Saving Scanlon: Contractualism and Agent-Relativity[1]

T.M. Scanlon's contractualism holds that "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..." (p. 153) The theory provides an account of morality's interpersonal aspects – what Scanlon calls the morality of "what we owe to each other" – as opposed to morality in the broadest sense. The theory is intended to be an account of the property of wrongness itself (p. 12).[2] Scanlon's critics have been virtually unanimous in objecting that understanding wrongness in terms of reasonable rejectability is simply to go through an unhelpful epicycle. Simon Blackburn, Colin McGinn, and Philip Pettit have all independently raised this objection. The critics reason roughly as follows: If we understand wrongness in terms of reasonable rejectability then we had better understand the reasons for rejection as distinctively *moral* reasons – otherwise the theory will no longer seem plausible as a moral theory of right and wrong. If, however, we antecedently have helped ourselves to a conception of moral reasons then the contractualist machinery looks otiose. For once we know what all the moral reasons are, we can understand wrongness as the property of being forbidden by the balance of moral reasons. We could add that wrong actions would be forbidden by principles nobody could reasonably reject. It would, however, be hard to see how adding this would provide any further illumination, or so the critics maintain.   The basic idea is that whenever principles allowing an action are reasonably rejectable because such actions have feature F, such actions are wrong simply in virtue of having F and *not* because their

having F makes principles allowing them reasonably rejectable. This standard objection rests on a pervasive misunderstanding of Scanlon's account. *If* Scanlon's theory held that the grounds on which one might reasonably reject principles had to be agent-neutral, then the objection might be sound. However, on Scanlon's view the reasons which ground reasonable rejection not only can be agent-relative, they *must* be. This underappreciated element of Scanlon's theory refutes the critics' standard worry.

The overall structure of the critics' objection is a dilemma. The reasons that can ground a Scanlonian reasonable rejection either are non-moral reasons or moral reasons. On the first horn of the dilemma, the critics argue that insofar as the reasons for rejection are not moral ones the theory cannot really give an account of moral wrongness – "non-moral reasons-in/non-moral-reasons-out" is roughly the guiding principle here. The suggestion that the notion of justifiability invoked by Scanlon's theory must be understood in terms of moral value is most explicit in Colin McGinn's work:

> When I call an action wrong, I may well imply that it is not justifiable to others but the only thing that this can mean is that it is not *morally* justifiable; and then the moral value invoked becomes the basis of the judgment of wrongness.[3]

Other commentators are less explicit. Here is Philip Pettit:

> When we try to justify certain actions to others…we try to establish that they are right by showing that they are fair or kind, or for the general good, or whatever.[4]

Fairness, kindness, and being for the general good are all moral notions and one assumes that the 'or whatever' is meant to refer to other similarly moral considerations (justice, fidelity, etc.). It is also telling that all the examples of reasons for rejection discussed by

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[2] He also makes the point in fn. 21, p. 391 in reply to an objection raised by Judith Thomson.
[3] Colin McGinn, "Reasons and Unreasons," *The New Republic*, May 24, 1999, p. 35.
[4] Philip Pettt, "Doing Unto Others," *Times Literary Supplement*, June 25, 1999, pp. 7-8, p. 8. Pettit argues against Scanlon on these grounds in his earlier book, *The Common Mind* (New York: Oxford University Press, 1993), pp. 297-302.

Simon Blackburn are obviously moral reasons - that a principle would generate vast inequalities of wealth is Blackburn's paradigm example of a Scanlonian reason for rejection.[5] The critics' suggestion is not that there could not be non-moral objections to immoral actions – of course there could be. Rather, the suggestion is that insofar as we aim to explain the immorality of such actions we must appeal only to moral objections. Hence Scanlon's theory should, according to the critics, restrict itself to moral objections in its account of the relevant sorts of reasonable rejectability.

