# T.M. Scanlon: Contractualism, Reasonableness, and Moral Intuition

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In his article "Contractualism and Utilitarianism", T. M. Scanlon formulates a contractualist account of moral wrongness. For Scanlon, a morally permissible principle is one that cannot be reasonably rejected within the context of an "informed, unforced general agreement."[1] Scanlon posits a hypothetical situation between agents who share a mutual recognition of each other's value as persons. These persons are assumed to be rational individuals who are capable of formulating their own particular visions of the good[2]; this situation is the figurative space in which a principle can be held up to the standard of reasonable rejection. Scanlon's formulation of moral wrongness hinges on this notion of reasonableness. If we are to use it as a standard of rejection, it must be clear what Scanlon considers reasonableness to be. The goal of this paper is to clarify the meaning of reasonableness in Scanlon's contractualism, consider how it functions within the hypothetical space of mutual recognition, and challenge its sufficiency as a standard of moral wrongness in relation to our moral intuitions.

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[1] Scanlon, p. 110

[2] Kumar, p. 14

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Scanlon is attempting to sketch out a characterization of moral wrongness that differs from the utilitarian standard of moral deliberation grounded in aggregate 'well-being'. He admits that there seems to be something intuitively correct in the idea that the well-being of persons is morally good. Scanlon argues that it is this moral intuition that makes utilitarianism an appealing standard for moral deliberation. However, utilitarianism can often result in counter-intuitive normative judgements that fail to reflect the overall scope of moral feeling. [3] Thus, Scanlon's contractualism is an attempt to develop an account of the nature of morality that can make sense of utilitarianism's appeal, while avoiding the pitfalls that normative utilitarianism entails.[4] One could argue, contra Scanlon, for what Peter Railton refers to as "sophisticated consequentialism". This entails choosing to perform an action, out of those actions available to an agent, that would bring about the objectively best state of affairs. [5] Under this view it could be argued that the most good would be promoted by acting in accordance with common moral intuitions, as opposed to conforming all our individual actions to a consequentialist standard of moral worth (Railton refers to this as "subjective consequentialism"). [6] The sophisticated consequentialist still defines moral wrongness in terms of the consequences of an action and the overall good that said actions brings about. He/she is applying the standard of moral wrongness to a state of affairs which is not limited to the perspective of a single individual, but positing an objective

[3] Scanlon, p. 108
[4] Ibid, p. 110
[5] Railton, p. 152, 153
[6] Ibid, p. 152

state that applies to all who are affected by the consequences of an action. Not wishing to diverge too much from our central topic, I will just point out that this form of consequentialism assumes a standard of moral wrongness that is, by definition, beyond the perspective of an individual moral agent. Railton opposes decisions based on objective and subjective consequentialist reasoning. It is questionable whether the individual knower is capable of viewing moral dilemmas from such a God's-eye view perspective, whether a moral agent is able to recognize which action is the moral action from an objective point of view; thus, sophisticated consequentialism entails assuming a standard that cannot be perceived. This vagueness is problematic to say the least.

Returning to Scanlon, well-being does factor into moral consideration, but it cannot act as the standard that exclusively defines which acts are moral and which are immoral. We see here right from the outset that Scanlon's conception of reasonableness is set in opposition to utilitarianism. He does not consider the aggregation of well-being to be a reasonable way to conduct moral deliberation.[7] For instance, from the perspective of 'act' utilitarianism, it might be moral to harvest organs from John, a single, healthy individual, in order to save the lives of another five patients who will die without organ transplants. For the vast majority, such a decision is strongly counter-intuitive; one would be hard pressed to find a doctor and five patients who would actually agree to participate in such an act. Why is this? Because it violates a commonly held moral intuition that it would be immoral to place such a heavy burden on a single

[7] Parfit, p. 74

individual, to sacrifice him against his will, even if it would result in an increase in the collective well-being of the five dying patients. As Scanlon argues, we have an intuitive sense that the individual's life is valuable and it would be unreasonable to demand a disproportionate sacrifice from one individual for the benefit of the group.[8]

