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Of Metaethics and Motivation: The Appeal of Contractualism

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In 1982, when T. M. Scanlon published “Contractualism and Utilitarianism,” he noted that, despite the widespread attention to Rawls’ *A Theory of Justice*,¹ the appeal of contractualism as a moral theory had been under appreciated. In particular, the appeal of contractualism’s account of what he then called “moral motivation” had been under appreciated.²

It seems to me that, in the intervening quarter century, despite the widespread discussion of Scanlon’s work, the appeal of contractualism, in precisely this regard, has still been under appreciated—even though Scanlon makes what he once called “moral motivation” central, throughout.

Perhaps others simply do not find attractive what Scanlon and I find attractive. This sort of flat disagreement is possible. However, I suspect it is not widespread. I suspect, rather, that the appeal of Scanlon’s contractualism has been somewhat obscured both by the precision with which he stated it and by surrounding, ancillary, issues. I thus suspect the disagreement less flat and more interesting than often recognized. My aim, here, is to do my best to draw out and make vivid the appeal of contractualism. I will then examine the state of the disagreement.

I will begin by considering two questions Scanlon thinks must be addressed by any moral theory, which he once called “the question of subject matter” and “the question of motivation.” After introducing these questions, I will spend time on the second, since it is contractualism’s answer to this second question that, Scanlon believes, provides contractualism with its appeal. I will then return to the first question, of subject matter—

¹ John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971).

² “Despite the wide discussion which [*A Theory of Justice*] has received... the appeal of contractualism... has been underrated. In particular, it has not been appreciated that contractualism offers a particularly plausible account of moral motivation.” T. M. Scanlon, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).

which will, by that point, have been revealed as not really distinct from the question of motivation, as Scanlon understands it. However, it is as an answer to this first question that Scanlon's theory is most often criticized. I will examine a few of the most popular criticisms and try to display why, once we have understood Scanlon's project, they do not find their target.

Since I suspect that even those who disagree with Scanlon's account of the subject matter will find attractive his answer to the "question of motivation," I will close by asking whether it is possible to wed Scanlon's attractive answer to the question of motivation to an alternative answer to the question of subject matter—i.e., to an alternative theory of morality. Not without both difficulty and sacrifice, will be my answer. In particular, not without sacrificing the central place given, in Scanlon's account, to what might be called freedom of conscience.³

LOCATING SCANLON'S QUESTIONS

In his early article Scanlon sets out two questions that, he thinks, must be addressed by any moral theory: the first he calls "the question of subject matter," the second "the question of motivation."

The question of subject matter is familiar from standard discussions in metaethics. He introduces it, saying

There is such a subject as moral philosophy for much the same reason that there is such a subject as the philosophy of mathematics. In moral judgments, as in mathematical ones, we have a set of putatively objective beliefs in which we are inclined to invest a certain degree of confidence and importance. Yet on reflection it is not at all obvious what, if anything, these judgments can be about,

³ I had originally hoped to address, for this volume, Scanlon's recent work on permissibility and blame (———, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Belknap Press, 2008)). But to do so, I felt it important first to explain the relation between Scanlon's account of wrongness and his "question of motivation" (which is really a question about reasons for acting), since it might seem puzzling to find Scanlon, who supports his contractualism in large part by pointing to the appealing answer it gives to the question of motivation, now separating the question of whether an action is permissible from an examination of the individual agent's reasons for acting. However, this paper does not reach to Scanlon's recent work. I hope, though, that it will provide some help in reading the recent work, by clarifying Scanlon's question of motivation and its role in supporting contractualism.

in virtue of which some can be said to be correct or defensible and others not. This question of subject matter, or the grounds of truth, is the first philosophical question in both morality and mathematics.⁴

I believe it would be a mistake to try to find a very precise formulation of this question.

Rather, Scanlon here gestures, broadly, at a general and recognizable area of inquiry, which he labels “the question of subject matter.”

To expand: almost everyone believes, pre-theoretically, that murder and cruelty are wrong and that you ought not to gain through the deceit or exploitation of others. But if asked what grounds these judgments—if asked why murder and cruelty are wrong, or why you ought not to gain through the deceit or exploitation of others—people are often at a loss for an answer, and what answers they do provide vary wildly. Some will appeal to the commands of God, some to the badness of pain, some to the dignity of persons or the excellences of the soul, some to the importance of autonomy, or to what they would want if in the other person’s shoes. Others think these pre-theoretical judgments simply express basic moral facts, and that further explanation is both unnecessary and impossible.

So, even though, pre-theoretically, we make certain judgments that we think both correct and important, it is remarkably unclear, upon reflection, what, if anything, makes them correct. It is also not clear exactly what holds them together, in the class of “moral” judgments.⁵ And yet, at least pre-theoretically, we think certain moral judgments are correct and others are mistaken. Scanlon’s first question, of subject-matter, asks what these judgments are about, such that some of them are correct and others incorrect. It is obvious

⁴ ———, “Contractualism and Utilitarianism,” in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003), 125.

⁵ These problems are sharpened by the fact that, in addressing them, moral philosophy—arguably like mathematics, but unlike the physical or social sciences—does not seek to accurately describe or explain an observable world. It is one thing to accurately describe the moral beliefs and practices of a given group of people, or to explain how or why those beliefs and practices came to be accepted. Both projects belong to social science. It is another thing altogether to explain why people ought to live a certain way, or why certain practices are, in fact, unjust or morally abhorrent.

enough why one might think this area of inquiry represents “the first philosophical question in both morality and mathematics.” We will return to it in the next section. For now, our focus will be on the question of motivation.

Scanlon’s second question, unlike the first, is not a familiar part of standard metaethical discussion. However, appreciation of this fact may have been hindered by the fact that he can seem to present it as continuous with what I will call the “traditional” question of motivation. I will therefore start with this traditional question, to highlight the contrast.

As noted by others, much of twentieth-century philosophical ethics was occupied with attempting in some way to accommodate or appreciate what was widely taken to be an obvious truth about morality: that moral claims, or moral judgments, or moral demands, whatever else they are, must have some sort of foothold in the will or in the motivations or the psychology of either the person to whom they apply or the person who makes the judgment.⁶ They must be “essentially action guiding,” or “prescriptive” or “normative” in some special but obscure sense beyond that in which the instructions of a cookbook, the

⁶ See, e.g. Stephen Darwall, Alan Gibbard, and Peter Railton, "Toward *Fin De Siècle* Ethics: Some Trends," *The Philosophical Review* 101, no. 1 (1992).

rules of a game, or the standards by which musical performances are evaluated are action-guiding, prescriptive, or normative.⁷

Call the claim that moral judgments or demands must find a foothold in the will or psychology of each person to whom they apply *the internalist thought*. The traditional question of motivation takes this thought very seriously and asks how it could be realized: how does morality manage to secure a foothold in our will or psychology?

As noted, Scanlon can seem to introduce his “question of motivation” as in some way continuous with this traditional question. But, in fact, Scanlon simply sets the internalist thought aside. So, in “Contractualism and Utilitarianism” he says, bluntly but sensibly:

an adequate philosophical theory of morality... need not, I think, show that the moral truth gives anyone who knows it a reason to act which appeals to that person's present desires or the advancement of his or her interests. In find it entirely intelligible that a moral requirement might correctly apply to a person even though that person had no reason of either of these kinds of complying with it. Whether moral requirements give those to whom they apply reasons of some third kind is a disputed question which I shall set aside. But what an adequate moral philosophy must do...

⁷How to motivate this thought? Perhaps one thinks that the instructions of a cookbook are action-guiding, prescriptive, or normative only to those who have the end of making a given dish, that the rules of a game are so only for those playing, and that the standards of musical performance are so only for those who care about music. One might think that moral judgments, in contrast, are to be action-guiding, prescriptive, or normative for everyone (or, for all rational creatures, or all humans).

C. L. Stevenson thought it a plain desideratum on any account of the meaning of “good” that “‘good’... must be ‘magnetic’;” that is, “a person who recognizes X to be ‘good’ must *ipso facto* acquire a stronger tendency to act in its favour than he otherwise would have.” Charles L. Stevenson, “The Emotive Meaning of Ethical Terms,” *Mind* 46(1937): 16. Christine Korsgaard characterizes a more recent version of the thought this way: “If I judge that some action is right, it is implied that I have and acknowledge, some motive or reason for performing that action. It is part of the sense of the judgment that a motive is present: if someone agrees that an action is right, but cannot see any motive or reason for doing it, we must suppose, according to these views, that she does not quite know what she means when she agrees that the action is right.” Christine Korsgaard, “Skepticism About Practical Reason,” *The Journal of Philosophy* 83, no. 1 (1986): 9. (She says, in her own voice, “Practical reason claims, if they are really to present us with reasons for action, must be capable of motivating rational persons” (11).) And, of course, she takes moral claims to be practical reasons claims.) Thomas Nagel says, “a normative requirement on action must have correspondingly strict motivational backing. If ethics is to contain practical requirements, motivation theory, specifically the theory of rational motivation, must contain results that are similarly inescapable... A satisfactory explanation [of the basic principles of ethics] must account for the motivational force appropriate to requirements on action.” Thomas Nagel, *The Possibility of Altruism* (Princeton: Princeton University Press, 1970), 4-5. To read this as a statement of the thought at hand, I am assuming that the “practical requirements” of morality apply to all, and that, similarly, the motivational force must appear in all. See also J. L. Mackie, *Ethics: Inventing Right and Wrong* (Penguin Books, 1977); Michael Smith, *The Moral Problem* (Oxford: Blackwell, 1994). For the seminal argument in favor of internalism about practical reasons, generally, see Bernard Williams, “Internal and External Reasons,” in *Moral Luck* (1981).

is to make clearer to us the nature of the reasons that morality does provide, at least to those who are concerned with it. . . . It must make it understandable why moral reasons are ones that people can take seriously, and why they strike those who are moved by them as reasons of a special kind of stringency and inescapability.⁸

Scanlon thus dispenses with the traditional question of motivation, as something a minimal moral theory need not address. He replaces it with a much more fundamental question: What any moral theory must do, he says, is to help those who are concerned with morality understand why the reasons it provides are so important, or what, exactly, their importance is.

