

NAVIGATING NONIDENTITY

SCANLONIAN CONTRACTUALISM AND TYPES OF PERSONS

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SCANLON'S moral contractualism presents a compelling framework for understanding our moral obligations towards one another.¹ According to this view, our actions should be guided by principles that are justified to others, in the sense that they cannot reasonably reject these principles. However, an open question remains as to whether Scanlonian contractualism can adequately address our obligations to future generations, specifically in light of the nonidentity problem.²

Many actions and policies that have long-term negative consequences for the well-being of future generations are to be understood as nonidentity cases in which the existence of the affected future persons is contingent upon our actions. In these cases, we are not making any future individual worse-off than she would otherwise be; rather, our actions fail to bring into existence other future individuals who would be better-off. The person-affecting structure of Scanlonian contractualism is tested to its limits here. While the principles allowing such actions may intuitively appear morally unjustifiable, it remains unclear on what grounds a future person, whose existence depends on the adoption of a principle and who would lead a worthwhile life, would have reason to reject that principle.

Scanlon has suggested that moral contractualism should respond to the nonidentity problem by showing that future persons have a reasonable objection not as the particular individuals but in terms of the "reasons that any individual would have in virtue of being in a certain position."³ A more detailed

- 1 Scanlon, "Contractualism and Utilitarianism" and *What We Owe to Each Other*.
- 2 The nonidentity problem has been brought to wider attention by the work of Derek Parfit. See especially Parfit, *Reasons and Persons*, ch. 16. To my awareness, the earliest discussion of the problem can be found in Schwartz, "Obligations to Posterity."
- 3 Scanlon, "Responses to Forst, Mantel, Nagel, Olsaretti, Parfit, and Stemplowska," 143.

account of this idea is given by Rahul Kumar.⁴ He suggests that the nonidentity problem can be avoided because the justifiability of moral principles depends on whether they can be rejected from the perspective of a relevant standpoint or type of person, characterized in general terms. On this view, a future person is wronged when she is treated according to a principle that is rejectable from the perspective of her type. I call this the *types-of-persons approach*.

This paper puts the types-of-persons approach under closer scrutiny. In section 1, I will briefly present Scanlonian contractualism and the nonidentity problem, followed by the idea of types of persons in section 2. I suggest two alternative interpretations of the types-of-persons approach that differ in how the reasons for objection in nonidentity cases are characterized: we could assume that the reasons on grounds of which the principles are unjustified are (a) reasons of types of persons or (b) type-based reasons of token persons. I spell out these versions in more detail in sections 3 and 4, respectively, arguing that both are incompatible with Scanlonian contractualism. I thus conclude that the types-of-persons approach does not provide a satisfactory solution to the nonidentity problem for Scanlonian contractualists.

1. SCANLONIAN CONTRACTUALISM AND THE NONIDENTITY PROBLEM

The basic idea of Scanlonian contractualism is that as agents, we stand in a relation of mutual recognition in which we owe each other justification. On this view “an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.”⁵ When we deliberate about what we ought to do, we consider what reasons the potentially affected individuals have to object to the principles allowing and disallowing the action in question. According to Scanlon, reasons to reject such principles are plural. They can be based on a person’s well-being, interests, or fairness, for example. When we act against a person’s reasonable rejection, we wrong her because the action is unjustified to her.⁶

4 Kumar, “Wronging Future People,” “Risking Future Generations,” and “Who Can Be Wronged?” This view has gained further support in Finneron-Burns, “Contractualism and the Non-Identity Problem” and *What We Owe to Future People*.

5 Scanlon, *What We Owe to Each Other*, 5.

6 This is the standard reading of Scanlonian contractualism as a relational theory, i.e., a theory concerned with directed obligations: we owe it to a person to act in a certain way, and we wrong her if we fail to do so. Katz has argued that to avoid the nonidentity problem, Scanlonian contractualism could also be interpreted in an impersonal “moral wrong” reading (“Contractualism, Person-Affecting Wrongness and the Non-Identity Problem”). However,

Two aspects are of particular importance in the context of this paper. First, to consider what the potentially affected persons could object to the adoption of the principles allowing or disallowing an action, Scanlon assumes that we ought to think about the various *standpoints* of the affected individuals and the *generic reasons* that can be attributed to them: we shall take into account what kinds of reasons people in certain situations plausibly have due to the position they are in.⁷

Second, it is only the *personal* reasons of *individuals* that count as reasons for the rejection of principles.⁸ This idea can be spelled out in terms of the *individualist restriction* and the *impersonalist restriction*. Broadly speaking, the individualist restriction excludes objections based on interpersonal aggregation or the claims of groups, and the impersonalist restriction excludes objections based on impersonal considerations, such as the intrinsic value of a natural landscape.⁹ I come back to this in more detail in section 4.

