

# LEAVING PRINCIPLE CONTRACTUALISM BEHIND?

A RESPONSE TO SALOMON

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IN AN EARLIER VOLUME of this journal, Aaron Salomon suggested a novel account of T. M. Scanlon's moral contractualism to circumvent an important challenge that has been raised against the original view. Traditionally, moral contractualism has been understood in terms of principle contractualism.

*Principle Contractualism:* An action is morally required just in case any principle for the general regulation of behavior that permitted people not to perform that action is one that someone could reasonably reject.<sup>1</sup>

For a principle to be reasonably rejectable in this sense, it means that the personal reasons those affected by the principle's *general acceptance* have for objecting to it are stronger than the reasons speaking against any of its alternatives.<sup>2</sup>

While principle contractualism is widely regarded as a plausible moral theory, it faces the so-called *ideal world objection*. What this objection draws attention to is that the appeal to principles that are *generally* accepted causes the view to overlook whenever acting in the relevant way would be very bad under more realistic circumstances with lower acceptance levels.<sup>3</sup> Due to the implausible moral judgments that the theory can be shown to generate on account of this shortcoming, it has been argued that contractualists should shift their evaluative focal point away from principles. One way of doing this would be to adopt Hanoch Sheinman's act contractualism.

*Act Contractualism:* An agent's action is morally required just in case someone could reasonably reject that agent's not performing that action.<sup>4</sup>

1 Salomon, "Maxim and Principle Contractualism," 573. He refers to Scanlon, *What We Owe to Each Other*, 4.

2 Scanlon, *What We Owe to Each Other*, 95, 202–4.

3 See, e.g., Parfit, *On What Matters*, 312–20; and Podgorski, "Wouldn't It Be Nice?"

4 Salomon, "Maxim and Principle Contractualism," 578. He refers to Sheinman, "Act and Principle Contractualism," 295. For a more recent defense of such a view, see Bourguignon,

In discussing act contractualism, Salomon expresses sympathy towards this strategy of responding to the ideal world objection. However, he also argues that adopting this view would come with serious theoretical costs because act contractualism fails to account for considerations of intuitive relevance to how we are permitted to act in certain cases. In response, Salomon therefore introduces the following alternative modification, which he takes to circumvent the ideal world objection without involving this particular shortcoming:

*Maxim Contractualism:* An agent's action is morally required under the circumstances just in case any maxim that he might adopt that involves not performing that action under the circumstances is one that someone could reasonably reject.<sup>5</sup>

While I agree with Salomon that maxim contractualism offers important advantages, I believe his view cannot fully solve the problem he raises against act contractualism. More specifically, I will argue that maxim contractualism also fails to account for considerations of intuitive relevance by overlooking that, sometimes, what would be the case if an action is performed *collectively* is relevant to whether I am permitted to perform that action *individually*. By showing on these grounds that Salomon's novel suggestion still involves serious theoretical costs, my overall goal in this discussion note is to make the case that we should not be too quick in leaving principle contractualism behind.

To this aim, I will first present Salomon's case for maxim contractualism (section 1), then introduce what I take to be its central shortcoming (section 2), and finally reject a potential response (section 3).

#### 1. SALOMON'S CASE FOR MAXIM CONTRACTUALISM

In making his case for maxim contractualism, Salomon starts by arguing that act contractualism suffers from overdemandingness in a similar way as act consequentialism: due to how act contractualism can assess the reasonable rejectability of particular actions only on a piece-by-piece basis, many of our everyday activities come out as impermissible because whenever we wish to do something, there is likely someone in precarious conditions who has a stronger reason for wanting our resources to be invested for their support instead.<sup>6</sup>

As Salomon points out, principle contractualism seems better positioned for avoiding such overdemandingness: instead of considering only particular

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"On the Possibility of Act Contractualism."

5 Salomon, "Maxim and Principle Contractualism," 572–73.

6 Salomon, "Maxim and Principle Contractualism," 581.

actions, this view reflects on which principle for the general regulation of behavior could not be reasonably rejected. From this perspective, any principle demanding us to act beneficently all the time would be met by strong reasons for objection because this demand would strip us of the kind of control over our lives necessary for making and executing plans.<sup>7</sup> Act contractualism, on the contrary, cannot accommodate this objection because its focus on particular actions prevents it from considering the cumulative burdens one can be subjected to as a result of performing the relevant action on more than one occasion. According to Salomon, it is due to this oversight that act contractualism fails “to account for the fact that, sometimes, what would happen if I performed an action over time is relevant to whether I am permitted to perform that action right here, right now.”<sup>8</sup>

