation has been undercut, it might seem that the most sensible option for Scanlon would be to abandon the attempt to extend the contractualist's concern to include the rationally incompetent. This would relieve the pressure on the relational understanding of justifiability, so that could preserve a coherent and distinctively contractualist account of the moral_C relations between rational creatures. In fact, however, even were Scanlon willing to abandon animals and infants to their fate in the outer regions of the moral landscape, this would not be sufficient to secure his position. His attempt to accommodate

²⁴ The place of the idea of *answerability* in this context was pressed by a referee on an earlier version of this paper and it seems to me a helpful one.

their interests only highlights the structural instability of his contractualism, it does not create it — for it is not only in his treatment of trustees that he commits himself to an understanding of justifiability which is directly at odds with that on which his contractualism relies. Indeed, that commitment is signalled in the contractualist formula itself, particularly in its condition that contractualist principles should not be *reasonably* rejectable.

The point of requiring that principles should not be reasonably, rather than that they should not be rationally, rejectable is to distance any process of justification from morally irrelevant features of the parties in a particular case:

Suppose, for example, that we are negotiating about water rights in our country, and that there is one landowner who already controls most of the water in the vicinity. This person has no need for our cooperation. He can do as he pleases, and what he chooses to do will largely determine the outcome of the negotiations. Suppose also that while he is not ungenerous (he would probably provide water from his own wells for anyone who desperately needed it) he is extremely irritable and does not like to have the legitimacy of his position questioned. (p. 192)

Here, as Scanlon points out, what it would be reasonable and what it would be rational for us to argue come apart: whilst ‘it would not be unreasonable for one of us to maintain that each person is entitled to at least a minimum supply of water’, it might not be rational to do so, ‘since this is very likely to enrage the large landholder and lead to an outcome that is worse for almost everyone’. Similarly, whilst it would be reasonable for the landowner to accept that he should provide everyone with at least a minimum supply of water, whether it would be rational for him to do so ‘depends on what his aims are’ (p. 193) — and when determining contractualist principles, people’s *actual* aims are irrelevant. Restricting one’s attention to which principles for action can be reasonably rejected allows one to abstract away from morally irrelevant features of particular cases: in ‘the contractualist analysis of right and wrong, what is presupposed first and foremost is the aim of finding principles that others who share this aim could not reasonably reject’ (p. 192).

Earlier, we saw that one sign of Scanlon’s contractualist understanding of moral deliberation was his thought that we each might prefer to establish or accept principles that are in our own favour.²⁵ This now makes little sense. Imagine a case where there is a division of spoils and where there are qualitative differences between the contributions of the parties to the acquisition of the spoils: someone, say, has had to manifest a great degree of ingenuity in planning the operation whilst someone else has had to put in heavy manual labour. Clearly it may be a tendentious matter how these different kinds of

²⁵ See above, p. 16.

contribution are to be valued and hence what proportion of the spoils are to be allocated to each: within Scanlon's model, that is, it may be moot what is to be the principle that regulates the division. Certainly, we may say that each party has reason to want to get as much of the loot as he can — but that is not to say that each has reason to *prefer a reasonably unrejectable principle* according to which he will get most. In this respect, principles are very different from contracts or articles of association. It makes perfectly good sense to think of parties negotiating beforehand to produce a contract that stipulates how much each will get and preferring whatever contract will be most to his benefit. In Scanlon's terms, however, the parties here will be negotiating as rational and not as reasonable agents — their overriding aim will not be that of finding principles which others who share this aim could not *reasonably* reject. In the case of principles for action whose role is to fix which actions are right_C, it does not make sense to talk of preferring, or having reason to prefer, one principle rather than another. This would be like saying that one has reason to prefer cases where what is in one's interests coincides with what is right, or sunny days to rainy days. 'Prefers' now means no more than 'likes more': its association with action and choice has been severed. One can try to persuade other people to accept a contract that is to one's own advantage and their disadvantage, but one cannot try to make either *that* contract fair or an unfair contract reasonably unrejectable.²⁶