This brings us to the second horn of the dilemma – the worry is that once we have antecedent moral reasons hanging around that the appeal to reasonable rejectability is an unmotivated epicycle. An example might help convey the worry. Suppose someone makes an disparaging remark to someone's face. We might explain the remark's wrongness by noting that it was cruel. The victim could reasonably reject a principle allowing it, but this is not how we would explain its wrongness. Colin McGinn offers another example:

> It is wrong to drop radioactive debris…over the population below…if it may be criticized on moral grounds – namely, that it has needlessly caused the suffering and death of thousands of innocent people – then *that* is the reason the action is wrong…The reference to interpersonal justifiability adds nothing to the simple claim that the action was wrong because of the suffering and death it caused.[6]

The critics' objection has the following form. Whenever a principle could reasonably be rejected, there must be some *grounds* for this reasonable rejection, where those grounds are undefeated *ceteris paribus* moral considerations. These grounds will be such things as: that the action caused unnecessary suffering, was unfair, etc. In that case, it seems

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[5] Simon Blackburn, "Am I Right?" *New York Times*, February 21, 1999. In fairness to Blackburn, I should note that he has (in personal communication) retracted this particular objection in light of the reply offered here, though he still thinks that Scanlon's two-part theory of the whole of morality is *prima facie* less plausible than a more unified albeit more impersonal and perhaps consequentialist account.

that those grounds are doing all the real work. From the fact that an action is cruel we

can directly infer that it was wrong, *ceteris paribus*. If its cruelty is not outweighed by

some countervailing moral reason(s) then we can infer that it was wrong, all things

considered. The fact that such considerations warrant a reasonable objection is supposed

to be true, but irrelevant. Here is Simon Blackburn:

> Suppose it is reasonable to reject my principles because, for instance, they lead to
> vast inequalities of wealth. Why then isn't this the very feature that makes my
> principles wrong? Why go through the detour of dragging in the hypothetical
> agreement with others?[7]

In fact, the critics' worry is even more pointed. Not only does Scanlon's theory add an

unmotivated epicycle, it does so in a pernicious way. For the introduction of Scanlon's

elaborate, cumbersome, and abstract machinery seems too anemic to capture what is

really wrong with grotesque atrocities. McGinn argues in this vein:

> Suppose I condemn the actions of Serbian forces in Kosovo…According to
> Scanlon's formula, the content of my statement is merely that these actions could be
> reasonably rejected…Scanlon's contractualist formula is too bland and unspecific.
> The moral force of the condemnation only emerges if we ask what the grounds of the
> objection are – namely, that the actions are instances of a genocidal murder. That is
> the real content of the moral judgment, and not the insipid assertion that the soldiers
> and the politicians responsible could not justify their actions to people in terms that
> they could not reasonably reject.[8]

So Scanlon's theory is meant to be both unmotivated and offensively trivializing of

serious moral judgments.

  The trouble with this objection is that it implicitly assumes that one's grounds for

rejection must be impersonal, whereas Scanlon holds that such grounds must be personal:

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[6] McGinn, "Reasons and Unreasons," p. 35.
[7] Simon Blackburn, "Am I Right?" *New York Times*, February 21, 1999. In fairness to Blackburn, I should
note that he has (in personal communication) retracted this particular objection in light of the reply offered
here, though he still thinks that Scanlon's two-part theory of the whole of morality is *prima facie* less
plausible than a more unified albeit more impersonal and perhaps consequentialist account.
[8] McGinn, pp. 35-6.

"Impersonal reasons do not, themselves, provide grounds for reasonably rejecting a principle." (p. 220) Scanlon here explicitly excludes the possibility of the reasonable rejection of a principle on impersonal grounds.[9] What is it, though, for a reason or value to be personal or impersonal? Scanlon gives the reader insufficient guidance, but the basic idea is clear enough. On Scanlon's view, values are founded on reasons and reasons are reflected in principles; this is his "buck-passing" account (pp. 95-100). This suggests that whether a value is personal depends upon whether the reason underwriting the value is personal. Whether a reason is personal, in turn, depends on the form of the principle it reflects. My suggestion is that Scanlon supposes that if the principle reflecting the reason makes an ineliminable (and non-trivial) pronominal back-reference to the person to whom the reason applies then the reason is a personal (agent-relative) one; otherwise it is impersonal (agent-neutral). For example, the principle that an agent has reason to maximize *her own* happiness is agent-relative, as is the principle that an agent must promote the welfare of *her* friends. On the other hand, the principle that one has reason to maximize happiness, and the principle that one should maximize friendship are both agent-neutral.[10]