The nonidentity problem challenges Scanlonian contractualism's ability to say that we wrong future persons in nonidentity cases. Consider Parfit's case:

Depletion: As a community, we must choose whether to deplete or conserve certain kinds of resources. If we choose Depletion, the quality of life over the next two centuries would be slightly higher than it would have been if we had chosen Conservation. But it would later, for many centuries, be much lower than it would have been if we had chosen Conservation.¹⁰

Because large-scale policies like Depletion and Conservation affect the lives of so many people, they have a profound effect on who and how many people will be born in the future. We can therefore assume that over the course of a few generations, none of the future persons who would exist if we chose Depletion would also exist if we chose Conservation, and vice versa. Furthermore,

an impersonal interpretation of Scanlonian contractualism seems to amount to an entirely different theory, and importantly, it can then claim no longer that future persons are wronged in nonidentity cases (but only that we act impersonally wrong).

7 Scanlon, *What We Owe to Each Other*, 202–4.

8 See especially Scanlon, *What We Owe To Each Other*, 229, 241.

9 This terminology is from Parfit. For the individualist restriction, see Parfit, *On What Matters*, 2:193; for the impersonalist restriction, see Parfit, *On What Matters*, 2:214. Scanlon adopts the terminology, albeit not consistently; see Scanlon, “Replies,” 429, and “Contractualism and Justification.”

10 Parfit, *Reasons and Persons*, 361–62.

it is stipulated that the lives of future people in both alternative outcomes, the depleted and the conserved world, would still be worth living overall.¹¹

While it seems intuitive that we ought not to choose Depletion, it is not clear whether Scanlonian contractualism yields this verdict. Generally, it seems open to take into account the reasons of future persons just as those of the currently alive.¹² However, the future individuals in the depleted world are not made worse-off by the principle allowing Depletion than they would have been under the alternative principle prohibiting Depletion (and neither would their interests be fulfilled under the alternative principles, nor would they be treated fairly, or whatever you think is the appropriate basis for objection). These particular persons would not exist at all if we adopted the principles prohibiting Depletion. So the central question for Scanlonian contractualism is: Can future persons reasonably reject the principles allowing an action even if their particular existence depends on the adoption of these principles?

2. THE TYPES-OF-PERSONS APPROACH

Scanlon has not given an explicit account of how to respond to the nonidentity problem. When mentioning it in *What We Owe To Each Other*, he suggests only that it touches substantive questions to be dealt with “within the morality of right and wrong.”¹³ More recently, Scanlon has suggested that a response to the nonidentity problem requires viewing the reasons for objecting to a principle not as reasons that are raised by particular persons but rather as reasons that could be raised by any individual due to her position. He clarifies:

The objections that are relevant in the process of contractualist justification are not objections of particular individuals. Rather, they are reasons that any individual would have in virtue of being in a certain position, namely the position of being affected in a certain way by a principle. . . . The position in question is that of living under conditions that are very bad in some way, due to policies that this principle would allow (for example, bad because of pollution, increased temperatures, or high sea levels) but who would not have existed if some alternative policy had

11 Parfit, *Reasons and Persons*, 362.

12 Scanlon assumes that in principle, those who can be wronged are “all those who do, have, or will actually exist” (*What We Owe to Each Other*, 187). This is usually accepted. See Kumar, “Wronging Future People,” 255–56; Hurley and Weinberg, “Whose Problem Is Non-Identity?” 724; Gibb, “Relational Contractualism and Future Persons,” 138; Fineron-Burns, “Contractualism and the Non-Identity Problem,” 1152–53, and *What We Owe to Future People*, 56–63.

13 Scanlon, *What We Owe to Each Other*, 186.

been followed. It is not obvious to me that people in this position do not have such an objection, although I do not have a worked-out view of the matter.¹⁴

What is needed, then, is a “worked-out view” of that objection based on the reasons any individual in such a position would have. Such an account can be found in the work of Rahul Kumar.¹⁵ His central claim is that Scanlonian contractualism avoids the nonidentity problem because it is concerned with whether the principles allowing an action are reasonably rejectable from relevant standpoints or types of persons, characterized in more general terms. Like Scanlon in the quote above, Kumar thus presses the point that Scanlonian contractualism is concerned with what can be objected from standpoints rather than from particular individuals. He argues:

The general point here, which is key to understanding Contractualism’s claim to immunity to the non-identity problem, is that for there to be a fact of the matter concerning what it is one owes another to whom one stands in a particular type of relationship, it is enough that the other to whom consideration is owed be characterizable in normative terms, by a relevant type description. There need be no fact of the matter concerning the particular token identity of that individual, as her token identity is irrelevant for fixing what it is she is owed as a matter of respect for her value as a person.¹⁶

Applying this view to Depletion, we can assume that the principles allowing Depletion are reasonably rejectable from the perspective of the type of a future person. Importantly, if we do choose Depletion, then any particular future individual in the depleted world can claim to have been wronged because she “instantiates” the relevant type.¹⁷ This claim that, very roughly, the nonidentity problem is avoided by reference to types of persons, is what I call the types-of-persons approach.

14 Scanlon, “Responses to Forst, Mantel, Nagel, Olsaretti, Parfit, and Stemplowska,” 143.

15 Kumar, “Wronging Future People,” “Risking Future Generations,” and “Who Can Be Wronged?” His view has received further support by Elizabeth Finneron-Burns in “Contractualism and the Non-Identity Problem” and *What We Owe to Future People*, ch. 2.