Now, that contractualist principles should need to survive the test of their not being reasonably rejectable does not in itself quite preclude taking justifiability to be a relation between principles and those to whom they might be justified. What is key, if justifiability is to be understood as such a relation, is that whether a principle is justifiable to some person should depend upon features of both. If it turns out that whether a principle is justifiable to someone does not depend upon facts about the person, but merely on what reasons there are to accept and to reject the principle, then justifiability will be a monadic property of principles rather than a relation between principles and people. Certainly, even taken literally, the Complaint Model cannot help here, at least not without making nonsense of moral_C deliberation. Say that I am considering whether to act in a way that will be to Tom's disadvantage but to Sarah's advantage, and propose a principle that would permit such an action and let us say also that the disadvantage that Tom would suffer provides adequate grounds for reasonably rejecting the principle. On the Complaint Model, it seems, only Tom can cite the fact that he will suffer. Presumably, it is not that the principle is reasonably rejectable by him but not reasonably rejectable by Sarah. Rather, all the parties need to decide whether the principle can be reasonably rejected, taking into account all the reasons that any of them has standing to appeal to. What varies between

²⁶ Scanlon himself allows that one may reasonably reject a principle on the grounds that it is unfair: see pp. 212-3.

people are the objections they can put forward to a principle: whether an objection, once brought, makes it reasonable to reject the principle does not vary.

The peculiarity of even this position will be obvious. Scanlon certainly does not think that Tom actually needs to object to the proposed principle for it to be reasonably rejected. My aim when I deliberate is not merely to avoid acting in ways that someone will reasonably object to; it is to avoid acting in ways that others could reasonably object to. In deliberating how to act, then, I need to decide whether someone could reasonably reject a relevant principle that permits my acting in some way. If someone could, I should reject the principle myself. So, if I know both that my action would harm Tom and that because of this Tom could reasonably reject any principle that permits me to act in this way, I will reject the principle — *and presumably reasonably so*. If a principle is reasonably rejectable by anyone, then, it will be reasonably rejectable by all. It seems, after all, that whether a principle is reasonably rejectable does not depend on facts about the people who could reject it.²⁷

In fact, in so far as the Complaint Model suggests a model of communal deliberation in which the potentially affected parties represent their own interests, it is quite misleading. Especially so, given that, as Scanlon himself emphasises, what are being deliberated about are *principles* for action. Principles are general in their application: it might be that what leads me to determine a principle that regulates the relative status of certain kinds of benefit and harm is that I have to decide how to act in respect of Tom and Sarah, but they are hardly the only interested parties:

[A]n assessment of the rejectability of a principle must take into account the consequences of its acceptance in general, not merely in a particular case that we may be concerned with. Since we cannot know, when we are making this assessment, which particular individuals will be affected by it in which ways..., our assessment cannot be based on the particular aims, preferences, and other characteristics of specific individuals. We must rely instead on commonly available information about what people have reason to want. I will refer to this as information about generic reasons. (p. 204)

So, in deciding how to act in respect of Tom and Sarah, I do not need to think of them as ‘specific individuals’; whether any proposed principle for

²⁷ In light of this, it is helpful to look back to Scanlon’s version of my (J), which I used to introduce the possibility that Scanlon is employing a relational notion of justifiability: one should ‘treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they too were seeking principles of mutual governance which other rational creatures could not reasonably reject’. Although this might look as if what is in question is a relation between principles and those who may be affected by one’s actions, this appearance turns out to be misleading, since such people only figure as possible vehicles of an ideal contractualist desire.

regulating what I do to them is reasonably rejectable depends not upon facts about them but on facts about what people generally have reason to want. It is not, then, that what secures the Complaint Model is some distinctively contractualist understanding of moral deliberation as an idealised form of deliberation between the interested parties. This is important, since the hope was that the Complaint Model would provide the motivation for restricting the reasons that can be cited in order to reject a contractualist principle to personal reasons. Since there is no distinctive kind of justification to which contractualist principles are subject, to endorse the Complaint Model just is to impose that restriction arbitrarily — or, rather, it is to impose arbitrarily the more severe restriction of those reasons to those of individual persons, to ensure that personal reasons cannot be aggregated. And not only is that restriction unmotivated by anything deeper in the contractualist's theory, it fails to capture the range of reasons that are relevant to deciding what we owe to each other.²⁸