This more fundamental question remains absolutely central throughout Scanlon's work, though it appears in a number of different guises. Perhaps the most precise and illuminating, if not the most colloquial, formulation focuses on moral failing and asks "what reason the fact that an action is wrong provides [one] with not to do it"⁹ More colloquially: what is so bad about wrongful action? Or, better: why avoid morally wrongful action, *as such*? Or, to put it very roughly but perhaps more vividly: just what is the big deal about morality?

Scanlon brings his question into further focus by considering what he calls "Pritchard's dilemma."¹⁰ H. A. Pritchard was an intuitionist; accordingly, he believed that the reason to do your duty is simply that it is your duty. No more can be said. Pritchard famously argued that moral philosophy rests on a mistake insofar as it looks for some *further* reason to do one's duty. Any further reason, he thought, would be an extra-moral reason, and so would be (as I would put it) one reason too many. By providing an extra-moral reason, you would

⁸ Scanlon, "Contractualism and Utilitarianism," 127.

⁹ T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), 4. Note that Scanlon (on page 3) characterizes this question as question his book is most primarily meant to answer.

¹⁰ See *Ibid.*, 150.

have failed to answer the question you meant to answer. Instead, you would have provided an ulterior motive, and so you would have changed the subject.¹¹

The first horn of what Scanlon calls “Pritchard’s dilemma” is the mistake identified by Pritchard: by appealing to extra-moral reasons, you change the subject. But Pritchard himself, by adopting intuitionism, falls afoul of the second horn of the dilemma Scanlon attaches to his name. Insisting, with Pritchard, that nothing more can be said about the reasons for doing your duty—that nothing more can be said about why doing one’s duty is so important—seems remarkably unsatisfying. Moreover, digging one’s heels in, just here, draws certain skeptical concerns that seem to require an answer. More than one prominent philosopher in the last half-century has suggested that the particular sense of importance we attach to avoiding immorality, as such, is something of a humbug—a bit of psychological conditioning we bring with us from childhood or from religious training.¹² And, of course, Thrasymachus and Nietzsche have their own ideas about what gives such demands their special sense of stringency and inescapability.¹³ So it seems something more must be said about the importance or significance of morality, to avoid the charge that we are simply in the grip of a kind of taboo, superstition, or scheme of control arranged by those in or out of power.¹⁴

¹¹ See H. A. Prichard, "Does Moral Philosophy Rest on a Mistake?," *Mind* 21(1912).

¹² See, e.g., Philippa Foot, "Morality as a System of Hypothetical Imperatives," *The Philosophical Review* 81, no. 3 (1972); G. E. M. Anscombe, "Modern Moral Philosophy," in *Ethics, Religion and Politics* (Minnesota: University of Minnesota, 1981); Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985). Note that the skeptical posture, too, drives one toward a psychological answer to the question of motivation. Scanlon instead looks for an answer that provides a reason in what he calls “the standard normative sense.”

¹³ Cf. Plato, *Republic*, ed. C. D. C. Reeve, trans. G. M. A. Grube (Indianapolis: Hackett Publishing Company, 1992); Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufmann (New York: Random House, 1969).

¹⁴ Scanlon labels this the “triviality” horn, which has led some to think Scanlon falls afoul of it, by presenting an “empty” view. I hope my presentation makes clear what the concern is and how Scanlon avoids it.

Scanlon's "question of motivation" inquires between these horns. He wants to understand what more can be said about the reason to avoid wrong action, but he is not looking for a reason *in addition to* the wrongness of the action. Rather, he is looking to better understand the reason provided by the fact that an action is wrong—the reason provided by the wrongness *itself*, as such. So he asks his question, "what reason [does] the fact that an action is wrong provides [one] with not to do it"?¹⁵

Asked of other domains, the answer is relatively clear. We might ask what reason to avoid an action is provided by the fact that the action is imprudent. Start with a candidate prudential demand: I ought to floss my teeth each night. Whatever force this flossing imperative carries seems to derive from the importance of avoiding gum disease: this prudential directive carries no more, and no less, significance than that of that bit of well-being it is meant to promote. (Fodder, this, for the consequentialist.) If we now ask about the reason-giving force of prudential imperatives, *as such*, we seem to arrive at the importance of one's well-being, *in general*. So, to follow Scanlon's formulation, the reason to avoid an action provided by the fact that the action is imprudent is the fact that the action will, in some way, compromise one's own well-being.¹⁶

We could continue to ask this question for different kinds of imperatives, and, in many cases, we can readily give plausible, candidate answers. The force of demands of strategy, as such, seems to be given by the importance of achieving your aim; the force of demands of grammar, as such, by the importance of communicating; the force of aesthetic demands, by

¹⁵ Scanlon, *What We Owe*, 4.

¹⁶ Thus, in asking the analog of Scanlon's question, about imperatives of prudence, it seems we arrive at that at which the imperatives, as a class, aim to promote in one or another way. Some people will think the importance of moral demands must follow this same pattern: they must aim to promote a certain (kind of) good, and the importance of moral demands, as such, will be found by investigating the good they promote, as a class. In fact, many have a hard time imagining the importance or significance of a demand or imperative could be understood in any other way. But this is not clear that all must be so understood, and Scanlon will provide a very different account of the relation between the particular reasons to avoid particular actions and the reason provided by the larger class. I will return to this below, and illustrate it with the example of etiquette.

the importance of creating or living among things of beauty. In fact, it seems, in each case, we discover the force of an imperative by considering the significance of its violation. We discover the reason to avoid violating a given kind of imperative by considering what is lost when such an imperatives is transgressed or what of importance such imperatives protect, promote, or create.

When we turn to morality, however, it seems surprisingly unclear what to say. What is the reason provided by the fact that an action is wrong? What is the importance of avoiding wrongful action, as such? What, exactly, is the big deal about morality?

Again, a surprising—indeed, shocking—variety of answers have been proposed. Some claim that, by violating moral requirements, you are failing to live an excellent human life. Others claim that, by violating moral demands you are, in some way, frustrating your own good—perhaps you are failing to realize your potential, or marring your own perfection or the harmony possible in your soul. Still others have it that you are violating the commands of the Creator, or the dignity of human life. Theories Scanlon calls “formal” claim that, by violating a moral requirement, you are guilty of something like a contradiction, or of failing to make sense. Scanlon takes his toughest opponent to be the utilitarian, on whose account the reason to avoid wrongdoing, as such, is that wrongdoing, as such, fails to bring about the most well-being (or violates rules that, if followed, bring about the most well-being). The variety of answers is staggering. You might expect us to have a better handle on the importance of morality.

In surveying the variety of answers given, it is easy to feel that each contains some important truth. Yet each also seems to Scanlon off-target, or at least incomplete, as an answer to his question. Each of these accounts, he thinks, fails to capture something of central importance to morality. Focusing on utilitarianism, Scanlon considers Peter Singer’s article on famine and says

But when I feel convinced by Peter Singer's article on famine, and find myself crushed by the recognition of what seems a clear moral requirement, there is something else at work. In addition to the thought of how much *good* I could do for people in draught-stricken lands, I am overwhelmed by the further, seemingly distinct thought that it would be *wrong* for me to fail to aid them when I could do so at so little cost to myself.¹⁷

It is this further, seemingly distinct thought about wrongness that Scanlon thinks remains unaccounted for by consequentialism, and, I suspect, by any view other than contractualism.¹⁸ Scanlon thinks that, if we could understand, or better characterize, this seemingly distinct thought about wrongness, we would be able to answer his basic and yet surprisingly difficult question: we would have a better understanding of the reason provided by the fact that an action is wrong.

ANSWERING SCANLON'S QUESTION OF MOTIVATION

We can now turn to Scanlon's own answer to his question of motivation (which will quickly return us to the question of subject-matter). Scanlon arrives at his answer largely by reflecting on his own sense of what is lost or violated, in moral failing, and attempting thereby to identify what is missing in the competing answers that seem off-target or incomplete.¹⁹ His answer is captured in his own contractualist theory, according to which,

an action is wrong if and only if any principle that permitted it would be one that could be reasonably rejected by people [who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject].²⁰

This contractualist formulation can be difficult to take in. We will consider it in some detail, in a moment. But note, first, that the underlying, core idea is familiar from political theory: we imagine ourselves as both legislators and citizens, creating the principles by which

¹⁷ ———, "Contractualism and Utilitarianism," 138. See also ———, *What We Owe*, 152.

¹⁸ Imagine the parallel objection: "In addition to the thought of how much harm I would do to my own life or soul, I am overwhelmed by the further, seemingly distinct thought that it would be wrong." Or, "In addition to the thought of how poor it would be, as a piece of human activity..." Or, "In addition to the thought of how impious it would be..." Or, "In addition to the thought that it would make no sense, as a piece of willing..."

¹⁹ Cf. the discussion of guilt in *Ibid.*, Chapter Six. See note N., below.