In response to this worry, Salomon introduces maxim contractualism as a new contender. Importantly, when Salomon talks about maxims, he pictures them as expressing a kind of personal policy—or, as he also puts it, as the “principles according to which we see *ourselves* as acting.”<sup>9</sup> Consequentially, Salomon’s novel suggestion is not forced to focus on particular acts of beneficence but can instead consider and compare what would be the case if the relevant agent adopted different maxims of beneficence and acted accordingly *over time*. From this perspective, overly demanding requirements could be rejected in the same way as in the case of principle contractualism—namely, by an appeal to the cumulative burdens the relevant agent would be subjected to due to having to act beneficently on multiple occasions. Salomon therefore concludes that maxim contractualism is the preferable view because it can avoid appealing to principles for the general regulation of behavior without failing to account for considerations of intuitive relevance in the way act contractualism does.

## 2. COLLECTIVE CONTEXTS AS A PROBLEM FOR MAXIM CONTRACTUALISM

While I agree that maxim contractualism comes with certain advantages, there still remain important considerations that the view cannot accommodate. We can see this by looking at Salomon’s discussion of the moral wrong of free riding. In the case he imagines, we live in a community where it is customary not to litter. Moreover, the benefits everyone experiences because of this convention make it intuitively clear that it would be morally wrong to free ride on the collective efforts of the compliers by starting to litter. As Salomon acknowledges,

7 Kumar, “Defending the Moral Moderate,” 296–303.

8 Salomon, “Maxim and Principle Contractualism,” 581.

9 Salomon, “Maxim and Principle Contractualism,” 572.

however, maxim contractualism struggles in generating this judgment because it cannot “capture the moral force of the ‘what if everyone did that’ question.”<sup>10</sup> What Salomon means by this is that principle contractualism can consider that if *everyone* accepted a principle allowing them to litter, there would be a significant loss of cleanliness. Maxim contractualism, on the contrary, cannot appeal to that effect in explaining the moral wrongness of littering: due to its focus on maxims, the view is concerned with a scenario in which only the relevant agent would litter over time. Given the negligible impact of conducting one’s own life this way, it becomes difficult to see how maxim contractualism could capture the relevant intuition on this basis.

In defense of maxim contractualism, Salomon argues that adopting maxims that allow littering would enable the relevant agent to “get all the goods without doing any of the hard work necessary to get them” and would thereby result in “treating unfairly those whose attitudes toward littering are necessary for the existence of the no-littering convention.”<sup>11</sup> He therefore takes his view to be able to explain the reasonable rejectability of corresponding maxims on account of the fairness-based reasons of those who refrain from littering.

Importantly, though, while this suggestion seems well suited in the example Salomon discusses, it falls short in alternative cases with a slightly different structure. Notice that for the suggested fairness account to get off the ground, the agents have to receive benefits that result from the collective effort they fail to contribute to. As I will argue now, however, cases that involve agential benefits of this kind pose only a subset of the collective contexts that can be troublesome for maxim contractualism, and so the view is revealed to be affected by a more fundamental problem that Salomon’s defense fails to respond to.

A good way to see this is by looking at a variant of the littering example that lacks the agential benefits Salomon appeals to. For instance, we could imagine certain fortunate neighborhoods in which any litter dropped on the streets quickly ends up in one of the adjacent, less fortunate neighborhoods—say, due to unusual air currents. Intuitively, littering as someone living in a fortunate neighborhood would still pose a moral wrong similar to the original example, even if the fortunate litterers stayed only within their own part of town. In explaining why that is, however, maxim contractualism encounters a familiar problem: structurally, the case is analogous to the original example in that the collective littering of those living in fortunate neighborhoods could significantly lower the level of cleanliness in the unfortunate ones, although each individual litterer could affect this level by only an amount too small to figure

10 Salomon, “Maxim and Principle Contractualism,” 594.

11 Salomon, “Maxim and Principle Contractualism,” 595.

in the reasonable rejection of corresponding maxims. Unlike in the previous variant, however, none of the fortunate litterers benefits from the no-littering convention because all litter is transported to the unfortunate neighborhoods anyway, and so Salomon is prevented from explaining the moral wrongness of their littering via the particular form of unfairness that his defense of maxim contractualism is built on.<sup>12</sup> As a result, it becomes unclear again how his view could capture the relevant intuition in this variant of the case.