Thus, Scanlon argues that "an act is morally wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which no one could **reasonably**[9] reject as a basis for informed, unforced general agreement."[10] This statement is Scanlon's formulation of moral wrongness itself. A principle that could be rejected by another sufficiently informed, uncoerced participant is immoral, under the condition that the grounds for rejection are reasonable. An informed agreement entered into freely must be presupposed in this situation in order to ensure that there is a certain amount of equality between the participants. Scanlon's characterization of moral wrongness would be distorted if it allowed for the manipulation of others through misinformation, or if it allowed an agent to take advantage of those who do not have the capacity to reject an unreasonable principle. A sufficient level of accurate information must be presupposed within the space of consideration. Otherwise, false beliefs concerning the consequences of an action would change the normative implications within a given situation and the result would not be in keeping with our intuitions concerning moral wrongness.[11] In general,

[8] Ibid, p. 74
[9] Emphasis added.
[10] Scanlon, p. 110
[11] Ibid, p. 111

Scanlon's formula presupposes a recognition of the other's agency as a rational, self-governed individual. The goal of Scanlon's contractualism is to specify the subject of moral argumentation, to "give us a clearer understanding of what the best forms of moral argument amount to and what kind of truth it is that they can be a way of arriving at." [12] Thus, all forms of reasoning in contractualism exclude the possibility of manipulation since the parties involved in moral deliberation are only concerned with arriving at a principle that no one could reasonably reject.[13] Within the conceptual space of the hypothetical agreement, it is assumed that the participants are rational individuals whose agency is being respected. [14] This situation is meant to be an ideal that can be used to guide moral deliberation and argumentation in a less ideal real world.

When considering the various factors that apply to reasonable rejection, mutual recognition will help specify the factors that will act as relevant grounds for rejection. Relevant concerns can be identified by how central they are to an agent's ability to shape what they consider to be a meaningful life plan. A principle that negatively impacts an agent's ability to purse their own vision of the good must be weighed against the opposing factors when positing whether one has a relevant consideration for reasonable rejection. [15] For instance, in the case of John mentioned above, where, under utilitarian reasoning, it would be permissible to kill one individual in order to save the lives of five others, it would be unreasonable to

[12] Ibid, p. 107
[13] Ibid, p. 111
[14] Kumar, p. 24
[15] Ibid, p. 25

expect the person being harvested for organs to reasonably assent to the procedure. Even if we posit that the individual is particularly self sacrificing and was willing to do such a thing, it would still be immoral to use that person in such a way because it would not be unreasonable for him/her to reject such a principle. It is presumed by contractualism that an individual and their life plan have an objective value within the hypothetical space of decision that cannot be overridden by aggregate concerns, even if such an individual agrees to a principle which will result in an unreasonable amount of self sacrifice.[16]

It is this presupposed mutual recognition of agency that Scanlon uses to counter the utilitarian aggregation of well-being. The perspective of each individual within a moral situation must be considered. If any of these persons has a case for the reasonable rejection of a principle then such a principle is immoral. Scanlon argues that the sum total of well-being cannot be used to judge the morality of an act. According to Scanlon, it is the strongest claim that must be considered. It is the individual with the strongest claim that will suffer the most.[17] When we consider the situation of John and the five dying patients again, we see that none of the patients has an individual claim stronger than John's. Indeed, they are all individually facing death as a prospect. Individually, none of the patients would benefit any more from the collective survival of the whole group. Scanlon argues that it does not make sense to claim the notion of aggregate well-being as a moral standard.[18] No one patient would be benefiting any more from John's

[16] Scanlon, p. 111
[17] Parfit, p. 74
[18] Ibid, p. 74

organs than if they were simply harvested as a one off trade between John and another patient. We would have to disregard John's agency, his dignity as a person, to perform such an act. Thus, we would, in fact, be doing more harm to John by using him in such a way then we would be doing to any of the other patients by letting them die of their ailments.

Let us consider another, less clear cut case in order to further flesh out Scanlon's conception of reasonableness and how it relates to mutual recognition. Jane, a wealthy woman in her late fifties living in Moscow, has fallen sick with a mysterious disease that can only be cured by a blood transfusion from Anne. If she does not receive the transfusion immediately she will die. Anne is a law student at York University. She comes from a poor family and has incurred substantial debt to get as far in her schooling as she has. Anne is preparing to take her final exams when she is notified that she must come to Moscow right away in order to save Jane's life. What is Anne reasonably required to do in this situation? If she refuses to put her life on hold and travel to Moscow then Jane will die. If she travels to Moscow she will miss her final exams and have to put off taking them for several months, with the result that her graduation will be further prolonged and her financial situation will be worsened.