²⁰ *Ibid.*, 4.

we will then govern ourselves. We imagine that we are symmetrically situated, that each of us has a veto, and that we must come to some kind of reasonable agreement. The principles of morality, as Scanlon understands it, are the principles that we would agree to, in this contractualist situation. They are thus the terms of self-governance adopted by those who recognize each other as having a symmetric standing to determine the terms of their mutual self-governance. They are, we might say, the principles that would be agreed to in a Kingdom of Equals, each of whom is committed to living in a kind of harmony with the rest and so accords to each one a symmetric standing in determining the terms of his or her own self-governance.

On such a view, the significance of moral failing is that, in doing wrong, you have violated the terms that would recognize the symmetric standing of each to determine the terms of our self-governance. Thus, to act wrongly is, roughly, to fail to accord others that kind of standing, and so to fail to accord others a certain form of respect.²¹ It is this form of respect which Scanlon thinks goes missing in alternative theories, and it is this which he believes provides contractualism with its under-appreciated appeal.

I will now examine Scanlon's contractualist formula in a bit more detail. I will start with a toy example: It would be wrong, I assume, for you to stomp on my foot for fun.²² Why is it wrong? One wants to say, with the utilitarian, "Because it causes me pain." And surely,

²¹ "Roughly," because Scanlon now thinks that whether an action is permissible does not depend on whether there was, in fact, disrespect or ill will in the mind of the actor. Rather, it depends on whether the action violates the principles, the establishment and following of which would show respect. See ———, *Moral Dimensions*.

²² For less toy-like examples: it would also be wrong, typically, for you to say belittling things about me, or to repeatedly draw attention to ways in which I fall short, or to become uncooperative whenever I openly disagree with you.

Note that the "for fun" in my toy example will now be interpreted by Scanlon as picking out features of one's situation, not properties of the intention with which one acts. So, it would be impermissible for you to stomp on my foot when you would stand to gain nothing from it but amusement. If you did so in such a circumstance, by accident, not in order to secure your own amusement, what you did would still be impermissible. However, you would not be blameworthy. See *Ibid*.

whatever else we say, this must not turn out to be incorrect—that much of the consequentialist position must be preserved.²³ For Scanlon, “because it causes me pain” not an *incorrect* answer, but it is *incomplete*. And surely this, too, must be right. After all, my dentist causes me pain on a fairly routine basis, but does nothing wrong thereby. So the mere fact that you cause me pain does not account for the wrongfulness of your action, even though that fact about pain should show up somewhere in the story. The consequentialist thinks it shows up as one among many other facts about what the action causes, or tends to cause—filling in these other facts will justify my dentist, but not you. Scanlon thinks, though, that filling in the further story as the consequentialist does will not account for the distinctive importance of moral failing—it will not provide a satisfying answer to his question of motivation.

As I understand it, here is how the further story goes, for Scanlon: the fact that your action (or, better, actions such as yours in circumstances such as ours) causes me (someone in my position) pain provides me (anyone in my position) with grounds to reject any principle that would *allow* actions like yours, in circumstances like ours. But no one has grounds for rejecting a principle that would *forbid* actions like your in circumstances like ours. Thus, your action violates a principle that no one could reasonably reject, in Scanlon’s contractualist situation. Thus it is wrong.

We should press: why is it that no one has grounds for rejecting a principle that forbids your action? While I think my pain provides me (or, those in my position) with reasonable grounds for rejecting any principle that allows your action, you might think that your amusement provides you (or, those in your position) with grounds for rejecting any principle

²³ One might think this answer is mistaken: your action is wrong, not because it causes me pain, but because it violates my bodily rights. I would take any such objection very seriously. Still, it seems that any account of the scope and limit of bodily rights will make reference, in some way, to goods and burdens such as pain. (Yet another alternative would say that, in taking pleasure in my pain, you display highly objectionable attitudes. But again, we need to know why these attitudes are objectionable.)

that forbids your action. Scanlon answers that, if we assume that we are all committed to finding principles that everyone can agree to be governed by, so long as everyone is committed to finding and being governed by such principles, then (given the circumstances and the various interests at stake) my rejection is reasonable, while yours is not.

But why is this? What makes my rejection reasonable and yours unreasonable? For Scanlon, the reasonableness of rejection is measured against the aim of finding principles that we can all agree to be governed by, given that we are all committed to finding such principles. But Scanlon acknowledges that this aim does not force a determinate answer in the way many of his interlocutors would like or hope. In determining the reasonableness of a rejection, we have to make what Scanlon sometimes calls a “substantive moral judgment.”

Consider this judgment, in our toy example. Importantly, the judgment that your rejection is unreasonable is partly, but *only* partly, grounded on the fact that, in our circumstances, avoiding pain is somehow more important than being amused. The fact that pain trumps amusement, in this case, plays an important role. However, the question of whether your rejection is reasonable is not simply the question of whether pain trumps amusement, now dolled up in contractualist guise. The question does not simply reduce to weighing the benefits and burdens of the immediately involved parties. One must also consider, e.g., the consequences and social significance of adopting, as a principle for the general regulation of behavior, a principle disallowing foot-stomping, and these consequences or this significance may overturn a judgment based only on the benefits or

burdens of the immediately effected parties.²⁴ The reasonableness of rejection also depends on whether some alternative, perhaps finer-grained, or differently-conditioned, principle would be preferable (e.g., your action is disallowed only if I told you in advance that I do not like my feet crushed), where its being preferable could again turn on the consequences and significance of the alternative principle. Finally, it is worth noting a reasonable rejection is grounded only in reasons that are, in Scanlon's terms, both "personal" and "generic."²⁵

So, whether a rejection is reasonable does not merely turn on the relative weights of the immediate burdens and benefits to the immediately involved parties. Rather, thinking reasonably about whether to reject a principle requires both thinking as one subject to or protected by that principle—thinking, so to speak, as a citizen under it—and thinking about the significance and effects of adopting such a principle for the general regulation of behavior—thinking, so to speak, as a legislator. When Scanlon says the reasonableness of rejecting a principle is constrained by the aim of finding and being governed by principles that are acceptable to each, he means that it requires thinking both as citizen and as legislator, while recognizing the need to come to a reasonable agreement with others, each one of whom has symmetric standing in determining the terms of our self-governance.

²⁴ Scanlon provides some examples of the consequences adopting a principle: "If.. I lived in a desert area and were obligated to provide food for strangers in need who came by my house, then I would have to take account of this possibility in my shopping and consumption; and if I am not entitled to photocopy articles at will when they turn out to be useful to my course, then I have reason to order a more inclusive anthology..." He then provides some examples of the significance of a principle: "Our need for privacy... is not met simply because, as a matter of fact, other people do not listen to our phone calls and go through our personal files. In order to have the benefits of privacy we need to have assurance that this will not happen, and this [assurance] is something that general acceptance of a principle can provide.... The fact that others recognize reasons to restrain themselves so that I may be free from observation and inquiry when I wish to be is important in defining my standing as an independent person who can enter into relations with others as an equal. [If these principles were not recognized] this would crucially alter my relations with other people, and even my view of myself. (Principles defining my distinctive rights over my own body—rights to say who can even touch it, let alone claim its parts for other purposes—are an even clearer example.)" ———, *What We Owe*, 203–04. for another example in which considering the general principle might overturn the initial judgment, see the example (offered for a different purpose) of dangerous public projects, at *Ibid.*, 236.

²⁵ I will not elaborate on what it is to be personal and generic. Cf *Ibid.*, 204 and 19.

Beyond this largely structural account, however, Scanlon does not explain how to arrive at substantive judgments about when the rejection of a principle is reasonable. He simply admits that the idea of “reasonable” is one with “moral content.” He even allows, as grounds for rejection of a principle, robustly moral considerations, such as fairness.²⁶ This open-ended appeal to reasonableness leaves many discomfited. I will return to worries about it.

For now, I want to finish our consideration of Scanlon’s answer to the question of motivation and how his account captures the distinctive thought about wrongness that he found missing in Singer’s article. For Scanlon, the wrongness of an action is not explained simply by appeal to its bad effects, and, accordingly, the reason to avoid wrongness, as such, is not given simply by its bad effects. Rather, the wrongness of an action must be explained by evoking a further fact: the action violates principles that must be accepted by anyone who is committed to living on terms acceptable to each. This further fact provides with the distinctive reason to avoid wrongdoing, as such: by acting wrongly, you have acted in a way that not only neglects the *interests* of those you have wronged, but that also denies their *standing* to (partly) determine the terms on which we each shall live.²⁷ You have, thereby, acted in a way that fails to accord them a certain form of respect.²⁸

So, according to Scanlon, wrongdoing has its own distinct significance, one that is importantly quite other than causing suffering, failing to achieve human excellence, violating the commands of God, or failing to avoid error or make good sense as a rational creature. You have, as Scanlon sometimes puts it, violated the terms of a relationship of mutual

²⁶ See *Ibid.*, 212. This occurs in the context of a broader discussion aimed at addressing a circularity objection.

²⁷ You have, he argues separately, violated their value as rational creatures. See *Ibid.*, 103–07. (See also, importantly, 170–171.)

²⁸ Again, the recent work puts questions of permissibility at one remove from questions of the actual motivation of the particular agent.

regard, the terms on which a kind of mutual recognition is possible, and so you have put yourself in a very different relation to your fellows.²⁹

OF METAETHICS AND MOTIVATION

It will not have been missed that, in displaying Scanlon's answer to the question of motivation, we strayed into the territory of the question of subject matter. That is, in displaying Scanlon's account of the reason to avoid wrongdoing, I had to provide his answer to the question of what it is for an action to be wrong. We thus strayed because, understood as Scanlon understands it, the question of motivation is not a merely psychological question: it does not ask what impulses, dispositions, desires, or sentiments can be relied upon to motivate moral action. Rather, it asks what important and distinctive reasons to avoid an action appear among the facts that constitute its wrongfulness. Scanlon has thus connected his question of motivation with the question of subject matter. In fact, he tends to support his answer to the question of subject matter largely by appeal to the attractive answer it provides to the question of motivation.³⁰

Return, then, to the question of subject matter as I originally explicated it. Most of us have certain pre-theoretical moral convictions, about, say, murder, cruelty, exploitation, and deceit, in which we have a high degree of confidence. However, if asked why, e.g., killing people in certain circumstances is wrong, or why cruelty is objectionable, people give widely varying answers. Given the wide variety of answers, it can seem puzzling what grounds these important pre-theoretical convictions, what makes some of them correct and others incorrect. It might also seem puzzling why they should be grouped together as a class.