16 Kumar, “Wronging Future People,” 261–62.

17 Kumar, “Risking Future Generations,” 252. Note that this is an important element that distinguishes Kumar’s view from Caspar Hare’s. Hare argues that we can have moral obligations to *de dicto* people (for example, an obligation to “my future child” in the *de dicto* rather than the *de re* sense), but he does not assume that the *de re* future child is wronged by a violation of a *de dicto* obligation. See Hare, “Voices from Another World.”

While I am sympathetic to this view, it is not clear how it is supposed to work in detail. On closer inspection, it seems to me that two alternative interpretations of the types-of-person approach are available, and they have been conflated so far. To see this, it is helpful to spell out the objections to a principle in terms of reasons. Schematically, we may say that in a given context *C*, proposition *P* is a reason for subject *S* to object to the principle in question. For example, suppose that the adoption of a certain principle would harm me, and this is a reason for me to object to that principle. Then the fact that I would be harmed is the proposition, and I am the subject. Based on this understanding of reasons for objection, we can distinguish two different versions of the types-of-persons approach.

The first option (a) is to claim that types are the subject for which some consideration is a reason to object to a principle. So in the understanding of a reason introduced above, *S* is a type of person rather than a token person. With regard to Depletion, for example, we might say that the type *future person* could object to the principle allowing Depletion because it makes the type worse-off, violates its interests, is unfair, or is in some other form disrespectful towards that type. On this view, moral deliberation is essentially concerned with types of persons and their objections. The alternative option (b) is to say that the type is only part of the proposition *P*, while the subject *S* is still a token person. On this view, we can maintain that it is particular individuals and their reasons that ultimately matter for the justifiability of moral principles. An individual may nonetheless have reason to object to a principle based on how the principle affects her type more generally. For Depletion, for example, we may say that any token future person could object to the principles allowing Depletion on the grounds that it makes persons of her type worse-off, is harmful to her type, or imposes higher risks on her type. In sections 3 and 4 below, I will discuss these two alternative versions of the types-of-persons approach one by one and argue that both are, in their own ways, incompatible with central features of Scanlonian contractualism.

3. THE REASONS OF TYPES OF PERSONS

The first option to spell out a types-of-persons solution is to claim that contractualist reasoning about wrongness essentially takes place at the level of types of persons rather than of token persons. According to this view, there are reasons to reject Depletion attributed to the standpoint or type *future person* in such generality; and this is all we need to know in order to assess whether the principle in question is unjustified. As Scanlonian contractualism allows a plurality of reasons for objection, there are in principle different options to spell out the

objection in more detail. For example, it could be argued that the type *future person* could object to the principle allowing Depletion because it significantly lowers its well-being, violates its interests, imposes higher risks on it, or treats the type unfairly. A particular future individual in Depletion would then be wronged by not being treated according to the behavior owed to her type in that type of situation. However, I believe this understanding of the types-of-persons approach conflicts with some of the basic ideas of Scanlonian contractualism.

From an exegetical perspective, note that such an understanding of the role of types of persons does not correspond to the concept of standpoints originally introduced in *What We Owe To Each Other*. The notions of standpoints and generic reasons are here primarily an answer to an epistemic problem.¹⁸ Scanlonian contractualism requires deliberating agents to take into account a very broad range of considerations. This is why Scanlon suggests that we must rely on “commonly available information about what people have reason to want” when assessing the rejectability of a principle.¹⁹ We therefore have to refer to generic reasons that are “reasons that we can see that people have in virtue of their situation, characterized in general terms, and such things as their aims and capabilities and the conditions in which they are placed.”²⁰

Elizabeth Ashford ascribes a more substantive, moralized role to standpoints, restricting reasonable rejection to the kind of objections “everyone has reason to be concerned with.”²¹ This rules out reasons that persons have due to very peculiar or inadequate individual preferences. But irrespective of whether standpoints serve a merely epistemic or some further moral function in Scanlonian contractualism, standpoints represent token individuals on both readings. Deliberating about standpoints or types is, on this view, only a way of taking into account the morally relevant reasons that the affected token individuals plausibly have.

Putting exegetical questions aside, however, the first version of the types-of-persons approach raises additional formal and substantial questions. To deliberate about types of persons might seem quite in line with the generality of moral principles and the way in which we commonly speak of persons when we deliberate about what is right or wrong. Kumar insightfully suggests that the contractualist system of moral principles can be seen as analogous to a legal

18 Scanlon, *What We Owe to Each Other*, 202–4. See also Gibb, “Relational Contractualism and Future Persons,” 146.

19 Scanlon, *What We Owe to Each Other*, 204.

20 Scanlon, *What We Owe to Each Other*, 204.

21 Ashford, “The Demandingness of Scanlon’s Contractualism,” 277.

system in this respect.²² Principles define what we can legitimately expect from each other in certain situations, and just like legal principles, moral principles refer to persons and situations in a generalized manner by specifying the types of persons and types of situations in which they hold. Kumar's example to illustrate this is that of an employer and an employee: when we think about what principles for the regulation of employment relationships are justified, we think about an employer's and an employee's interests in different situations in a generalized way. We can meaningfully discuss which conduct employer and employee owe each other by referring to types of persons and types of situations. And when a particular employee is said to have been wronged, then this claim is based on the assessment that the relevant type descriptions are applicable to her and her employer in their actual situation.²³