In fact, it would have been difficult for Scanlon had it turned out that a principle might be justifiable to one person but not to another. He is attempting to capture what he takes to be a moral property — labelled here as *rightness_C* — that is, a way for actions to be right. According to (ME_{X_C}), however, an action is *right_C* just if, and because, it is permitted by principles that cannot reasonably be rejected. If a principle could be reasonably rejectable by one person but not by another, this would have brought further and unwelcome consequences: if the condition for an action's being *right_C* were satisfiable relative to individuals, *rightness_C* would also be relative to individuals.²⁹ Consider again his argument for there being special reasons that regulate our dealings with rational creatures: 'we have reason to care about the justifiability of our actions to other rational creatures, but not to non-rational ones' (p. 182). Rational creatures, for these purposes, are those 'who

²⁸ It is, however, worth noting that the Individualist Restriction is much less obviously arbitrary if one's concern is to decide not what it is right but what it is just to do. In the light of this, it is tempting to think that at least some of the strains in Scanlon's theory result from his treating what should be an account of justice as if it were an account of something rather different. In effect, he would have misidentified the part of the moral map he is setting out to describe. However, whilst this would motivate the Individualist Restriction, it would only do so in a modified form: for whilst it is perhaps plausible to maintain that justice is sensitive to the distinctness of individuals and does not allow for aggregation of interests, it is not plausible to claim that its requirements can be determined only by taking into account personal reasons. In this respect deciding what it is just to do is on a par with deciding what is owed to other people.

²⁹ It might perhaps be argued that the condition that a principle cannot reasonably be rejected is to be taken as 'cannot reasonably be rejected by anyone': this would preserve reasonable rejectability as a relation between principles and individuals, whilst allowing *rightness_C* to be a nonrelational property of actions. For the reasons just given, it seems that Scanlon does not in fact think of reasonable rejectability as a relation — but in any case, this could only work if there were a guarantee that two incompatible principles could not each be reasonably be rejected by someone, and there could be no guarantee of that.

have the capacity to assess reasons and justifications' (p. 105). If a creature is not rational, then, it does not have the capacity to assess reasons and justifications and, since it lacks that capacity, it will not make sense to care about justifying one's actions to it. This, no doubt, is straightforward enough — but what it leaves out of account is that the kind of rationality in question is not an all-or-nothing capacity.

Anyone who is the member of a university department or has served on a committee will know that the ability to recognise reasons and to judge their relative strength is not evenly spread. Clearly, it would be absurd to think that when it comes to how well something possesses that ability, there is no one in between Frances Kamm and my cat. If the contractualist's requirement that one's actions should be permitted by principles that are justifiable to others indeed specifies a relation that holds between principles and rational creatures, one should not expect that every principle will be such as to stand in the same relation to all rational creatures. Some, that is, will be justifiable to some people but not to others. Imagine, for instance, that my breaking a promise is permitted by both principle P' and P''. P' is not reasonably rejectable whilst P'' is obviously rejectable, but since the two principles are very subtly different, not everyone will grasp that difference. If Tom cannot grasp the difference between P' and P'' and Juliet can, good sense can be made of saying that my action is justifiable to Juliet and not justifiable to Tom. If a creature's being rational generates a special kind of reason governing how one may act towards it, which reasons of that kind obtain should depend on just how rational any particular rational creature is. How one can treat someone will depend on which principles he is able to understand.

Instead of (ME_{XC}), then, one would need something like

(MR_{EXC}) An action of affecting a person in some way is right_C if it is permitted by principles that could not be reasonably rejected by that person and wrong_C otherwise.³⁰

Given that someone cannot reasonably reject a principle he cannot understand, it would seem that the less able someone is to assess principles for action, the fewer the moral constraints there are on how one can treat him.³¹

³⁰ It might be objected that this does not show that rightness_C is relative. It might turn out that breaking my promise to Tom is right_C whereas breaking my promise to Sarah is wrong_C, but this result can be stated without needing to introduce further places in the predicates. This, however, relies on predicating rightness_C of act-types. If I have promised both Tom and Sarah not to swear, then my swearing will be both the breaking of my promise to Tom and the breaking of my promise to Sarah. To avoid having to treat the same act-token as both right_C and wrong_C, one would need to say that it was right_C in respect of Tom but wrong_C in respect of Sarah. Nothing of substance turns on this, of course.