²⁹ I believe that his account of guilt and blame, of the "force" of a negative moral appraisal, provides very illuminating lens through which to see Scanlon's entire project. See *Ibid.*, 267–77. Cf. also what he calls the "remorse test" in T. M. Scanlon, "Wrongness and Reasons: A Reexamination," in *Oxford Studies in Metaethics*, ed. Russ Shafer-Landau (Oxford: Oxford University Press, 2007).

³⁰ So he says, on the third page of Scanlon, *What We Owe.*, "I begin by offering a characterization of the reason-giving force of such judgments [judgments of right and wrong], and then take that characterization as the basis for an account of their subject-matter". (These projects are carried out in chapters four and five.)

Scanlon's account both groups these convictions into an understandable class and preserves a role for the answers people are inclined to give.³¹ Wrong actions violate the principles that must be accepted by anyone committed to finding principles acceptable to everyone who shares this commitment. Very importantly, many of the answers that people give, when asked about their moral conviction, have a place in Scanlon's story: they will appear as *grounds* for the rejection of principles. One could, and often should, appeal to such facts as pain or dignity when rejecting principles.

So we have encountered two more points in favor of Scanlon's view: not only does it provide a satisfying portrayal of the importance of moral failing, it also unifies the subject matter of morality—or, at least, a very central part of it—and locates, within that subject matter, the role of many of the disparate considerations we pre-theoretically thought belonged within it.

Still, many people have been unhappy with Scanlon's account, especially as an answer to the question of subject matter. We have already encountered one reason, in fact the most popular reason, for the unhappiness: Scanlon does not provide much guidance in determining whether a given rejection is reasonable. He thus seems content to rest his theory on what seems to many an insufficiently articulated or structured base of moral intuitions. Some think that, because of this reliance on an open-ended account of what is reasonable, the view is in some way empty or circular. Others think that, once we fill in the

³¹ It is, no doubt, a slightly revised class from what our pre-theoretical convictions may have expected. But, as we will see later, this is not a problem, but rather an indication that the theory is doing some work.

needed story about reasonableness, it will turn out that the distinctively contractualist appeal to reasonable rejection does no real work.³²

These objections seems to me mistaken, and considering why they are mistaken can help us to better understand Scanlon's position.

Consider, first, the objection that Scanlon has rested his theory on an admittedly moral base (of moral claims, facts, intuitions, or forms of reasoning). Call this objector *the reductionist*.

The reductionist insists that we specify non- or pre-moral (perhaps "non-normative" or "natural") facts and forms of reasoning, which will deliver the truths of morality.³³ Though the reductionist might be a contractualist, she will insist that both the grounds for the rejection of principles and the account of when rejection is reasonable be explicable in non- or pre-moral terms.³⁴

Scanlon doubts that we will be able to reduce or explain moral judgments by appeal to purely "pre-moral," "non-normative," or "natural" facts. These doubts rest on his belief in what he calls the "holism" of moral judgments.³⁵ When considering the possibility of reduction, Scanlon takes welfare as the likeliest "pre-moral" candidate, and says,

³² One might also have a shallower unhappiness: that Scanlon has not provided guidance in determining which actions are wrong. I hope I have made clear that this is not Scanlon's ambition. I believe this is the unhappiness found in an otherwise commendable review by Jonathan Hughes and Stephen De Wijze, "Moral Contractualism Comes of Age," *Res Publica* 7(2001). The complaint also seems to be made by Gauthier, who finds the view to yield an insufficiently determinate outcome. See David Gauthier, "Are We Moral Debtors?," *Philosophy and Phenomenological Research* 66, no. 1 (2003).

³³ Some might confusedly think that we must provide such a pre-moral base to avoid circularity. Scanlon will point out that avoiding circularity requires avoiding reliance on the notion of *wrongness*, but not on other moral notions. See Scanlon, *What We Owe*, 216. His account is holistic, but not viciously circular.

³⁴ Theories that might be thought to be of this form are on offer: Perhaps principles cannot be reasonably rejected if they lead to maximal utility, overall, or if these are the principles that maximize expected utility for each position, or if they are what it would be rational choose given one's self-interest, or given the aim of maximizing one's primary social goods from behind a veil of ignorance.

³⁵ His point here is of a piece with a more general view, which one might characterize as a holism about reasons.

...it is misleading to suggest that when we are assessing the “reasonable rejectability” of a principle we must, or even can, set aside assumptions about other rights and entitlements altogether... Suppose, for example, that we are considering a principle defining our obligations to those in need. This would seem to be a case in which considerations of welfare are most likely to be predominate. But in order to be in a position to aid someone, an agent must be entitled to dispose of the resources that are needed, and must be free from any obligation that would prevent him or her from acting in the way required to give aid.... So in order to understand the scope of the proposed principles (the range of action it might require) we need to presuppose a framework of entitlements. What this illustrates is that a sensible contractualism, like most other plausible views, will involve a holism about moral justification: in assessing one principle we must hold many others fixed. This does not mean that these other principles are beyond question, but just that they are not being questioned at the moment.³⁶

By highlighting the way in which even this moral reasoning rests on moral assumptions, Scanlon hopes to undermine the motivation for the reductive ambition.³⁷

A second, and extremely common, charge is that Scanlon’s view is somehow empty or circular.³⁸ Scanlon claims that an action is wrong if it is in violation of principles no one could reasonably reject, given the aim of finding principles that no one could reasonably reject, given that aim. But the idea of “reasonable” is left unspecified. Scanlon allows that it is constrained by appeal to the aim of finding principles that others, similarly motivated, could not reasonably reject—but that obviously makes reference to the very idea it was

³⁶ Ibid., 214.

³⁷ Scanlon considers the distinct claim that utilitarianism is a “theorem” of contractualism, at ———, “Contractualism and Utilitarianism,” 137ff. and ———, *What We Owe*, 217–18.

³⁸ It is sometimes hard to distinguish, in the secondary literature, the claim that the view is empty or circular—that, in giving an account of what wrongness is, Scanlon illicitly relies on our pre-theoretical ideas (or that our intuitions about what is unreasonable to reject in the contractualist situation are indistinguishable from our intuitions about what is wrong)—from the claim that the view is, as people sometimes put it “redundant”—that what constitutes an action as wrong are the facts that make a principle unreasonable to reject, in the contractualist situation, rather than the fact that the action violates a principle that could not be rejected in that situation. The emptiness/circularity charge leads to and supports the redundancy charge.

The charge of circulatory is made, most uncharitably, by Colin McGinn, “Reasons and Unreasons,” *The New Republic*, May 24 1999, 35. I believe it can also be found in Robert Merrihew Adams, “Scanlon’s Contractualism: Critical Notice of T. M. Scanlon, “What We Owe to Each Other,”” *The Philosophical Review* 110, no. 4 (2001): 565–68; Alan Gibbard, “Reasons to Reject Allowing,” review of Scanlon, *What We Owe*, *Philosophy and Phenomenological Research* 63, no. 1 (2003): 172. and David Sosa, “T. M. Scanlon, What We Owe to Each Other: A Big, Good Thing,” *Nova* 38, no. 2 (2004): 375. The charge is mentioned, but not endorsed by Thomas Nagel, “One-to-One,” *London Review of Books*, February 4 1999. All of these objections are anticipated throughout Scanlon, *What We Owe*, especially chapters 4 and 5. Scanlon addresses them again in T. M. Scanlon, “Reply to Gauthier and Gibbard,” *Philosophy and Phenomenological Research* 66, no. 1 (2003); Scanlon, “Wrongness and Reasons: A Reexamination.”

meant to constrain.³⁹ So it seems to some that the view is empty or circular and that the question of whether it would be *unreasonable* to reject the principle must just be the question of whether it would be *wrong* to reject the principle. Then the theory is simply serving as a conduit for our pre-theoretical intuitions.

In charging such emptiness or circularity, one has to be careful. We have seen that Scanlon allows—in fact insists—that in determining whether rejecting a principle is reasonable one makes a substantive moral judgment. He does not hope to ground wrongness in pre-moral facts. Nor, even, is his primary aim to provide a theory that will generate correct moral principles from more basic or more secure moral claims. Rather, his aim is “metaethical:” he hopes to provide an account of what wrongness is, or of the facts that constitute wrongfulness. He claims that the wrongfulness of an action or attitude is constituted by the fact that it is in violation of principles that could not be reasonably rejected in the contractualist situation. To show the view empty or circular, then, one would have to show that we cannot arrive at a judgment about when a principle can be reasonably rejected—that we can make no determination on that question—except by considering (pre-theoretically) whether that which it disallows is wrong. But this Scanlon denies. Even though he allows that the notion of reasonable has “moral content,” and even though he espouses a holism about the moral (indeed, about the “normative”), he does not leave the notion of “reasonable” as impoverished as it would have to be to vindicate the charge that he has left the view empty or somehow reasoned in a circle. Rather, as we have seen, he believes that whether a principle can be reasonably rejected depends on a wide range of considerations—e.g., the symmetric standing of each, the burdens and benefits to those immediately affected, the consequences or significance of adopting a principle for the

³⁹ Thanks to Nishi Shah for helpful conversation on this point. A concern about a regress is raised by Gauthier, “Are We Moral Debtors?,” 166.

general regulation of behavior, and the possibility of adopting alternative principles. We can think about whether rejection of a principle is reasonable by thinking about such considerations, without simply relying on our pre-theoretical intuitions about whether the actions disallowed by the principle would be wrong. Indeed, I believe we have some fairly strong, pre-theoretical convictions about what would be reasonable to reject in Scanlon's contractualist situation.⁴⁰ And, if these judgments very closely track our pre-theoretical judgments about when an action is wrong, this would not show the view empty or circular; it would rather be evidence that the view is *correct*.