However, while this might be plausible when deliberating about employers and employees, the relation of the type and the token person is not so straightforward in nonidentity cases. While the type of a future person has a reason to object to the principle in question, in nonidentity cases, the token future person herself does not have that reason. (Otherwise, I assume, we would not need a types-of-persons approach to solve the nonidentity problem in the first place.) This raises the question of whether the token person is in fact an instantiation of that type.²⁴ But even if it is, to rely on the type's reasons in such a case seems not very attractive for Scanlonian contractualism as a moral theory.

First, to claim that the wrongness of an action is grounded in the reasons of types of persons is at odds with the view that reasons are relative to persons. In Scanlonian contractualism, reasons are the most fundamental normative concept.²⁵ Scanlon characterizes a reason for action as a four-placed relation between a person, a proposition, the circumstances, and an action.²⁶ So what I have schematically introduced as the subject of a reason, on this view, must always be a person. And this assumption is not unique to Scanlon's view but widely shared.²⁷ However, when reasons are relative to particular persons, and reasons are the foundation of normativity in Scanlonian contractualism, then ultimately, the reasons of particular persons should be guiding our deliberation.

22 Kumar, "Risking Future Generations," 260.

23 Kumar, "Risking Future Generations," 261.

24 See Huseby, "Person-Affecting Moral Theory, Non-Identity and Future People," 204.

25 Scanlon, *What We Owe to Each Other*, 17.

26 Scanlon, *Being Realistic About Reasons*, 120.

27 I am not aware of any scholar who denies that a reason is always a reason for a person. See, e.g., Raz, *Engaging Reason*; Dancy, *Ethics Without Principles*; Schroeder, *Slaves of the Passions*; Skorupski, *The Domain of Reasons*; Parfit, *On What Matters*, vol. 1; Scanlon, *Being Realistic About Reasons*; Snedegar, *Contrastive Reasons*.

This is important because it shows what to do when we come to see that on closer inspection, a person herself does not actually have the reason we ascribed to her standpoint. What is morally relevant in such a case must surely be the actual person's reasons and not the reasons ascribed to an abstract type description. I assume that this is plausible in the employer example as well. If we see that a particular employer and employee in fact have reasons very different from those we ascribed to the general roles of employer and employee, it seems problematic to take the general descriptions as decisive for assessing what they owe to each other. In a legal system, perhaps all that matters is whether your case falls under the circumstances and roles defined by the law, but in morality, I believe, we should rather look at the actual individuals. It is their reasons and interests that ultimately matter for the justifiability of moral principles.

Second, even if some may disagree with the claim that morality must be concerned with the reasons of token persons, this is not an option for Scanlonian contractualism. In particular, the view that moral deliberation is concerned with types of persons rather than with token persons clashes with the idea of what we owe to each other. Contractualism's central idea is that in a relation of mutual recognition, we respect the value of another person by recognizing her as a reasoning agent and thus owe it to her to take her reasons into account.²⁸ If in deliberation we take into account the reasons ascribed to a type description of her, even if she herself does not have these reasons, this does not seem to amount to the kind of respect we owe to her. Thus understood, contractualism ultimately seems to be a theory of what is owed to types of persons rather than of what is owed to persons.²⁹

That being said, standpoints and generic reasons still have an important epistemic (or perhaps even further moral) function in contractualist reasoning, and I do not want to imply that this feature should be dismissed. We should bear in mind, however, that in a Scanlonian framework, what is ultimately morally relevant must be the reasons of particular individuals, not those of abstract types. Therefore, the idea that Scanlonian contractualism avoids the nonidentity problem because types of persons are the subject of the reasons for rejection is not plausible. This is not the end of the types-of-persons approach, however. Even if the relevant subjects in moral deliberation should be token persons, it may still be the case that a token person can reject a principle based on how it affects her type more generally. This idea is discussed in the following section.

28 See also Ashford, "The Demandingness of Scanlon's Contractualism," 277; Gibb, "Relational Contractualism and Future Persons," 11–12.

29 See also Parfit, *On What Matters*, 2:235–36.

4. TYPE-BASED REASONS OF TOKEN PERSONS

In the previous section, I have taken the types-of-persons approach to make the claim that types of persons are the subject of the relevant reasons for objection in moral deliberation. But perhaps the types-of-persons approach is better understood as making a claim only about the proposition. On this interpretation, a defender of the types-of-persons approach might agree that it is the reasons of particular persons that ultimately matter morally but argue that particular persons have certain reasons to reject principles *due to their type*. This interpretation of the types-of-persons approach could avoid the concerns raised in the previous section and may also seem closer to Scanlon's suggestion that contractualism should look at the reasons persons have "in virtue of being in a certain position."³⁰

On this view, a person can object to a principle on the ground that it negatively affects her type. Regarding Depletion, for example, any token future person could object to a principle allowing Depletion because it would leave a person of her type (the type *future person*) significantly worse-off compared to the alternative principles, because it would violate her type's interests or impose higher risks on her type. The reason to object to a principle thus is a particular person's reason, but its proposition refers to how the person's more general type is affected rather than how she herself as a token would fare under this principle and its alternatives. I call these reasons *type-based reasons* to reject principles.