Though Scanlon's account is narrow insofar as it requires that reasons for rejection must be agent-relative rather than agent-neutral, the theory is ecumenical with

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[9] Scanlon allows that impersonal reasons "nonetheless play a significant role in determining other grounds for reasonable rejection." What he seems to have in mind is that what people take to have impersonal value is relevant to what we owe to one another. So, for example, the fact that I reasonably and impersonally value the preservation of whales might provide a grounds for reasonable rejection of any principle allowing practices leading to the extinction of whales. It is, however, the fact that *I* reasonably think the preservation of whales is valuable that does the moral work.

[10] Scanlon has, moreover, verified this reading of the personal/impersonal distinction in correspondence, remarking that personal reasons "are a species of agent-relative reasons."

respect to what forms of agent-relativity can ground such rejection.[11] That a principle would make it impossible for an agent to give special attention to her own projects, for example, can ground a reasonable rejection (p. 204), as can the fact that it would make it impossible for her to give special attention to her friends and family (p. 204). The former is an instance of what Thomas Nagel, in his classic discussion of agent-relativity, calls a non-moral "reason of autonomy" – a reason an agent has to give special weight to her projects as such.[12] Whereas the latter, on at least one reading, corresponds to what Nagel refers to as a moral "reason of special obligation" – a reason to give special weight to the needs of one's nearest and dearest. So reasons for rejection can come in non-moral and moral varieties Though he is not explicit about this, I suspect that Scanlon would even allow that what Nagel refers to as "deontological reasons" – reasons an agent has to not perform certain actions because of their bearing on her integrity – could ground a reasonable rejection.

That Scanlon allows both moral and non-moral reasons for rejection connects with an important aspect of the critics' case against Scanlon. Recall that Scanlon's critics' objection has the form of a dilemma – either reasons for rejection are non-moral, in which case the theory is hopeless as a moral theory *or* reasons for rejection are moral, in which case the theory does no real work. Scanlon embraces both horns of this dilemma. He disarms the first horn by holding that non-moral objections can plausibly explain why an action is wrong so long as those objections are *reasonable*, for the notion of reasonableness is "an idea with moral content." (p. 194) The notion of reasonableness serves as a sort of filter, so that an agent's non-moral reasons can ground a reasonable

rejection only if they would be morally appropriate to take as reasons for such rejection. That your principle would prevent me from completing my project will not ground a reasonable rejection if, for example, my project is one of genocidal extermination of a given set of people. Nor does a reason's being reasonable transform it into a moral reason. For example, my non-moral reason to climb a mountain does not become a moral reason just because it would be reasonable for me to reject principles interfering with my mountain-climbing. Climbing the mountain just because it is your project to do so is neither a duty nor even supererogatory – it is a paradigm non-moral reason. Of course, in determining whether a non-moral reason could ground a morally reasonable rejection we must help ourselves to some antecedent moral principles. However, Scanlon argues that in determining a principle's reasonable rejectability we may rely upon antecedent though provisional moral principles. Just as we should be holists in epistemology (Neurath's famous metaphor of rebuilding our boat while at sea is relevant here), Scanlon argues that we must be holists in moral theory (see pp. 213-218, and esp. p. 214). Roughly, on Scanlon's view, our moral theorizing begins in the messy middle of things, with various (perhaps implicit) default moral principles and values, though none of these principles and values are sacrosanct. Contractualism is the guiding meta-principle we use in assessing other principles, but a given principle is evaluated only against the (defeasible) assumption that many of our other first-order moral principles are sound. So the first horn of the critics' dilemma is not sensitive enough to how non-moral reasons can be morally relevant so long as it would be morally reasonable to reject principles on their basis, though this does commit Scanlon to a kind of holism about moral justification. To

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[12] See Thomas Nagel, *The View From Nowhere*, New York: Oxford University Press, 1986, chapter IX.

see how Scanlon disarms the second horn of the critics' dilemma, we must explore the implications of the agent-relativity of reasonable rejection.