Moreover, it does seem that, when thinking about cases that one finds difficult (assisted suicide, perhaps—or choose your own example), this form of reasoning can put pressure on pre-theoretical convictions about whether an action is wrong. But if this form of reasoning is able to put pressure on our pre-theoretical ideas about whether an action is wrong—pressure that might lead one to question, not the theory, but rather one's intuitions—then it cannot be simply channeling our pre-theoretical convictions about which actions are wrong. The above objections miss their mark by attributing to Scanlon ambitions that he does not harbor. He is not aiming for a reductive account, nor does he hope to generate specific moral principles from more basic or secure moral claims. His aim is more “metaethical:” he hopes to better understand wrongness, or what it is for an action to be wrong.⁴¹

A final kind of objector questions whether Scanlon has succeeded in his own ambition. This objector insists that Scanlon's appeal to reasonable rejection, or justifiability to each, is not doing the work; it is redundant. The objector thinks the hard work of determining

⁴⁰ “Pre-theoretical,” although, admittedly, embedded in the theory—in the contractualist situation, as described by Scanlon. The convictions are embedded in the theory, but not derived from the theory.

⁴¹ One might, then, think that the open-ended appeal to “reasonable” is merely promissory: something to be filled in later by a more complete theory. I take its the openness to be an attraction of the view: we are left to determine, in evolving historical circumstances, what is reasonable.

which actions we have overriding reason to perform or avoid will be done by whatever facts will provide the grounds for rejection of the principles supposedly governing the action. So it seems that wrongness turns out to be what Scanlon calls a “buck-passing” notion—it simply indicates the presence of other reasons. Thus, Scanlon’s central idea of reasonable rejection is thus not what constitutes an action as wrong: rather, whatever facts make a principle one that no one could reasonably reject will *also*, according to this objector, make actions that violate it wrong. The appeal to reasonable rejection of principles is otiose or redundant.

This final objector actually makes three different claims, calling for different replies. The objector claims, first, that claims about which principles must be accepted in the contractualist situation will not change what we have most reason to do. The view is, using a term of A. J. Julius’, “non-productive.”⁴² Second, the objector claims that wrongness is a “buck-passing” notion. And, finally, the objector takes issue with Scanlon’s most central claim, by insisting that an action is constituted as wrongful, not by the fact that a principle

⁴² A. J. Julius, "A Lonelier Contractualism," (in progress).

prohibiting the action could not be reasonably rejected in the contractualist situation, but rather in some other way.⁴³

Consider, first, the claim about buck-passing. Though some have used this term to characterize the third charge, above, this is not Scanlon's usage. I will follow his usage. A "buck-passing" notion, for Scanlon, is one that *provides no reason of its own*, but rather merely points out, indicates, or labels the presence of other reasons. So, Scanlon's question of motivation ("what reason is provided by the fact that an action is *x*?"), asked of a buck-passing notion, would return a null answer. Scanlon thinks value is a buck-passing notion. If we ask what reason is provided by the fact that a thing is valuable, Scanlon thinks the answer is, *no* reason is provided by the fact that it is valuable, *as such*. Rather, the fact that something is valuable simply indicates, or labels, the fact that there are other, specific, reasons to treat it in some specific way—to promote, protect, preserve, or pursue it.⁴⁴ But, as we have seen, Scanlon denies that wrongness is buck-passing: the fact that an action is wrong provides an additional, distinctive reason to avoid it, *viz.*, the action violates the terms that accord to each

⁴³ This last is sometimes called the "redundancy objection" (and sometimes, unhelpfully, the "buck-passing" objection). (The aspect of it concerned with the order of explanation is sometimes called the "Euthyphro objection"). I will focus, in the text, on Thomson's formulation of the objection. (In another place she states it in a way that makes "redundancy" an obvious label: Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 188 n.5.) This objection has been raised by many (and is often hard to distinguish from the emptiness or circularity objection from which it draws strength). It was raised early by Phillip Pettit, *The Common Mind* (Oxford: Oxford University Press, 1993), 299–302. It was raised again (though neither endorsed nor pursued) in Simon Blackburn, "Am I Right?," *New York Times*, February 21 1999. It has more recently received quite a bit of attention: Philip Stratton-Lake, "Scanlon's Contractualism and the Redundancy Objection," *Analysis* 63, no. 1 (2003); David McNaughton and Piers Rawling, "Can Scanlon Avoid Redundancy by Passing the Buck?," *Analysis* 63, no. 4 (2003); Philip Stratton-Lake, "Scanlon, Permissions, and Redundancy: Response to Mcnaughton and Rawling," *Analysis* 63, no. 4 (2003). Michael Ridge addresses the objection in what seems, at first, to be a very different way than I: he claims that Scanlon restricts the grounds for rejection to reasons that are "agent-relative." See Michael Ridge, "Saving Scanlon: Contractualism and Agent-Relativity," *The Journal of Political Philosophy* 9, no. 4 (2001); ———, "Contractualism and the New and Improved Redundancy Objection," *Analysis* 63, no. 4 (2003). His answer is rejected (and the objection made) by Joseph Raz, "Numbers, with and without Contractualism," in *On What We Owe to Each Other*, ed. Philip Stratton-Lake (Oxford: Blackwell, 2004), 57–60. The issue is nicely discussed in Tamra Frei, "The Redundancy Objection, and Why Scanlon Is Not a Contractualist," *The Journal of Political Philosophy* 17, no. 1 (2008). My full reply unfolds in this section and the next, where I consider what positive position the objector might occupy.

⁴⁴ See Scanlon, *What We Owe*, 98.

standing to determine the terms of our mutual self-governance—it violates the terms of respectful relations. Scanlon calls the fact that an action is wrong a “higher-order reason” to avoid the action—higher-order, because it depends on other, “lower-order” reasons, viz., those that provide grounds for the rejection of any principle allowing the action.

Nonetheless, the fact that an action is wrong adds to the reasons to avoid it in a way that the fact that it is valuable does not (according to Scanlon) add to the reasons to pursue or promote or preserve it. So, to claim that wrongness is a buck-passing notion is just to deny what Scanlon finds appealing about his view. It is to be engaged in what I called, at the beginning, the flat disagreement.

We can now see an initial answer to the claim that Scanlon’s view is non-productive: even if it *is*—even if its recommendations are equivalent to those of a view that did not appeal to agreement about principles—the appeal to agreement about principles provides an additional, and distinctive, reason to avoid wrong action.⁴⁵

But I doubt that the view will be non-productive. Recall that, to arrive at the judgment that a principle cannot be reasonably rejected, we do not simply consider the benefits and burdens to the immediately involved parties; we also have to consider both the effects and the significance of adopting that very principle, and we have to consider whether a different principle might be superior. But these considerations might well change our verdict about whether we have most reason to perform a given action.⁴⁶ If these further facts about the adoption of a principles for the general regulation of behavior can change the verdict, then it seems that the contractualist view is productive.

⁴⁵ In fact, Scanlon hopes to use the fact that his view generates the correct class of answers as evidence for it. If it turned out that his view was co-extensional with others, he could not make use of that line of reasoning. I owe thanks to A. J. Julius for helpful conversation on this matter.

⁴⁶ See, again, the examples at note 24.

The final claim made by the final objector is the most pressing. The objector claims that the fact that an action violates principles that no one could reasonably reject, given the relevant aim, does not constitute the action as wrong. Rather, an action is made wrong in some other way. Of course, having been made wrong in some other way, an action might *also*, therefore, be disallowed by principles that no one could reasonably reject, given the aim of finding such principles. The objector might allow that this provides a distinctive reason to avoid the action. But the objector denies that the fact that the action is disallowed by unrejectable principles is what constitutes its wrongfulness. As Judith Thomson puts the point:

For my own part, I cannot bring myself to believe that what makes it wrong to torture babies to death for fun (for example) is that doing this “would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis of informed, unforced, general agreement.” My impression is that the explanation goes in the opposite direction—that it is the patent wrongfulness of the conduct that explains why there would be general agreement not to allow it.⁴⁷

Scanlon considers this kind of objection, in detail, in several places.⁴⁸ I will focus on his direct response to Thomson, in a footnote, where he says,

The contractualist formula that Thomson quotes is intended as an account of what it is for an action to *be* wrong. What *makes* an action wrong are the properties that would make any principle that allow it one that it would be reasonable to reject (in this case, the needless suffering and death of the baby).⁴⁹

Scanlon here, in effect, draws attention to the fact that his is a “two-level” view, in which wrongness provides a “higher-order” reason. For an action to *be* wrong, according to Scanlon, is for it to be in violation of principles that no one could reasonably reject, etc. But, for an action to be wrong, there must be other, strong, “lower-order” reasons that count against it—other reasons that provide winning grounds for rejecting any principle that would allow the action. And in Thomson’s case there surely are. So, Scanlon need not deny that the unspeakable horribleness of torturing babies is what, in an important way, *makes* the

⁴⁷ Thomson, *The Realm of Rights*, 30, n. 19.