These considerations show that maxim contractualism's failure to accommodate the "what if everyone did that" question is problematic not only in cases in which the relevant agents benefit from the collective effort they fail to contribute to. Instead, a more fundamental problem emerges once we realize that the view has the same implausible implications in a variant of the littering example that lacks agential benefits of this kind: while principle contractualism could once again explain the moral wrongness of littering by appealing to the *overall* loss of cleanliness, maxim contractualism is still prevented from this maneuver because of its evaluative focal point. What this shortcoming indicates is not only that it is problematic for a contractualist theory to fail to account for how people would be affected by the relevant action when performed on multiple occasions by the same agent *over time*. Instead, we can see in the modified littering example that by neglecting the cumulative burdens people would be subjected to as a result of the performance of the relevant action by *different* agents, maxim contractualism overlooks that, sometimes, what would be the case if an action is performed *collectively* is relevant to whether I am permitted to perform that action *individually*. As a result, maxim contractualism is revealed to still fail to account for considerations of intuitive relevance to how we are permitted to act in certain cases.

### 3. MAXIM CONTRACTUALISM AND FAIRNESS

In response, it could be insisted that Salomon's suggestion might have to be only slightly extended to avoid the problem raised in the previous section. However, while I do think that it is possible to understand fairness such that it can provide reasons for rejection without appealing to agential benefits, I am skeptical that an account of this kind can be offered on the basis of maxim contractualism. To explain this in more detail, I will first look at different ways to extend Salomon's fairness account and then argue that to serve as the basis

12 For real-world examples that could lead to similar problems, think of how consumers collectively incentivize harmful production in other parts of the world or how those above a certain age collectively contribute to the emergence of future climate harms without having to worry about being personally affected by them.

for plausible objections, they have to include a further condition that cannot be accommodated by maxim contractualism due to its evaluative focal point.

What we have seen so far is that the problem with Salomon's defense results from how his fairness notion takes agential benefits to be a necessary condition of its applicability. At first, however, it could seem easy for Salomon to extend the account in a way that avoids this shortcoming: instead of focusing on a notion of unfairness that requires being benefitted by some collective effort, one might think that it could also be unfair when one fails to take part in doing something that is beneficial only to others. However, the problem with this proposal is that refraining from some beneficial collective effort is not enough to constitute an unfairness. For instance, if some colleagues of mine were to collect money to support their friend's business, it would be absurd to claim that I am treating them unfairly by not chipping in.

Importantly, though, there may be conditions under which this could still seem to be the correct verdict. For instance, blaming me for making an unfair exemption would become much more adequate if I not only failed to join some beneficial collective effort but also cared about the resulting outcome or were morally required to care about it.<sup>13</sup> In the business example, we can see this by considering how not chipping in could indeed seem like an unfair treatment of my colleagues if one of these conditions were met—say, if I also happened to be friends with the beneficiary, so that I could plausibly be required to be concerned about their success.

In defending maxim contractualism, adopting such a more elaborate fairness account seems like a step in the right direction: if the fortunate litterers could be shown to either care or to be morally required to care about the level of cleanliness, following the account sketched above might allow Salomon to explain the unfairness of littering despite lacking the agential benefits his original defense relied on.<sup>14</sup> As closer inspection reveals, however, such an account would not suffice to serve as the basis for plausible fairness objections. We can see this by looking at a third variant of the business example: let us say it is only *my* friend who is starting a new business, and the reason my colleagues

13 For a suggestion along these lines, see Barrett and Raskoff, "Ethical Veganism and Free-Riding," 197. I thank the associate editor for bringing this account to my attention.

14 Of course, one might wonder on what grounds such an obligation to *care* about the level of cleanliness could even be established within the overall contractualist framework. However, I do not want to exclude the possibility that such obligations *could* be established (say, because being indifferent toward the relevant outcome might express an objectionable form of callousness), and so I will simply grant the success of this maneuver here and use it as a foil instead for developing the deeper problem that I take maxim contractualism to be affected by. I thank an anonymous reviewer for suggesting clarification on this point.

support him is their hope of financial gain. While it still being my friend's business allows for the same explanation of why I ought to care about its success, it would be very odd in this variant if the fact that my profit-oriented colleagues are engaged in a collective effort to bring this success about were to establish my lack of contribution as an unfairness. If anything, the fact that my friend's business already has so many investors should release me from the obligation to invest additional resources myself.

What we can see here is that for this account to serve as the basis for plausible fairness objections, a further condition is needed to distinguish between the last two variants of the business example. But what would such a condition look like? Intuitively, what makes the unfairness charge so fitting in the second variant is that this case seems to involve a disparity in what is granted to the different agents: by failing to contribute to the collective effort of supporting my friend's business, I act in a way I could not *allow* the other contributors to act, given our shared normative commitment to caring about the success of our friend's business. In the third variant, however, things are different: here, those engaged in the collective effort do so not because of any commitment of this kind but only because they hope to receive certain benefits. Given that this makes it such that I could expect my colleagues to support the business even if they were explicitly permitted to refrain from doing so, I could invite each of them to join me in my lack of contribution without undermining my friend's success as the outcome I morally ought to care about. As a result, no one can blame me for exempting myself unfairly, because all of us could be granted to refrain from supporting the business in the very same way.