Note that the type-based reasons I have in mind here are comparative, that is, they refer to how the type of person is comparatively affected by a principle relative to its alternatives. Instead, one could also argue for a noncomparative account of these reasons, for example by referring to a violation of noncomparative interests, noncomparative harm, or a sufficiency threshold of well-being. A noncomparative response to the nonidentity problem, however, is an entirely different view that deserves its own in-depth discussion.³¹ I assume that the main motivation for adopting a types-of-person approach is to incorporate the kinds of comparisons that we can make with respect to the types but not

30 Scanlon, "Responses to Forst, Mantel, Nagel, Olsaretti, Parfit, and Stemplowska," 143.

31 For a defense of noncomparative objections, see Suikkanen, "Contractualism and Climate Change"; and Wallace, *The Moral Nexus*. See also Kumar's brief remarks in "Risking Future Generations," 253. The idea of noncomparative objections recurs in an older debate on noncomparative harm, most prominently defended by Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm"; Harman, "Can We Harm and Benefit in Creating?" For critical discussions, see, e.g., Hanser, "Harming and Procreating"; Boonin, *The Non-Identity Problem and the Ethics of Future People*, especially ch. 3, sec. 3; and McMahan, "Climate Change, War, and the Non-Identity Problem."

with respect to the token persons. The following discussion is thus limited to a comparative understanding of type-based reasons.

Generally, I believe the idea of type-based reasons has quite an intuitive appeal, but it has the following problem. It assumes, for example, that a person can object to a principle on the ground that it leaves persons of her type worse-off than persons of that type would otherwise be, even though she cannot object on the ground that the principle makes *her* worse off than *she* would otherwise be. This is what allows the view to solve the nonidentity problem. However, it is in tension with the contractualist requirement that objections must be the personal objections of individuals.

As introduced earlier, in Scanlonian contractualism, it is only the personal reasons of individuals that count as reasons for the rejection of principles. For this constraint, Parfit has coined the terms *individualist restriction* and *impersonalist restriction*. Following his definition, the individualist restriction requires that “in rejecting some moral principle, we must appeal to this principle’s implications only for ourselves and for other single people.”³² This excludes the interpersonal aggregation of benefits or burdens or referring to the claims of groups, for instance. The impersonalist restriction claims that “in rejecting some moral principle, we cannot appeal to claims about the impersonal goodness or badness of outcomes.”³³ This excludes, for example, reasons referring to the intrinsic value of nature or other impersonal considerations. As Scanlon argues, if someone wants to destroy the Grand Canyon to build a theme park, I might object to the principles allowing such a project on the ground that it would deprive me of enjoying that natural landscape. But the value of the natural monument itself is nothing that makes the action unjustified *to me*. While there might be intrinsic value in landscapes or ecosystems, this is not considered to be part of the contractualist domain of morality, the morality of what we owe to each other.³⁴

The common idea behind these constraints is that the reasons must be, as Scanlon suggests, reasons that a person has “on his or her own behalf.”³⁵ Its roots lie in the contractualist ideal of justifiability to each person, and it is intricately linked to the relational structure it takes morality to have. What we owe to each other is to take the reasons of each person into account, and to ground a contractualist wronging, these must be reasons that the person has on her own behalf, otherwise it would not be a wronging of *her* in particular. The two

32 Parfit, *On What Matters*, 2:193.

33 Parfit, *On What Matters*, 2:214.

34 Scanlon, *What We Owe to Each Other*, 219–20.

35 Scanlon, “Replies,” 429.

restrictions are thus closely related, and a Scanlonian solution to the nonidentity problem should be compatible with both.

My main concern in this paper will be with the impersonalist restriction, but let me first take a brief look at the individualist restriction. On Parfit's definition given above, the individualist restriction requires that the objections to a principle be based on its implications for "single people."³⁶ On the types-of-persons approach, the relevant objection to a principle appeals to its implications for types of persons. Quite simply, a type of person does not seem to be a single person. Rather, it is a generalized description of a person that could be instantiated by different individuals. In Parfit's terms, such a description is a "general person" and "general people are *not* individuals. A general person is a vast group of possible individuals, or people, one of whom will be actual."³⁷ In a way, the whole point of the types-of-persons approach is that objections must not be based on how a single individual is affected by a principle and its alternatives. So on this interpretation, the types-of-persons approach is a violation of the individualist restriction.