⁴⁸ Scanlon, *What We Owe*, chapters 4 and 5; ———, “Contractualism and Utilitarianism.”; ———, “Wrongness and Reasons: A Reexamination.”

⁴⁹ ———, *What We Owe*, 391.

torture wrong. He does, however, need to insist that the unspeakable horribleness, or the needless suffering and death, makes it wrong by providing grounds to reasonably reject any principle that would allow it. This, he says, is what it is for the action to *be* wrong.⁵⁰

One could easily feel this dissatisfying. One might think that the action has been displayed as wrong, in fact as horribly wrong, well before we arrive at the thought that the horribleness, or the needless suffering and death, provides grounds for the rejection of any principle that allows it. The appeal to (as I have put it) what could be willed in the Kingdom of Equals seems, in this case, quite beside the point—a perverse kind of overkill. Such appeal is simply not needed, one might think, to establish the wrongfulness of an action likely to induce a violent visceral reaction in the morally vital.

At this point, though, we must tread carefully. Everyone agrees that there are things that are so horrible that they mustn't be done,⁵¹ and Thomson has certainly put her unswerving finger on one of them. Scanlon has run into trouble, it seems, by denying that it is the horribleness, alone, that constitutes the action as wrong. But, of course, to say that an action is unspeakably horrible, or that it causes pain to someone helpless, is not *yet* to say that it is morally wrong, or even that it mustn't be done (consider medical procedures performed in emergency circumstances).⁵² Unless we are content to rest with some form of intuitionism, or with the thought that certain actions are simply taboo, we will want to know what makes certain actions, not just unspeakably horrible, but also wrong. And notice that *any* theory that attempts to give a more articulated account of wrongness will inevitably leave behind

⁵⁰ There is a further complication, in this case, about whether a baby can stand as a party to the contract. Scanlon addresses the question of the “scope” of the contract at *Ibid.*, 177–87.

⁵¹ Cf. Scanlon's discussion of the “semantics” of ‘wrong’ in ———, “Wrongness and Reasons: A Reexamination.” See especially page 10 and 15, where he says that the most minimal sense of wrongness is the idea that something “mustn't be done.”

⁵² Perhaps to say that an action causes *needless* pain is enough to show that it mustn't be done—but there are other things that mustn't be done, which do not cause needless pain, and we would like to understand the relation between these, as well as the content of “needless.”

our initial sense that anything that is unspeakably horrible, is also, for that reason *alone*, morally wrong. So this, by itself, cannot be a fair objection.⁵³

Perhaps the dissatisfaction stems from the thought that Scanlon's account provides, at least in cases like Thomson's, an unattractive picture of the motivations of the moral person. That person has now been given, one might think, one reason too many: the horribleness of the torture now serves simply as input into a concern with something like good citizenship.

But this objection misunderstands the view. Scanlon's "question of motivation" is not a question about the psychology of moral agents. It is a question about the significance of moral failing—about the reason provided by the fact that an action is wrong. Further, and very importantly, although Scanlon does claim that the wrongfulness of an action is "normally decisive" reason to avoid it, he need not insist that its wrongfulness is always the most *salient* or *pressing* or, even (now moving beyond psychology) the *most* important reason to avoid it.⁵⁴

To illustrate, it might help to consider how Scanlon's "question of motivation" would be answered, if asked of demands of etiquette (say "please" and "thank you;" eat with your mouth closed; reply promptly to invitations; use the bread dish to the left; upon making an introduction, provide enough information to facilitate conversation). What is the reason to avoid violations of etiquette, *as such*? Here is a candidate account: by violating a demand of etiquette, you will upset certain conventionally established social expectations. Your transgression may, of course, also have other kinds of significance: you may also have shown ingratitude, been uncharitable, caused discomfort to those around you, or shown disrespect. However, what gives unity to the demands of etiquette, as a class, (on this candidate

⁵³ Thanks to Barbara Herman for helpful conversation on this point.

⁵⁴ Cf. *Ibid.*, 7–10., where Scanlon notes that a moral person will "most often" not be thinking about the wrongness of an action, *per se*, though its wrongness might play a "backstop" role. (One might be confused Scanlon's claims that the fact that an action is wrong usually takes "priority," but that claim concerns cases in which morality competes with other concerns. See ———, *What We Owe*, 160–68.)

account) is simply that violating these demands upsets a certain range of conventionally established social expectations. So the reason to avoid a violation of etiquette, *as such*, is simply the importance of avoiding the upset of such expectations.

Note that, on this account, the importance of satisfying the demands of etiquette, as such, typically will not be nearly as great as the importance of satisfying a particular demand of etiquette (one whose violation would, say, also show ingratitude or badly inconvenience someone). So, the reason to avoid transgressions of etiquette, as such, typically is not the most important reason to do that which a particular demand of etiquette prescribes. This would explain why demands of etiquette, thought of in a general way, seem relatively unimportant, even though particular violations of etiquette can be very important.⁵⁵

Scanlon's account of wrongness can take this form, in cases like Thomson's. While he insists that the reason provided by the fact that an action is wrong is important, and that it is normally decisive and normally takes priority in cases of conflict, Scanlon does not claim it is always the *most* important, salient, or pressing reason, in a given case. In fact, he can claim that someone who was moved, primarily, by the fact that torturing babies is wrong, in his

⁵⁵ Note that demands of etiquette, so understood, are quite different than demands of prudence, in that the avoidance of upset social expectations need not be understood as what each demand or imperative in this class aims to promote. Arguably, the demands of etiquette aim or serve to promote a variety of goods: expressions of gratitude, ready topics of conversation, facilitation of event planning, etc. Arguably, there is no one (type of) thing that each member of the class can be said to aim at, in the way that each of the demands of prudence aim at one's own well-being. (I am obviously denying that they each aim to promote something like social harmony. That seems to me to be something they produce, in fact, but not something they aim to promote in the way that the demands of prudence each aim to promote something that could be abstractly characterized as an aspect of well-being. This requires elaboration.) If this is so, the demands of etiquette provide an alternative to the model provided by prudence: while the class of prudential demands all aim to promote one's well-being, the class of demands of etiquette does not achieve its unity in the same way.

Those who resist the temptation to account for the force of all imperatives on the model of prudence often appeal, not to demands of etiquette, but rather to a quite different kind of imperative: the hypothetical imperative. I believe the temptation to focus on the hypothetical imperative is motivated in part by the internalist thought: this is a "formal" requirement of rationality, and so, one might think, one that all rational creatures are bound by. (There is much interesting recent discussion as to whether the hypothetical imperative is, in effect, a buck-passing notion. See, e.g., Niko Kolodny, "Why Be Disposed to Be Coherent?," *Ethics* 118 (2008); Michael E. Bratman, "Intention, Practical Rationality, and Self-Governance," *Ethics* 119, no. 3 (2009).) However, I think that, for many purposes, etiquette would provide a more interesting contrast.

narrow sense, would be monstrous—because that person, though concerned with wrongness, *per se*, would be completely out of touch with the reasons that make the action wrong.

So, if one finds Scanlon's account unsatisfying, in light of Thomson's case, it cannot be because one feels Scanlon's distinctive reason to avoid wrong action, as such, is not always the most important reason to act or should sometimes take a back seat. Scanlon agrees with this.

If one is still moved by Thomson's example, one likely thinks that Scanlon's account is somehow off-base or off-key as an account of the distinctive reason to avoid wrong action. One would then be raising, against Scanlon, the objection he raised against Singer: With Thomson's case in mind, one might say, "when I recognize this clear moral requirement, there is something else at work... in addition to the thought that the action is in violation of principles that no one could reasonably reject, I am overwhelmed by the further, seemingly distinct thought that the action is *wrong*."

This is, of course, a possible position—it is another kind of flat disagreement: one simply fails to share Scanlon's sense of the distinctive importance of morality. One could, for this reason (or, for other reasons), fail to be convinced by Scanlon's account of the subject matter. Those who find themselves thus disagreeing face the task of articulating their own answers to Scanlon's questions. In voicing this flat disagreement, one is invited to propose or defend an alternative moral theory.⁵⁶

HIJACKING THE APPEAL OF CONTRACTUALISM?

Interestingly, though, even those who disagree with Scanlon's answer to the question of subject matter often recognize the attraction of Scanlon's answer to the question of

⁵⁶ Scanlon does not simply rest content with this disagreement. He would argue that his account not only captures the distinctive importance of morality but also better accounts for the "shape" of our actual moral convictions. Scanlon, *What We Owe*, 5.

motivation; they are not engaged in the *initial* flat disagreement. Rather, they agree that something like respect for each person, or treating others as ones to whom justification is owed, is central among our reasons to avoid wrong action. So I would like to close by considering something Scanlon does not consider explicitly (to my knowledge)⁵⁷: What would it take to hijack Scanlon's attractive answer to the question of motivation and wed it to an alternative account of the subject matter?

So suppose one thought that the significance of wrongdoing is, at least *in part*, captured by the fact that one has acted in a way that one could not justify to others. It might seem that one could then claim that wrongness—what it is for an action to be wrong—is something prior to and independent of being unjustifiable to others, but, nonetheless, any action that is wrongful is *also*, and *therefore*, unjustifiable to others, and that this fact about justifiability does, as Scanlon claims, provide the (or at least, a) distinctive reason to avoid wrongdoing. (This seems to be the position Thomson hoped to take, in making her objection.) If such an account were possible, then the appeal of contractualism could be had by another, perhaps less difficult, less abstract, or more determinate account of the subject matter. This would be a considerable blow to contractualism.