A crucial element of the critics' objection is the thought that the grounds upon which an agent might reasonably reject an action can themselves provide the moral reason the action is wrong, *without* any reference to the possibility of reasonable rejection. Insofar as a potential victim's objection invokes an agent-relative reason, though, the grounds on which she could reasonably object would be constituted by reasons not applying to me. For example, that my action would make it very difficult for you to avoid infringing an agent-relative deontological restriction provides you with a reason to reject principles licensing my action. However, *your* agent-relative deontological reason does not itself provide *me* with any reason whatsoever not to perform the action. In fact, the case might even be a perverse one in which I can only help you to avoid infringing a deontological restriction by infringing one myself. Consider an example. Perhaps you are in danger of being blackmailed by your enemies into revealing very private and damaging details about a close friend, thereby infringing a deontological restriction. Since you know enough about yourself to know that will not be able to resist this pressure, you have strong agent-relative deontological reason to avoid being blackmailed in this way. I, however, must tell a "white lie" to an innocent third party to prevent your enemies (who are eavesdropping) from learning your whereabouts. Once your enemies learn your location, let us suppose, they will be able to blackmail you. Let us simply suppose that in such a case I have a duty to lie for your sake. The contractualist might explain this, in part, by citing your agent-relative deontological reasons to avoid being blackmailed, holding that such reasons could ground a reasonable

rejection of principles allowing me to tell the truth in such a situation. Scanlon's critics must hold that my own reasons to lie to the innocent third party in this case just *are* the grounds on which you would object to my telling the truth. For according to the critics the basis of a reasonable rejection itself constitutes wrongness and (hence) the relevant moral reason(s). This, however, obviously does not work. Your reason for rejecting my action is that it will lead to *your* being blackmailed – clearly, this is not a reason that I have – by hypothesis, *I* am in no danger of being blackmailed no matter what *I* do. In fact, my own agent-relative deontological reasons of fidelity would, if anything, counsel in favor of telling the truth to my innocent interlocutor in spite of its impact on you. In which case, whatever moral reason I have to lie cannot be the same as the agent-relative (deontological) grounds on which you could reject principles licensing my truth-telling

Another example might help. You have an agent-relative reason of autonomy to complete your projects, let us suppose. So you might object to my action on the grounds that it would frustrate your efforts to complete *your* project, where that project is a morally permissible one. Insofar as such an objection invokes an agent-relative reason of yours, it invokes a reason that I do not have. Let us make the example more concrete – your project is to be a world-class chess-player. I do not care in the least for chess, nor do I care about your chess career. I am contemplating an action that would not hinder any of my own projects but would, for some reason, prevent your completion of your project. Perhaps I know you have a problem with alcohol and I am thinking about offering you a drink when I know that you are having a hard time and might easily fall back into alcoholism, thus frustrating your efforts to excel at chess. In such a case, *your* agent-relative reason to reject principles allowing my action would be that such principles

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would not allow you to complete your project. This reason is not, in the relevant sense, a reason of mine. For the action I am contemplating would, by hypothesis, not undermine *my* ability to complete any of *my* projects – in fact, it might well be one way of advancing one of my projects (I might own the local liquor store!). If, at the end of the day, we decide that my action would be wrong in virtue of your agent-relative reason to complete your project then some further story needs to be told about how your agent-relative reason provides a reason for me. Otherwise, if I ask, "What justifying reason do I have not to perform this action?" there will be no answer.