From a contractualist perspective, it is fairly obvious that Anne should travel to Moscow in order to save Jane. Anne will certainly be harmed by putting off her exams and incurring further debt. Indeed, Anne's life plans, which she has put a considerable amount of effort into realizing, will be frustrated. They are obviously of great importance to her and we can see that their interruption would be something she'd likely object to. However,

considering the threat to Jane's person we cannot say that Anne's rejection of this principle would be reasonable. Despite the cost to Anne, she will still be able to continue with developing her life the way she wants to. It will involve further hardship, but it is nothing compared to the utter termination of her life and the pursuit of her desired goals. Thus, we see that Jane's concern is more pressing and, therefore, it would be unreasonable of Anne not to make the effort to assist her.

In order to come to this decision we have taken the perspectives of both participants into account. What have been considered as relevant considerations are those things which we can objectively say are important to either individual's ability to pursue the kind of life that they wish. In making this decision, Anne can know objectively that Jane's life is something which is of the utmost importance to her well-being. Anne is able to discern such a thing due to the commonalities between herself and Jane as persons. Reasonableness in contractualism is not concerned with discovering what Jane, in actuality, considers to be the most important thing for her well-being. If Jane believed that a prayer from Anne would save her, Anne's moral responsibility would not be to pray for Jane. The decision would be the same whether Jane recognizes the value in the duty performed or not. Anne, as a moral person who values Jane's agency and the life plans which stem from it, is bound to promote that agency through her life saving action, if it is reasonable for her to do so. Considering the cost to herself would be relatively minimal, it would be unreasonable for her to refuse. Anne would not be able to reasonably justify herself to Jane if she let her die simply so she could avoid putting off her

exams. According to Scanlon, it is this need to justify our actions to others that motivates us to act morally.[19]

In establishing this form of reasoning, Scanlon is presupposing that there are certain things we can identify as objectively beneficial to an individual from their own point of view. This is where Scanlon's position departs from subjectivism. A reasonable interest is not determined by a subjective claim made by a particular agent. Consider the aforementioned case of Jane and her desire for prayer. It does not matter that she believes this to be the moral response to her situation. A blood transfusion is what is necessary to save her life and ensure she can continue to pursue her valued aims. It is possible for someone to be objectively wrong about what will benefit them and facilitate the fulfillment of their valued desires. However, what is objectively correct in Scanlon's contractualism will vary depending on the specific context of a given moral dilemma. Consideration of a particular situation and whether the solution can be reasonably rejected hinge on there being an objective cross over of interests that can be identified by the considering agent. According to Scanlon, these objective, identifiable considerations exist by virtue of the fact that we are rational individuals who value the pursuit of those things we identify as meaningful. Even if we do not understand the other's perspective, we can understand that what is important to another should be given weight. As moral agents, we are capable of identifying objective considerations if we can recognize what is important to another from their own perspective, framed in contractualist terms.[20]

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[19] Scanlon, p. 113

[20] Kumar, p. 23-25

Scanlon is undoubtedly correct in assuming that there will be a certain amount of cross-over in terms of necessary material conditions. There are certain minimal standards in terms of food, clothing and shelter that humans require to flourish. A principle that deprives a person of such things is likely going to be reasonably objectionable no matter what the individual's point of view. Beyond these commonalities, objective standards will vary depending on one's individual and social context. In order to reason from a contractualist perspective one must be capable of making sense of a wide variety of differing views. For instance, an individual could be in a position where he/she must evaluate how central another person's religious beliefs are to their conception of self. This would be necessary in order to decide how much these religious convictions would count as a grounds for reasonable rejection in a hypothetical contractualist agreement. If it is not someone who is fairly well known to you then this may be difficult to discern. Many individuals perform the rituals that accompany belonging to a specific faith without investing much of themselves in the practice of that religion. However, such an individual's behaviour would be outwardly identical to that of a truly faithful person. How, then, does one tell what is important to whom when outward behaviours can be deceiving? This poses a problem for Scanlon. Contractualism posits a hypothetical dialogue that, in actuality, is meant to take place within the mind of a single individual. If the reasoner cannot represent an accurate version of another's point of view then there is no hope that he/she would be able to formulate a reliable set of reasonable considerations in the eyes of the other.