To illustrate, while keeping matters simple, suppose that an action is wrong because it is in violation of the requirements laid down by our benevolent and just Creator and that one such requirement is that thou shalt not give false testimony. Thus, doing so is wrong. It might seem to follow that doing so is also, and therefore, unjustifiable to others. Thus, it might seem, if you give false testimony, you have not only offended against the commands of God, but you have also done something that does not show due regard to others as ones

⁵⁷ Or, perhaps, he has not considered since the original article, where he was content to rest “on a qualified skepticism”?

to whom justification is owed. Thus it might seem that even this overly simplistic theistic view can help itself to Scanlon's attractive answer to the question of motivation.

Notice that hijacker moves from "this action fails to meet some independently specified standard" to "this action is wrong" to "this action is unjustifiable to others," while insisting that violating the proposed standard is what makes the action wrong. The hijacker thus attempts to tie Scanlon's attractive account of the distinctive significance of moral failing to her own account of wrongness by exploiting the very strong, intuitive connection between what is wrong and what is unjustifiable to others. In fact, given this strong, intuitive connection, it might seem that *any* theory that succeeds in telling us what makes actions wrong will be guaranteed to have, at its disposal, Scanlon's account of the distinctive reason to avoid wrong action.

Unfortunately for the hijacker, things are not so easy. You cannot simply move from "this action violates my specified standard" to "this action is morally wrong" to "this action is unjustifiable to others," if, by "morally wrong" you mean nothing other than "violates my specified standard," and by "unjustifiable to others" you mean to capture Scanlon's attractive claim that, in wronging others, we have failed to accord them a certain standing or a certain form of respect. Most broadly, this is because not every standard puts respect for others on the line—and certainly not, more narrowly, the specific form of respect at issue in Scanlon's account.

Start with the broader, basic, crucial, but far too often overlooked point: we do not plausibly owe it to one another to do everything well. I take this to be a pre-theoretical starting point, true for any plausible interpretation of what we owe to each other. Although there are standards of good mathematical reasoning, of good hygiene and personal health, of musical accomplishment and of athletic performance, we do not plausibly owe it to others to satisfy them. And, while a poor performance with respect to such a standard

might cause upset to someone who cares deeply about it, the poor performance does not plausibly wrong him or her.

Scanlon would account for these pre-theoretical intuitions about what we owe to each other by appeal to claims about what would be reasonable in his contractualist situation:⁵⁸ if we accord to each symmetric standing to determine the terms of our mutual self-governance, and if we are committed to finding such terms, then we would recognize that certain standards—even certain correct and important standards—could be reasonably rejected as the terms of our mutual self-governance. It would be reasonable to reject them on grounds of, say, taste, ability, priorities, or liberty.⁵⁹

So, importantly, Scanlon's notion of "justifiability to others" is much narrower than one might have thought. An action (or attitude) might be "unjustifiable" with respect to some correct and important standard, without being unjustifiable to others. In fact, Scanlon's notion of "justifiable to others" is even narrower than a very natural, plausible notion of "justifiable" that one might associate with Scanlon: it would be natural and plausible to think that an action is justifiable if it is supported by the balance of reasons and unjustifiable otherwise.⁶⁰ But this is not Scanlon's notion of justifiability to others: again, I can fail to do what the balance of reasons requires, in completing my logic homework, choosing my attire,

⁵⁸ As we have seen, the claim that a rejection is reasonable is, for Scanlon, also a "pre-theoretical" claim—even though it is embedded in Scanlon's theory. It is, however, different than the pre-theoretical claim that an action is or is not wrong.

⁵⁹ (And, for many standards, it is doubtful that there are personal reasons to insist on their satisfaction.) Of course, we often owe it to others to *do* what a given standard prescribes, for other sorts of reasons—e.g., we owe it to those who depend upon us to look after our health. And, of course, a poor performance with respect to one of these standards could be *made* wrongful, by making a promise or commitment to a person or group, to live up to the standards (if you are a member of a community of faith, perhaps, or of a team). But absent such overlay of additional commitment, a poor performance with regard to any of these correct and laudable standards is not, itself, plausibly something that we could reasonably insist upon, in determining the terms of our mutual self-governance. (Note that the appeal to such a mutual commitment is the foundation of, rather than an overlay upon, Scanlon's account of the standards.) We do not, then, owe it to one another to live up to these standards, *as such*.

⁶⁰ See, e.g., Julius, "A Lonelier Contractualism." Cf. Scanlon, "Wrongness and Reasons: A Reexamination," 9.

or cooking my dinner, without violating terms of conduct that we all must agree to be governed by, if we accord each one symmetric standing to determine what those terms will be. To be justifiable to others, in Scanlon's narrow sense, is to be justifiable by principles that must be agreed to in his contractualist situation.

This narrow notion of justifiability to others is associated with a very specific form of respect, and this form of respect gives contractualism its appeal. Again, according to contractualism, the significance of moral wrongdoing lies in the fact one has violated the principles that recognize the standing of each to partially, symmetrically, determine how one shall act—one has violated the terms that would be agreed to in the Kingdom of Equals.

The hijacker finds this account of the significance of moral wrongdoing attractive and hopes to claim it for her theory. But she cannot do so simply by showing that some standard is plausibly identified as the "moral" standard (or that the standard leads to a good or decent human life, or even that it is rationally required or inescapable for rational agents). It must also be shown (or, must be independently plausible) that the standard would be ratified by contractualist reasoning. Only so is its violation unjustifiable to others in a way that compromises the form of respect Scanlon has identified.

One might now reply, bluntly, that a poor performance with respect to the standards mentioned (musical, grammatical, rational, etc.) does not wrong another, does not violate what we owe to one another, because these are not the *correct* moral standards. But, one might continue, it seems intuitive and uncontroversial to claim that, if an action is in fact morally wrong, then it *would* be unreasonable to reject any principle prohibiting such an action as the basis for our mutual self-governance.⁶¹ So, once we grant that some prior, independent standard is the *correct* moral standard, then, one might think, it is sure to be ratified in the contractualist situation, and Scanlon's attractive answer to the question of

⁶¹ Notice: this is dangerously close to simply granting that Scanlon's account of wrongness is correct.

motivation is sure to follow. Thus, one might think, we are assured that that the true moral theory, whatever it is, *will* hijack Scanlon's attractive answer to the question of motivation.⁶²

There are two replies. First, we need to make sure that the previous point has been adequately appreciated. To summarize: you cannot simply move from (a) "this action violates my specified standard" to (b) "this action is morally wrong" to (c) "this action is unjustifiable to others," if you are claiming that your standard is *itself* what constitutes the action as morally wrong and if, by "unjustifiable to others" you mean, not simply "unjustified with respect to my specified standard," but rather, what Scanlon means, in securing his attractive answer—roughly, "principles disallowing this action cannot be reasonably rejected in the Kingdom of Equals." You can't simply move from (a) to (b) to (c), because we have some pre-theoretical convictions about what we could and could not insist upon, in the contractualist situation. So, if the hijacker accepts Scanlon's attractive account of the significance of moral failing, that account provides a desideratum for her theory: the hijacker must show that her proposed, admittedly important, standard is also, plausibly, something that would be ratified in the contractualist situation. Thus, it is not so much that the correct moral theory *will* hijack Scanlon's attractive answer to the question of subject matter, but that it *must*. This is a task it must complete.

Not every theory—not even every otherwise plausible theory—will succeed in this task. Consider, first, the overly simplistic theistic theory. Even granting that we owe it to our benevolent and just Creator to live in accord with that Creator's decrees, it is not at all clear why, in owing it to God, I also owe it to *you* to do so, or why I have wronged you in violating those decrees, as such. Of course, if I give false testimony about you, I have probably harmed you, and that harm may provide grounds to reject any principle permitting your action—but we must put this aside. We are asking why I have wronged you, not in harming

⁶² Thanks to Mark Greenberg for helpful conversation on this point.

you, but rather in violating the requirements of God, *as such*. But it seems that a principle requiring that we each live in accord with the decrees of the Creator could be reasonably rejected, in the Kingdom of Equals, on grounds of liberty (or, perhaps, on the ground that the establishment of such principles would muddy one's own personal, spiritual devotion).⁶³ Even granting that impiety is a serious mistake, it is not clear why it is any more reasonable for others to require that I honor my Creator than it is for them to require that I care for my body. More would need to be said, to make this plausible.⁶⁴

I believe much the same can be said about accounts that rely on the constraints or demands of rationality or rational agency (whether they be consequentialist views like Sidgwick's or Kantian views): even if we grant the requirements of rationality or rational agency are as these accounts claim, it is not at all clear why I owe it to you, or to anyone else, to live up to them, as such.⁶⁵ Again, we do not owe it to one another to always be rational or to rightly respond to every reason. So, even granting that the standards of rationality are very important—even that they are *inescapable* for creatures like us, or that they are generated by or generate the only real source of value in the universe (be that God, or pleasure and pain, or practical reason)—does not seem to secure the claim that we owe it to one another to live in accord with them or that they could not be reasonably rejected as a basis for our mutual self-governance, on grounds of, say, ability, liberty, or privacy.⁶⁶

⁶³ Again, it is also doubtful that there is a *personal* reason to require others to honor God. But see the next note.

⁶⁴ One might try claiming that we each bear the image of God, and so we owe it to one another, as bearers of God's image, for whatever reason we owe it to God. If this thought could be made out, it might allow one to argue that this standard should be ratified in the contractualist situation.

⁶⁵ This is another place at which focus on the internalist thought has distorted our subject matter: it has identified morality with *inescapable* constraints, rather than with the constraints we owe it to one another to abide by. These seem to me different classes. As a result, theorists have hoped to secure the claim that you have a reason to act morally, and so have attempted to locate morality in rationality. They have thus secured "essential prescriptivity" or inescapability, but, I think, have lost what is distinctive about moral requirements.