³¹ Although, interestingly, there is now a gap between a principle's being justifiable to someone and its being reasonably rejectable by someone: for one might make a condition of an action's being right_C that one be able to justify it to the person who is affected. This would

Such a result would clearly be intolerable. Of course, it can certainly be the case that whilst it is right (or right_c) to act in some way towards one person, it is wrong (or wrong_c) to do so towards someone else, but, at least generally, such a difference cannot rest on the kinds of consideration that would make a principle justifiable to the one but not the other. Whether it is morally allowed to treat someone in some way should not depend on the intellectual or moral character of the person one might try to justify it to.³² The trouble is that if justifiability is to be a relation between principles and people, so that whether it holds in a particular case must depend on features of the person as well as of the principle, someone's intellectual and moral character would seem to be the only features that could be relevant.

These are points that Scanlon himself is in fact keen to emphasise. So, if 'the people who are the victims of one's action are fully convinced that their interests are much less important than those of others, they may be quite happy with, and even grateful for, much less than is their due'. This is to have no effect on how one may treat them, however: 'But it does not follow from the fact that they (and others) accept your action as justified that that action is morally correct' (p. 155). Again, Scanlon is at pains to distinguish 'actual agreement with those around us' — something that he allows to be often desirable and 'sometimes morally significant as well' — from 'the ideal of hypothetical agreement which contractualism takes to be the basis of our thinking about right and wrong' (p. 155). In his discussion of trustees of humans of 'limited capacities', Scanlon claimed that 'the idea of justifiability to them must be understood counterfactually, in terms of what they could reasonably reject if they were able to understand such a question' (p. 185). It now turns out that such a counterfactual understanding of reasonable rejectability is required throughout Scanlon's argument. What the contractualist must care about is to avoid acting in ways that others could reasonably object to were they to have the moral and intellectual capacities to understand both the principles to be justified and the force of the justification offered. No doubt this will not always be counterfactual, but nothing will ever turn on whether it is or not. To care that one acts on a principle that could not be reasonably rejected by someone of suitable rationality is just to care that the principle be justified — and what determines this is that it correctly specifies

have the effect that one would be more constrained in how one could treat someone the fewer principles he could understand.

³² Though this does not mean that what it is right to do in some circumstances may not depend upon the ability of those affected by one's action to recognise that they are justified. A child's parents might know, for instance, that it is in their child's best interests to be sent away to school, since this would provide the best context for the development of his intellect and independence of character. They might also know that, as yet undeveloped, the child would not understand this justification and would be alienated from them. This itself might make it right not to send the child away. Here, of course, what is of moral relevance is the distress that would be caused to the child because of his failure to grasp the justification and not that failure itself.

the moral status of whatever reasons it regulates and not whether it stands in any relation to people.

The effect of this is to force a wedge between the intuitions that are supposed to motivate contractualism and the contractualist theory that is supposed to honour them. Even if our behaviour towards other people should be justifiable to those we affect, or we should be answerable to other people for how we act towards them, this does nothing to set the terms for what is to count as an adequate justification for what we do or a satisfactory answer to those we affect in doing it.

9. (ME_{ExC}) is now also lost. It is not the case that every action which is permitted by principles that cannot reasonably be rejected is right_C: reasonable rejectability and justifiability are properties of principles that determine the status of reasons of all kinds and not just of those that regulate only personal reasons. One could save it by explicitly restricting its principles to personal-reason principles, but there would be little point in doing so. All that would result would be a stipulative definition of a technical predicate that refers to a property of actions with no moral relevance. If (ME_{ExC}) is false, however, this opens up again the possibility of accepting the original (ME_{Ex}). If this were true, it would at least leave Scanlon with his contention that the rightness of actions is dependent on the justifiability of principles. That this is a substantive thesis is, he thinks, indicated by the fact that it is inconsistent with utilitarianism. A utilitarian, he claimed, could not accept the explanatory direction of (ME_{Ex}): for the contractualist, actions are right because they are justifiable, whilst for the utilitarian, an action is right because it has the best consequences and ‘justifiability is merely a consequence of this’ (p. 189).