It is not so clear, however, that the individualist restriction should be understood in this way. Its central role is usually taken as barring interpersonal aggregation, and the types-of-person approach is compatible with this constraint. For example, if some people in the depleted world were miserable, and some others were very well-off, the types-of-persons approach would presumably not aggregate their well-being. Instead, the question here is whether an objection can be based on how different possible individuals of the same type would be comparatively affected. Rather than interpersonal aggregation, this is what we could perhaps call an *interpersonal comparison*. Such comparisons may be, from a Scanlonian perspective, problematic in much the same way as interpersonal aggregation, but this is far from obvious.³⁸ So on a narrower interpretation of the individualist restriction, one in which it excludes only interpersonal aggregation, the types-of-persons approach is compatible with it. Apart from that, it is quite contested whether Scanlonian contractualism should uphold the individualist restriction even in this narrower interpretation. In recent years,

36 Parfit, *On What Matters*, 2:193.

37 Parfit, *On What Matters*, 2:236, emphasis in original. In the context of this quote, the general person Parfit discusses is "your future child," and he explicitly refers to Kumar's view in an endnote to this sentence in *On What Matters*, 2:754.

38 Parfit suggests that failing to distinguish between two individuals by treating them as parts of the same general person ignores the "separateness of persons," a concept usually invoked in opposition to interpersonal aggregation. Parfit, *On What Matters*, 2:236, 754. Settling this question requires a deeper discussion of the impermissibility of interpersonal aggregation in Scanlonian contractualism, which I cannot provide here.

even Scanlon has expressed doubt that the strict exclusion of aggregative reasons can be defended.³⁹ I therefore do not want to rest my arguments on the individualist restriction, on either interpretation. A violation of the impersonalist restriction seems to be the more pressing concern.

So, how does the impersonalist restriction relate to the idea of type-based reasons? Scanlon's formulation that reasons for objection must be "on a person's own behalf" suggests a narrow interpretation, including only reasons based on how the person herself would be affected by a principle, how it would affect her own interests or her own well-being, and so on, rather than how it would affect those of her type more generally. However, Scanlon is not very clear on this, and following Parfit's definition, there might be room for type-based reasons. A lot hinges on how 'impersonal' and 'personal' are understood. On one interpretation of the restriction, the exclusion of an appeal to the *impersonal* goodness or badness of outcomes can be taken to exclude only reasons that do not refer to (what is good or bad for) persons, such as reasons referring to the intrinsic value of nature. On this understanding, type-based reasons would be valid reasons to object to principles. They are *personal* in that they refer to how persons are affected; and even in a stronger sense, they are not about just any persons but specifically about those of one's *own* type.

Without explicitly discussing the impersonalist restriction, Kumar addresses this question in a few of his papers. He accepts "the initial intuition that a person's being wronged consists in something having been done to *her*, the force of which needs to be accounted for in light of the implications for *her life*."⁴⁰ He adds, though, that this does not require that a person's objection is based on how she in particular is affected. Instead, a particular person is entitled to be treated according to what is owed to her based on more general considerations: "her entitlement, on the contractualist account, is one that she has in virtue of her circumstances being relevantly characterized by a more general description, one that could be instantiated by an indefinite number of others."⁴¹ Similarly, in his work on risk, Kumar claims that what we owe to a person is to treat her in ways that are owed to a person *like her* more generally: "The objection is general: it is an objection not just to *you* doing what had negative consequences for *me*, but to *anyone* under this type of circumstance engaging in that type of conduct, on the grounds that it could have certain implications for another

39 Scanlon, "Contractualism and Justification."

40 Kumar, "Who Can Be Wronged?" 109, emphasis in original. See also Kumar, "Risking Future Generations," 248.

41 Kumar, "Risking Future Generations," 252.

individual (like me).⁴² This, Kumar emphasizes, “does not abandon the contractualist ideal of always conducting oneself in a way whose permissibility is justifiable to each person.”⁴³

Even though this sounds like an attractive way for Scanlonian contractualists to account for nonidentity cases, I am not convinced. It is one thing to consider “general objections” in the sense that all token persons in a given position share that objection to a more general principle and to be able to consider that objection even if we do not know the identity of the persons who are or will be in that position. It is another thing to attribute a general objection to a person when we know that, as a token person, she does not have that objection to the principle in question. Therefore, in the following, I will argue that type-based reasons should be excluded on a plausible understanding of the impersonalist restriction because they do not plausibly ground a personal wronging of the token person.

In nonidentity cases, we are inclined to accept a personal wronging based on type-based reasons because it leads to the intuitively right verdict. However, in other cases, this seems quite problematic. Consider the following case:

Medical Program: You have two alternative therapy options to choose from for setting up a program to treat patients suffering from a rare and painful disease. Treatment *A* is more effective in improving the patients’ well-being, but it is also a lot more expensive, leaving you with less budget for other health expenses. Treatment *B* is a different, less expensive therapy that also helps its patients, but it leaves them worse-off than patients would be under treatment *A*. The alternative therapy options are applicable only to persons with certain medical characteristics, so you know in advance that the patients who would be admitted to the alternative programs are nonidentical.

With the idea of type-based reasons in mind, one could argue that the type *future patient* is worse-off in *B* than in *A*, and this is what grounds the objection to the *B* treatment program from any of the affected token persons. However, we know that the decision we are about to make will determine not only the quality of treatment for future patients but also who will be treated and who will not. We should therefore be very careful about what we take the relevant type to be.