We could tell this further story in a number of ways. One way, familiar from consequentialism, would be to hold that for every agent-relative reason for a given agent to promote some end there corresponds an agent-neutral reason to promote that end. This is *not* the approach that Scanlon favors; he rejects consequentialism's unconstrained aggregation. On Scanlon's account, for example, your agent-relative complaint that my action would cause you serious physical pain can qualify my action as wrong even if that action is necessary to prevent an enormous number of other people from suffering a somewhat less severe pain. The contrast with a consequentialist imperative to minimize aggregate pain is stark.[13] Very roughly, Scanlon's idea is that moral reasons "piggy-back" on people's agent-relative reasons. In effect, the contractualist principle simply expresses the way in which all-things-considered moral reasons piggy-back in this way. Insofar as your agent-relative reasons could ground the reasonable rejection of any principle allowing my action, *that fact* provides me with moral reason not to perform the

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[13] On the other hand, contractualism is itself an agent-neutral principle and is in this respect similar in its formal structure to consequentialism; while contractualist reasons "piggy-back" on agent-relative reasons the contractualist reasons themselves are agent-neutral. The main contrast is that consequentialism is a

action. Whatever else one may think of contractualism, it is not otiose. Only with the contractualist formula (or some such bridge principle) can our all-things-considered moral reasons piggy-back on others' agent-relative reasons.

Of course, this reply assumes that it is plausible to suppose that we should give substantial moral weight to people's reasonable agent-relative complaints as such. This, it seems to me, is where some important issues surface, but the critics who object that contractualism is otiose have not thereby engaged those issues at all. Furthermore, Scanlon has made a *prima facie* case for supposing that common-sense morality gives weight to agent-relative complaints as such, and the critics' standard objection does not address that case at all. It is worth very briefly reviewing some of the main lines of Scanlon's argument here. First, giving such weight to agent-relative objections fits well with the way in which our moral practice encourages us to take other people's points of view ("How would you like it if I did that to you?"). Intuitively, it seems plausible to suppose that a potential victim's complaint does not *have* to invoke purely agent-neutral considerations to be morally relevant. To appreciate the importance of your agent-relative concern to pursue a particular and perhaps idiosyncratic project (e.g., to write a novel), I must really try to "put myself in your shoes," and common-sense morality *does* suppose that it is deeply important that we engage in this sort of "ideal role-playing."[14] Whereas to appreciate the agent-neutral disvalue of pain it does not seem that I need to occupy an alternative perspective. Second, contractualism can explain what goes wrong with intuitively implausible forms of aggregation in which a very small benefit to very

teleological (indeed, maximizing) principle whereas contractualism is not; for Scanlon's criticism of a thoroughly teleological conception of morality, see chapter two.

many people could (in principle) justify an enormous harm to a particular individual (see pp. 229-241). It is precisely because each individual's agent-relative objections are given weight that Scanlon's view can better track common-sense moral intuitions in such cases. Third, Scanlon plausibly argues that many of the most common forms of moral bias stem from failure to take seriously enough others' agent-relative complaints (see p. 206). Fourth, the appeal to a victim's agent-relative objection helps capture our sense that immoral actions can wrong particular person(s), rather than being wrong "from the point of view of the universe."[15]

These considerations also undermine McGinn's claim that contractualism is too anemic to capture the force of weighty moral judgments. Insofar as the contractualist must try to take up the agent-relative perspectives of each of the individual victims involved, it seems plausible to suppose that she has a more clear sense of how monstrously they were treated than someone who invokes agent-neutral disvalue and thinks of the badness done to the aggregation taken as a whole. It is the agent-neutral approach which seems more likely to see the wrongness of the Holocaust in inappropriately abstract terms, by trying to find that wrongness "from the point of view of the universe," rather than from the perspectives of the victims taken individually. Joseph Stalin was, in effect, picking up of this element of human psychology when he remarked that, "a single death is a tragedy, a million deaths is a statistic." A vivid sense of how awful such actions are is best elicited by taking up the perspective of an particular victim. Insofar as appreciating someone's agent-relative reasons is best done in this way,

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[14] The phrase is borrowed from Habermas. See Jurgen Habermas, "Reconciliation Through the Public Use of Reason; Remarks on John Rawls's *Political Liberalism*," *Journal of Philosophy* 92 (March 1995): 109-131, p. 117.

the contractualist account of wrongness seems *less* anemic than its purely agent-neutral

competitors.

This diagnosis of the source of the critics' error is confirmed by their examples,

all of which assume that the grounds for a reasonable rejection are agent-neutral. Here is

Simon Blackburn:

> Suppose it is reasonable to reject my principles because, for instance, they lead to vast inequalities in wealth. Why then isn't that the very feature that makes my principles wrong?[16]

Pretty clearly, Blackburn is supposing that inequalities have agent-neutral disvalue.