Scanlon seems to be relying on our ability to intuitively interpret the behaviour of others and, from this, to form a general idea of their relevant interests that we can work with. This process of evaluation is grounded in an informal, intuitive form of moral reasoning. Consider the aforementioned situation concerning religious faith. I am trying to decide how much another's religious belief's mean to that individual. She goes to church regularly; I have seen her pray. Her outward behaviour certainly indicates she is an ardent believer. But how do I know she is not just "going through the motions"? "Well," I say. "She certainly seems like a genuine person. She really acts like she sincerely believes." Not only do I judge the outward behaviour of the other, but if I am in relation to them I also use my intuitive sense of their character to help make the decision. Contractualist reasoning in everyday life is not exact and is forced to rely on vague, imperfect intuitions about others in the process of decision making.

Scanlon's contractualism seems to be a method to help clarify our moral intuitions, to give them a theoretical explanation, a stable base to stand on. Unlike Gauthier's introduction of deliberative justification in place of moral justification, Scanlon is not seeking to eliminate our moral intuitions with an alternative form of judgment. [21] However, there is the possibility that Scanlon's formula undermines that which it is attempting to ground. His account of moral wrongness states that an action is wrong if the principles licensing it can be reasonably rejected. We cannot sacrifice the one to save the many because that individual can justifiably object to being used in such a way. However, this description of the wrongness of killing is counter-intuitive. Scanlon redefinition of moral

[21] Gauthier, p. 98

wrongness changes what makes a specific act objectionable. We can no longer appeal to acts as wrong in and of themselves. Killing is no longer forbidden because it is wrong; it is forbidden because it is an action which is always reasonably rejectable. [22] This formulation of wrongness separates us from the legitimate horror we feel when such an act takes place. It sanitizes it, in a certain sense, and separates the actor from the violent character of the act.[23] Scanlon rejects utilitarianism partly because its conclusions diverge wildly from our moral intuitions. He does not believe that people are motivated by a desire to maximize aggregate well-being. However, it seems unlikely that individuals condemn certain acts because the victim can reasonably reject the principle the act was based on. Thus, he has fallen into the same trap as utilitarianism. His formulation of moral wrongness does not represent our moral intuitions about moral wrongness.

This would not be a problem for Scanlon if, like Gauthier, he was seeking to do away with our moral intuitions. However, not only is he seeking to legitimize and elucidate moral intuition, but, as we have seen above, contractualism relies on intuition in its decision making process. Because of this, Scanlon must find a way to accommodate his theory to the conclusions of moral intuition when the two diverge. An example of this is Scanlon's wholesale rejection of the aggregation of well-being. Contractualism contains an individualist restriction; there is no way in which we can sacrifice one individual for the greater good.[24] Scanlon must admit, however, that there are certain situations where our moral intuitions are

[22] Parfit, p. 69
[23] Žižek, p. 46
[24] Parfit, p. 71

on the side of aggregation. For instance, if there is a choice between saving the life of a single individual and saving the lives of ten, it seems obvious that we should save the lives of the ten over that of the one. To accommodate these situations Scanlon proposes that the concerns of the single dying person are cancelled out by one of the ten. One individual is facing death, yes, but so is each out of the ten. Thus, there are still nine separate objections that must be taken into account and they are the ones that should be saved.[25] However, Scanlon fails to substantiate why he is suddenly justified in eliminating the point of view of the single dying individual when the contractualist formula is meant to account for the perspectives of everyone involved. This sudden exception seems to contradict the mutual recognition of individual agency that his theory is based off of. It seems, in formulating this principle, that he is making an accommodation to the intuitive rightness of utilitarian aggregation in this specific context.

I have argued that reasonableness in T.M. Scanlon's contractualism presents a contextually based standard of rejection that balances out the competing interests of those involved in a particular situation. The motivating factor of Scanlon's reasonableness is a mutual recognition of each individual's right to pursue their own vision of the good, which frames the relevant concerns in hypothetical deliberation. Thus, the contractualist conception of reasonableness maintains an objective standard while still placing substantial weight on the subjective values of individual moral agents. In formulating his conception of reasonableness Scanlon relies heavily on moral intuitions in both identifying relevant considerations and considering motivating factors for justification itself. This

[25] Ibid, p. 75

forces Scanlon to accommodate contractualism to the conclusion of moral intuition when the two diverge. While contractualism has been able to represent an aspect of our moral reasoning, the difficulty Scanlon has with the aggregation of well-being suggests that his theory fails to represent moral wrongness in its entirety.

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