When we know in advance that a person would be treated only in the *B* program, considering the type *future patient* does not seem to adequately capture

42 Kumar, “Risking and Wronging,” 50, emphasis in original.

43 Kumar, “Risking and Wronging,” 50–51.

her perspective. She has a strong interest in the implementation of the *B* program to receive treatment for her painful disease. This consideration is lost when we take into account only how the general type *future patient* is affected. It seems that we should therefore use more specific type descriptions that capture these relevant reasons of the token persons, for example, the types *sick person who would be treated only in the B program*, *sick person who would be treated only in the A program*, and *person who would benefit from the money invested in other services*. This way, we see what is in fact owed to whom.

This supports the original interpretation of standpoints as representing token persons in moral reasoning, as discussed in the previous section. On this view, I have suggested that once we have evidence that a token person has reasons different from what we ascribed to her type, we should correct our belief about what the relevant standpoints are. Otherwise, we run the risk of defining entirely arbitrary standpoints or, worse, characterizing standpoints according to what we believe should be the result of the moral deliberation.

I thus take it that an adequate type description must be narrow enough so that the reasons of the token persons correspond to their type's reasons (with regard to the principle at stake, at least). This means that type-based reasons that a person has with regard to her type but not with regard to herself should not plausibly count as personal reasons that can ground a wronging of that person.⁴⁴ They are rather based on an inadequately broad description of her that obscures the reasons that are decisive for what we owe to her. Regarding non-identity cases, I believe this strongly suggests that we should dismiss standpoint descriptions as general as suggested by the types-of-persons approach. An adequate standpoint description of a future person should presumably include the facts that she would not exist if the alternative principles were adopted and that she is therefore not made worse-off than she otherwise would have been (or adversely affected in any other comparative sense).⁴⁵

But perhaps it is too early to draw conclusions. In nonidentity cases, we are concerned with future persons who are not yet born, and we thus have very limited knowledge about them. It could be argued that this is a crucial

44 Allowing personal reasons to be based on interpersonal comparisons is what Harney calls, in a welfarist context, a *pseudo-person affecting view*. See Harney, "The Interpersonal Comparative View of Welfare."

45 Note that I am claiming only that the standpoint description should be narrow enough so that it does not include reasons based on the type being comparatively affected in a way that the token person is not. I do not claim that the standpoint description should include an interest in existence (so that, for example, a future person could object to a principle that it prevents her from existing). Elizabeth Finneron-Burns argues convincingly that the latter is implausible ("Contractualism and the Non-Identity Problem," 1156–58, and *What We Owe to Future People*, 73–77).

consideration. Notably, Kumar combines his types-of-persons approach with an *ex ante* view for cases of risk or uncertainty.⁴⁶ On an *ex ante* view, what is decisive for the justifiability of a principle that allows us to impose risks on others are the objections based on their prospects (*ex ante*) rather than on how persons fare in the outcome (*ex post*). I cannot discuss here the more general plausibility of *ex ante* and *ex post* contractualism, but in many cases, it seems reasonable to adopt an *ex ante* interpretation.⁴⁷ Does the *ex ante* reasoning provide a rationale for considering the general standpoint of a future person in cases like Depletion?

In support of this, note that in Medical Program, it may seem much more plausible to consider the standpoint *future patient* when we do not know who the patients in the alternative programs would be.⁴⁸ On an *ex ante* view, considering the objections of the affected persons requires us to take seriously their prospects rather than looking at the outcomes. For a person suffering from a painful disease, about whom we cannot know whether she would be admitted to program *A* or program *B*, the fact that patients would receive better treatment in *A* than in *B* does indeed seem to be a relevant consideration. This holds even though we know that there are in fact only persons who would be admitted to *A* and persons who would be admitted to *B*. In other words, even though we know that each token person can be treated in only one of the programs, due to our epistemic limitations, it is reasonable to take into account a type of person who could be treated in either program. For this type, implementing the *B* program implies a higher risk of not receiving effective treatment, and this may be an objection to the principles allowing us to implement the *B* program. This type description may be generalized or abstract but is nonetheless very relevant for what we owe to the token persons.

Considering this, it may not seem odd at all that a person who is treated in the *B* program can be wronged by the choice of *B*, even though she benefited from the unjustified choice. The wronging consists in the action being unjustified to her, regardless of the outcome of that action. A person can be wronged in virtue of a risky behavior even when she happens to benefit from it and does

46 See especially Kumar, "Risking and Wronging" and "Risking Future Generations." See also Finneron-Burns, "Contractualism and the Non-Identity Problem," 1158, and *What We Owe to Future People*, ch. 6.

47 For defense of this claim, see, e.g., Frick, "Contractualism and Social Risk"; and Kumar, "Risking and Wronging." While Scanlon argues for an *ex post* perspective in *What We Owe to Each Other*, ch. 5, he later accepts the *ex ante* view and credits Frick's paper with having changed his mind ("Reply to Zofia Stemplowska").