Why, though, could a utilitarian not accept (ME_{Ex})? Scanlon needs there to be a material difference between

(a) Tom’s brainwashing his mother is right because it had the best consequences of all the actions available to him,

and

(b) Tom’s brainwashing his mother is right because it was permitted by the reasonably unrejectable principle that one should always act to produce the best consequences.

Both (a) and (b) are explanatory statements, however, and as such both are incomplete. In full, one should rather have

(A) Tom’s brainwashing his mother is right because it produced the best consequences of all the actions available to him and an action is right just if it produces the best consequences of all available actions,

and

(B) Tom's brainwashing his mother is right because it was required by the reasonably unrejectable principle that one should always act to produce the best consequences; it produced the best consequences of all available actions and an action is right just if it is permitted by a reasonably unrejectable principle.

(B) is more complicated than (A), since it both cites the principle that permits Tom's action and specifies the general connection between an action's being right and its compliance with an unrejectable principle. This is misleading, however, since on the utilitarian's account, there will be only one such principle and that is because he believes that the correct way to determine the status of competing reasons in any circumstance is to assess them in terms of utility. Thus, if we are to provide parallel levels of generality, we should either make (A) more complicated or (B) more simple.³³ If we do that, then the only apparently significant difference between the explanations offered by the utilitarian and the utilitarian-contractualist is that the former thinks that Tom's action was right because it had the best consequences whilst the latter thinks this was because it was permitted (indeed required) by the reasonably unrejectable principle that one should act to produce the best consequences. Of course, if the reasonable unrejectability of a principle turned on anything other than whether it gets the balance of reasons right, there would be the possibility of a gap between these two explanations — but since it does not, that possibility is closed.

What, then, of Parfit's claim that the explanatory direction of (MEx) prevents it from being empty: to accept (MEx) is to disallow certain grounds for accepting or rejecting the principles that are to regulate our actions. If it is because of the reasonable rejectability of the principle that the acts it permits are wrong, it cannot also be that the principle is reasonably rejectable because the acts it permits are wrong. One cannot, that is, appeal to the fact that actions of a certain kind are wrong to reject a principle that permitted such actions and this restriction — the Moral Beliefs Restriction — will make a difference to our moral thinking. So, Parfit imagines a case where two people are trapped in burning wreckage in such a way that we can save the life of one, Black, but only by causing the other, Green, to lose her arm. Clearly we have reason both to save Black's life and not to do anything that would injure Green in such a severe way. On Scanlon's account, whether it is right to save Black will depend on which action is permitted by reasonably unrejectable principles, and Parfit provides two candidate principles that each of

³³ So, either replace (A) with something like 'Tom's brainwashing his mother is right because it produced the best consequences of all the actions available to him and an action is right just if it complies with the strongest reason for action in the circumstances, and in any circumstance the strongest reason is to produce the best consequences', or replace (B) with 'Tom's brainwashing his mother is right because it produced the best consequences and any action is right if it is required by the unique reasonably unrejectable principle that one should always act to produce the best consequences'.

those trapped might appeal to in order to defend his interests: Green might put forward the Means Principle,

It is wrong to inflict great injuries on some people as a means of saving others from greater injuries,

whilst Black might urge instead the Greater Burden principle,

We are permitted to impose a burden on someone if that is the only way of saving someone else from a much greater burden.³⁴

The Moral Beliefs Requirement, however, requires that in supporting or rejecting principles, one cannot appeal to one's moral beliefs, and this, thinks Parfit, handicaps Green's advocacy of the Means Principle:

When Black defends the Greater Burden Principle, she can claim that dying is much worse than losing an arm. This is the kind of fact to which, on Scanlon's view, moral reasoning can appeal. When you defend the Means Principle, you cannot appeal to such a fact. Your problem is, unlike the Greater Burden Principle, the Means Principle is best defended by appealing to our moral intuitions. When we consider cases of this kind, most of us believe that it is wrong to injure some people, without their consent, as a means of benefiting others.³⁵

Since the Greater Burden Principle is a consequentialist principle, whilst the Means Principle is not, this would be a case where commitment to the contractualist's Moral Beliefs Requirement actually works in favour of rather than against a consequentialist morality.