Recall that McGinn's discussion of dropping radioactive debris assumed that such an

action would be wrong because of the agent-neutral disvalue of suffering and death.

McGinn appeals to agent-neutral disvalue in discussing our duties to nonhuman animals:

> Surely the reason it is wrong to cause non-rational beings pain is that pain is a bad thing...The wrongness does not consist in the fact that the hypothetical trustees of such beings would strenuously object...[17]

Actually, Scanlon rejects the "trustee model" of duties to nonhuman animals (according

to which those duties are based on the possibility of reasonable rejection of the relevant

principles by a trustee acting on behalf of such animals) and so agrees with McGinn:

> One view holds that although it is morally objectionable, in the broad sense, to fail to take account of the pain and distress of nonrational creatures, we do not have the reason that we have in the case of rational creatures to accept the general requirement that our conduct be justifiable to them. The other view holds that we do have reason to accept this requirement...*I myself am inclined toward the first of these views*. (p. 184, emphasis added)

Scanlon's discussion of "works of nature" also shows how he thinks contractualism *would*

do no important work if only impersonal values were at stake:

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[15] This point has recently been emphasized by Rahul Kumar. See his, "Defending the Moral Moderate: Contractualism and Common Sense," *Philosophy and Public Affairs*, 2000, v. 28, pp. 281-282..

[16] Blackburn, "Am I Right?"

> ...the idea that there is a moral objection to harming or defacing works of nature (apart from any effects this has on human life) is adequately explained by the fact that the character of these objects…provides compelling reason not to harm them. *Nothing would be added by bringing in the idea of what a trustee for these objects would have reason to reject.* (p. 183, emphasis mine)

So Scanlon's critics consider cases in which only agent-neutral value is at stake, and argue that in such cases reasonable rejectability would do no real work. Scanlon embraces this claim and rejects the trustee model for this reason. This indicates Scanlon's sensitivity to the fact that his view would be vulnerable to the critics' objection *if* he did not restrict the grounds for reasonable rejection to *agent-relative* ones.

One might at this point wonder why Scanlon's critics have so often implicitly assumed that reasons for rejection must be agent-neutral. Here I shall offer a very speculative, tentative, and admittedly uncharitable hypothesis. The critics' objection begins with the mistaken but seductive thought that reasons for rejection must be moral reasons if contractualism is to work. If we simply add the tacit premise that all moral reasons are agent-neutral, it would follow that all Scanlonian reasons for rejection must be agent-neutral. Of course, the premise that all moral reasons are agent-neutral is itself highly controversial and it would be question-begging to presuppose it here. Nonetheless, one cannot help being struck by the fact that the critics who press the objection discussed here (Blackburn, McGinn, and Pettit) are all consequentailists and as such *do* think that all moral reasons are agent-neutral. So in a way it would not be too surprising if they fell into thinking reasons for rejection must be agent-neutral.

The guiding insight of Scanlonian contractualism is the thought that we must make room for the reasonable agent-relative concerns of others. The idea is very Kantian insofar as it picks up on the idea that each of us should be granted a sphere of autonomy

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[17] McGinn, "Reasons and Unreasons," p. 36.

over a range of agent-relative concerns. This insight is cashed out in terms of acting only

in ways that would be permitted by principles that nobody could reasonably reject, where

'reasonably reject' is to be understood in terms of agent-relative reasons for rejection.

Since one person's agent-relative reasons are not themselves had by others, Scanlon's

critics are mistaken in their claim that we should instead understand wrongness as

constituted by the grounds of such possible objections. If we want to accommodate

Scanlon's insight we need a bridge principle like contractualism that somehow captures

the idea that everyone has reason to make room for the reasonable agent-relative

concerns of others. Only in this way can my moral reasons not to wrong you follow from

your agent-relative concerns. So, *contra* Scanlon's critics, contractualism is not a "fifth

wheel," but is essential to explaining how one person's reasons for rejection can ground

another person's moral obligations.