48 I thank an anonymous reviewer for pressing this point.

not regret that the choice was made.⁴⁹ This kind of *ex ante* reasoning, it may be argued, is what we should apply to cases like Depletion. This way, we can see that a token person in the depleted world who neither is worse-off nor regrets our choice can nonetheless be wronged by us, in virtue of us having imposed unjustified risks on a relevant type description of her.

However, on closer inspection, I believe that the *ex ante* reasoning for cases of risk does not provide a justification for considering the general type *future person* in nonidentity cases and thus does not vindicate the types-of-persons approach. There is a crucial difference between Depletion and Medical Program. In Medical Program, when we do not know to which of the programs a sick person would be admitted, it seems reasonable to consider the standpoint of a person who could be treated in either of the programs. Importantly, though, in this case, there is a token person about whom we do not know whether she would be treated in *A* or in *B*. In order to justify ourselves to that token person, we have to take into account that, for all we know, she might end up in *A* or in *B*. Thinking about the standpoint of such a future patient, I assume, is therefore not in conflict with the impersonalist restriction. The reasons attributed to that standpoint do correspond to the token person's reasons in light of the epistemic limitations.

This is not the case in Depletion. There is no such person who, for all we know, could end up in either the depleted or the conserved world. Although we have a fair amount of epistemic uncertainty about future persons, we do *not* have the kind of epistemic uncertainty involved in Medical Program.⁵⁰ In Medical Program, to justify our actions to a token person about whom we do not know in which program she would be treated, we should take into account that the principle allowing the *B* program imposes on her a higher risk of not receiving effective treatment. In Depletion, there is no token person about whom we do not know whether she would live in the depleted or the conserved world and on whom the principles allowing Depletion thus impose higher risks. To consider such a standpoint and to attribute the standpoint's reasons to a token person are thus to attribute reasons to a person that she does not have on her own behalf, neither *ex ante* nor *ex post*. This is what makes the types-of-person approach incompatible with the impersonalist restriction, as I have argued. The *ex ante* view does not change this, nor does it provide a justification for considering a standpoint so broadly constructed in nonidentity cases.

From this, I take it that the second version of the types-of-persons approach, according to which token persons have type-based reasons, is incompatible

49 Kumar, "Risking Future Generations," 249–50, 254.

50 See also Gibb, "Relational Contractualism and Future Persons."

with the impersonalist restriction. A reason that refers to how a person's type is comparatively affected by a principle and its alternatives when this is not how the token person herself is affected is not a reason that she has on her own behalf that can ground a wrongdoing of her. Perhaps a version of Scanlonian contractualism without an impersonalist restriction or with a revised one could be defended.⁵¹ I cannot engage in a discussion of such a revised contractualism here, but the theoretical costs seem significantly high. The impersonalist restriction lies at the core of Scanlonian contractualism. While Scanlon has shown himself somewhat open to reconsidering the individualist restriction (to capture cases in which numbers seem to matter after all), he seems to be a lot more reluctant to loosen or give up on the impersonalist restriction.⁵² And I believe there is good reason for this. It seems impossible to dismiss the restriction without losing the central ideal of justifiability to each person and thereby the resources for grounding a personal wrongdoing in the first place.

5. CONCLUSION

To conclude, the types-of-persons approach is not a plausible option for Scanlonian contractualism to account for our obligations to future persons. I have suggested two alternative options to spell out such a view. On closer inspection, however, both versions prove to be incompatible with central ideas of Scanlonian contractualism. The assumption that types of persons and their reasons are what normatively matters does not align well with the concept of standpoints as originally advanced; it clashes with a plausible conception of reasons within the contractualist framework and with the idea of what we owe to each other. On this reading, Scanlonian contractualism would no longer adequately represent the idea of what we owe each other in the sense of what we owe to the persons with whom we stand in a relation of recognition rather than in the sense of what we owe to types. The assumption that the particular persons have type-based reasons to object to principles conflicts with the impersonalist restriction. A reason that is based on how a person's type is comparatively affected by a principle and its alternatives when the token person herself is not affected in that way is not a reason that the token person has on her own behalf that can ground a wrongdoing of her. I therefore conclude that the types-of-persons approach does not provide a solution to the nonidentity problem for Scanlonian contractualism.

51 Parfit argues that Scanlonian contractualism should dismiss both the individualist and the impersonalist restrictions. Parfit, *On What Matters*, vol. 2, ch. 10.

52 Scanlon, "Contractualism and Justification," especially 35–36.

Where does this leave us? If a solution to the nonidentity problem on contractualism's own terms proves to be impossible, then perhaps a pluralist view is the only plausible way for Scanlonian contractualists to explain our obligations to the future. There may be different ways to outline such a view, but it raises new, difficult questions that need to be answered. And importantly, it means understanding the diminishment of future living conditions not as a wrong done to future persons but as an impersonal wrong. Before we become pluralists, a noncomparative account of the future persons' objections might thus be worth looking into in more detail. The notions of types of persons or standpoints, however, do not help Scanlonian contractualists to solve the nonidentity problem.⁵³

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