The contrast here between the two principles, however, is less sharp than Parfit's treatment of it suggests. For one thing, his formulations build in the asymmetry that he is arguing for: whilst the Greater Burden Principle specifies what is permitted, the Means Principle specifies what is wrong. More seriously, whilst the strategy that Parfit offers Green is indeed one that would, if permitted, support her favoured principle, that which he offers to Black will not in fact support his. He can certainly point to the fact that it is worse to lose an arm than to lose one's life as one that is of moral relevance in the circumstances, but, despite what Parfit says, this is hardly a fact able to give any support to the Greater Burden Principle. Rather, for that fact to be decisive in deciding what it is right to do, one would already have had to have accepted that principle as not reasonably rejectable. Green too can cite facts

³⁴ Parfit, p. 369.

³⁵ p. 370. I am following Parfit in allowing each party to be the advocate of the principle whose acceptance would be in his own interests, and whilst this, as we saw in section 4, accords with some things that Scanlon says, as we also saw there, this model needs to be resisted. In so far as they are parties to a relevant deliberation, neither Green nor Black should be more likely to advocate either principle than the other.

about their situation that are of relevance to deciding what is the right thing to do: that losing her arm constitutes a grave injury and that she does not consent to suffering that injury.³⁶ These facts are not dependent upon the truth of any moral beliefs, but nor are they able to support the principle that would make them decisive. As Parfit says, the obvious move to make is to say that actions which violate the Means Principle are wrong, but similarly, the obvious move to support the Greater Burden Principle will be to say that actions which violate it are wrong. The worry now is not that the Moral Beliefs Requirement will make it difficult for Scanlon to resist consequentialist moral principles but that his account will not have the resources to accept or reject any principles at all.

What in effect (MEx) rules out, and not because of any contractualist content, is only that actions might be barely right or wrong. Facts about the rightness and wrongness of actions will, if one likes, supervene on facts about the reasons for and against their performance and about the relative weight or strength of those reasons. A principle is just a proposition that states how one should act in light of the reasons that obtain, given their relative weights. The only reason one can have to object to some candidate principle for action will be that in assigning the wrong relative weighting to the reasons whose status it purports to determine, it commands actions incorrectly. What it assumes is that when it comes to making judgements about the relative weights of competing reasons, one will not need to ground those judgements in prior considerations of what it would be right or wrong to do. Whether this is true is clearly a crucial and basic question in axiology, but there is nothing left in Scanlon's contractualism that will help us to answer it.³⁷

³⁶ The issue of consent is a difficult one, at least if, as here, one tries to run the deliberation about principles as one that involves the interested parties. Clearly there are cases where the fact that someone withholds consent is morally relevant. What is delicate is how to accommodate the question of whether the consent is reasonably or unreasonably withheld. Could Green and Black, for instance, decide that the right thing to do is to save Black's life at the cost of Green's arm, but then need to review the matter when Green nevertheless withholds her consent from the operation? Could it then be that by, so it seems, unreasonably withholding her consent, Green tips the balance so that it is no longer right to save Black's life — which would now make her withholding her consent reasonable? Again, such difficulties are avoided once one stops thinking of the aim of deliberation to be the justifiability of the outcome *to* particular parties.

³⁷ I wrote the first version of this paper when I was a visiting fellow at the Institute of Philosophy in London. That version was given at a conference on Professor Scanlon's work organised by Véronique Munoz-Darde and held at the institute. I am grateful to the institute for providing me with the opportunity to work on this material, and to participants of the conference, especially Professor Scanlon himself, for their helpful reactions to it. A term of research leave from the University of York gave me the chance to turn that rather concise discussion into this more sustained and no doubt unwieldy one. Joseph Raz has proved willing to talk about the issues and to read multiple versions well beyond the point of saintliness. I have also benefited from the comments of Christian Piller, Tom Baldwin and Marie McGinn, as well as from the referees who acted for this journal.

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