What this indicates is that to constitute an unfairness, it does not suffice to fail to join a collective effort that brings about an outcome I either do or morally ought to care about. Instead, to treat others unfairly, it seems necessary that my behavior also meets the condition of being such that I could not allow those others to engage in it given what I am personally committed to. Importantly, though, while a fairness conception that includes this condition could indeed provide plausible reasons for rejection without relying on agential benefits, the problem that arises for maxim contractualism here is that it cannot accommodate corresponding objections due to its evaluative focal point: as we have seen, the difference between maxim contractualism and principle contractualism is that maxims are principles for the regulation of my own instead of general behavior. While this enables maxim contractualism to assess different ways for the relevant agent to act in while "holding fixed what everyone else *does*,"<sup>15</sup> the third business example shows that making an unfair exemption is not just about

15 Salomon, "Maxim and Principle Contractualism," 594–95 (emphasis added).

deviating from how others are *in fact* behaving; rather, it seems to require acting in a way one could not *allow* those others to engage in. Given this plausible claim about what constitutes unfair treatment, it becomes difficult to see how maxims could be a fitting target of fairness objections: if maxims as contractualism's evaluative focal point are supposed to merely regulate my own behavior in the way Salomon suggests, then they cannot involve any claims about what is permissible to others. Without making any such claims, however, it is not possible to object to them on the grounds of disparities in what they grant to different agents, although this would be necessary for accommodating the plausible fairness condition introduced above.<sup>16</sup> As a result, it becomes very difficult to see how the reasonable rejectability of maxims could be explained by the notion of fairness in the way Salomon would need for his defense to be successful.

#### 4. CONCLUSION

In this discussion note, I have argued that both act contractualism and maxim contractualism fail to account for considerations of intuitive relevance to how we are permitted to act in certain cases. For contractualists, this finding gives rise to the following dilemma: while principle contractualism seems to fall prey to the ideal world objection, avoiding this problem via a shift in the view's evaluative focal point brings about serious difficulties of its own. In response to this dilemma, there are different paths forward, and it is an open question which of them is the most promising. However, especially in light of various underexplored suggestions on how contractualism could respond to the ideal world objection *without* shifting its evaluative focal point, I take the shortcomings of the existing alternatives as sufficient evidence that we should not be too quick in leaving principle contractualism behind.<sup>17</sup>

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16 For principle contractualism, accommodating such objections does not pose any particular difficulty. See Scanlon, *What We Owe to Each Other*, 218.

17 For suggestions along these lines, see Perl, "Solving the Ideal Worlds Problem"; Pogge, "What We Can Reasonably Reject," 132; and Suikkanen, "Contractualism and the Counter-Culture Challenge."

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## REFERENCES

- Barrett, Jacob, and Sarah Zoe Raskoff. "Ethical Veganism and Free-Riding." *Journal of Ethics and Social Philosophy* 24, no. 2 (2023): 184–212.
- Bourguignon, Lea. "On the Possibility of Act Contractualism." *Australasian Journal of Philosophy* (forthcoming). Published online ahead of print, December 16, 2024. <https://doi.org/10.1080/00048402.2024.2422923>.
- Kumar, Rahul. "Defending the Moral Moderate: Contractualism and Common Sense." *Philosophy and Public Affairs* 28, no. 4 (1999): 275–309.
- Parfit, Derek. *On What Matters*. Vol. 1. Oxford University Press, 2011.
- Perl, Caleb. "Solving the Ideal Worlds Problem." *Ethics* 132, no. 1 (2021): 89–126.
- Podgorski, Abelard. "Wouldn't It Be Nice? Moral Rules and Distant Worlds." *Noûs* 52, no. 2 (2018): 279–94.
- Pogge, Thomas W. "What We Can Reasonably Reject." *Philosophical Issues* 11 (2001): 118–47.
- Salomon, Aaron. "Maxim and Principle Contractualism." *Journal of Ethics and Social Philosophy* 26, no. 2 (2024): 571–600.
- Scanlon, T. M. *What We Owe to Each Other*. Harvard University Press, 1998.
- Sheinman, Hanoch. "Act and Principle Contractualism." *Utilitas* 23, no. 3 (2011): 288–315.
- Suikkanen, Jussi. "Contractualism and the Counter-Culture Challenge." In *Oxford Studies in Normative Ethics*, vol. 7, edited by Mark Timmons. Oxford University Press, 2017.