⁶⁶ If it *could* be argued that they could not be rejected due to personal, generic interests of someone or some class of people, then we would have generated a principle of Scanlon's sort.

Other accounts may fare better. Suppose the hijacker proposes, as the moral standard, respect for persons (or for rational nature, or for humanity).⁶⁷ It seems very plausible both that we owe it to each other to treat one another with respect and that we could not reasonably reject, as providing the principles of our mutual self-governance, the standards provided by respect for persons. Moreover, it is plausible that this concern will dominate, in the contractualist situation (i.e., it is plausible that, where respect comes into conflict with other values or goods, respect will take priority, and that, where it might seem that respect must be sacrificed, it turns out that it was not respect, after all, but some kind of pride or concern for self-image). Thus, this alternative seems to be in a very good position to hijack Scanlon's attractive answer to the question of motivation.

The question is whether such an account provides a genuine alternative to Scanlon's view. To make clear how this alternative account differs from Scanlon's, we need to know how or whether treating persons with respect (for their humanity, or for rational nature) differs from treating them as ones who have partial, symmetric standing to determine the terms of our mutual self-governance on the basis of generic and personal reasons.⁶⁸ It seems to me an open question whether these differ, one that could be answered only by giving more content or specificity to the notion of respect for persons.⁶⁹

So, the first reply to the blunt objection points out that, once we grant that any correct moral theory will include Scanlon's attractive account of the significance of moral failing, we have placed a significant constraint on moral theory. But there is another reply: even if this

⁶⁷ Thanks to Seana Shiffrin for this suggestion.

⁶⁸ Scanlon addresses this briefly. See ———, *What We Owe*, 103–07. (See also, importantly, 170–171.)

⁶⁹ These other accounts might be seen not wholly independent, but as providing a prior, underlying rationale for the features of Scanlon's account: the symmetric standing of each and the restriction to personal and generic reasons. Perhaps this underlying rationale will appeal to the kind of creature we are (persons, or embodiments of rational nature). I think there is reason to avoid being so explicit about the metaphysics of our morals, as I hope will become clear below.

constraint is satisfied, even if the hijacker is as successful as she could possibly be, she would not have captured all that is attractive about Scanlon's view. This is because, while the hijacker insists (or argues) that some independent standard is the true moral standard and so will be ratified in the contractualist situation, Scanlon thinks, to the contrary, that there is no other, independent, standard waiting to be ratified. Rather, as Scanlon puts it, "justifiability is basic."⁷⁰ This claim provides a remaining, important appeal to Scanlon's theory, an appeal that will be sacrificed by any hijacker.

To elaborate: the hijacker hopes to wed some some alternative account of what makes an action wrong—what she takes to be the true moral theory—to Scanlon's attractive answer to the question of motivation. As we have seen, she can do this either by choosing a moral standard that is, on its face, something that would plausibly be ratified in the contractualist situation or else by providing an argument that her standard will be so ratified.

In contrast, Scanlon simply notes, in effect, that it is plausible that we owe it to each other (in some pre-theoretic sense) to grant to one another standing to partially determine the terms of our mutual self-governance, so long as such standing is exercised consistently with each the standing of each to do the same. Further, and crucially, Scanlon thinks we owe *only* this to one another. That is to say, we do not, in constructing these moral principles, appeal to any other, prior or independent, moral standard (though we may appeal to moral principles established in some other iteration of the holistic contractualist method). Rather, Scanlon identifies, as the moral standard, *whichever* principles no one could reasonably

⁷⁰ See *Ibid.*, 5 and 189. It is a confusing thing to say: after all, for something to be justifiable is for there to be some story that can be given, in its defense—so how can justifiability be basic? I hope what follows illustrates what Scanlon has in mind. (In particular, what he has in mind when he says that justifiability provides "the most general characterization of [morality's] content" (189).)

reject, if we were all committed to finding such principles.⁷¹ Again, as he puts it, justifiability is basic. His is, so to speak, a minimalist account.

An upshot of this minimalism is that any more specific standards, ideals, and pictures of human flourishing and goodness are, for Scanlon, either subordinated to or incorporated into the project of finding and abiding by the principles that must be accepted by all, in the contractualist situation. While these other ideals or other kinds of value have a place in the morality of right and wrong, what place they have will be determined by asking what principles no one could reasonably reject (considering personal and generic reasons). The overriding concern is to find reasonable terms on which we can get along, given our competing interests and ideals. Other concerns, standards, or ideals are either subordinated to or incorporated into that project.⁷²

Some will find this very unattractive. In fact, anyone who is committed to a contrasting picture, not just of the good or ideal life for humans, but of the good or ideal and *therefore moral* life for humans, should not find Scanlon's view appealing. Anyone who believes, not only that some other standard provides an appealing picture of the good or excellent living that we would all do well to adopt, but also that we *owe it to one another* to adopt that standard—that the alternative standard, *itself*, rather than our need to find some mutually acceptable way to live together, should command agreement in the contractualist situation—will find themselves in disagreement with Scanlon. (Likewise for those who think that there is a prior

⁷¹ Where Korsgaard reads Kant claiming, of the moral maxim, "All that it has to be is law," Scanlon says, in effect, "the only thing moral principles must be is unrejectable by others with the relevant commitment." Some might therefore call Scanlon's a "formal" account, but this is not how Scanlon himself uses the term. See Christine Korsgaard, "Morality as Freedom," in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 166.

⁷² Morality takes priority. For a model of how a competing ideal or concern will be both incorporated into and subordinated to the concern to live in ways acceptable to each, see Scanlon, *What We Owe*, 160–66. There he shows both how another ideal (his example is friendship) can play a role in shaping the principles of morality and how morality might play a role in shaping that other ideal. Cf Scanlon's own discussion of the relation of these ideals to his minimalism, at ———, "Wrongness and Reasons: A Reexamination," 18–19.

and independently specifiable account of what is just or respectful.) And, of course, this is just what the hijacker was hoping for: an independent standard that would command agreement in the contractualist situation.

Others will find this minimalism one of the view's attractions—an attraction that cannot be had by the hijacker. In fact, I think the minimalism has at least two favorable results. The first, which Scanlon sometimes highlights, is what will seem to some (though certainly not to all) a kind of metaphysical minimalism—whatever degree of minimalism might be had by a non-reductive, constructivist theory.⁷³ Moral principles are the product of our capacity for rational self-governance, our symmetric standing, and our need to get along, taking into account our various and competing interests.

Second, and perhaps less often noticed, because the contractualist principles must take into account the (personal, generic) reasons arising from competing ideals, standards of human flourishing, or accounts of the good life—because even those who take such ideals very seriously nonetheless must find the principles unreasonable to reject—the result, presumably, will be a set of principles that maximizes the liberty of each consistent with the liberty of others, and so preserves—to as great an extent as possible, given the commitment to finding mutually acceptable terms of self-governance—freedom of conscience. Within the constraints provided by the commitment to find mutually acceptable terms, the view remains otherwise neutral in its conception of the good life. The attendant liberty of conscience will be sacrificed in any account grounded in some prior, independent ideal or standard of morality—where recognition of the appropriateness or importance or inescapability of the independent standard secures agreement in the contractualist situation.

⁷³ In his 2009 Locke Lectures, Scanlon has elaborated a bit on his metaphysical minimalism.

What will be sacrificed, then, in even a successful hijacking Scanlon's answer to the question of motivation, is the appeal of old-fashioned, modern, liberalism.⁷⁴

CONCLUSION

I hope here to have portrayed, with some vivacity, the appeal of contractualism. I hope also to have cleared some confusion about Scanlon's so-called "question of motivation" and to have shown many of the standard criticisms of his view miss their target by misunderstanding its broadly (though not traditionally) metaethical ambitions. Finally, by considering what I take to be a serious criticism of the view, put forward by Thomson (among others), I hope to have shown how disagreement about contractualism is more interesting than is often noticed. While those who disagree may hope to secure its appeal for their own theories, doing so requires some work, and, I argued, even if that work is successfully discharged, the alternatives still sacrifice something like liberty of conscience.

We can note, in closing, that Scanlon's view shares with Kant's the result that moral facts are "practical:" they are facts about what people can (reasonably) choose. They are practical in another sense: they are chosen with a view to what it would be like to live in accordance with them. They are, nonetheless, facts, and facts we can easily invest with a great deal of importance. (Whether they are "natural" facts seems to me an unclear and so unhelpful question.) So, in the end, morality does, for Scanlon, have a connection to the will. But it is not to the will of each individual to whom it applies, as the internalist thought would have it. It is rather that moral facts are facts about possible agreements between reasonable people who share the aim of living with one another on terms that accord each symmetric standing

⁷⁴ As we have noted, this sort of liberalism requires that other ideals be either incorporated into or subordinated to the goal of living on mutually acceptable terms. The liberty of conscience is not total, nor should the claim of neutrality be over-played.

to determine those terms. These may after all be facts of a rather queer sort. But it is not hard to see why we give them the kind of importance we do.⁷⁵

⁷⁵ This paper has been a long time in the writing and owes many debts. It has benefited from extensive conversation and/or written comments from Mark Greenberg, Barbara Herman, A. J. Julius, Brent Kiou, Rahul Kumar, Seana Valentine Shiffrin, and Julie Tannenbaum, as well as from audiences at UC Riverside, the Southern California Philosophy Conference, Arizona State University, the University of Western Ontario, Princeton University, and the OSU-Maribor-Rijeka Conference, *Evaluating Agents*. Thanks are also due to Stephen White, for research assistance. Finally, immeasurable thanks are owed to T. M. Scanlon, both for his careful and insightful work and for his extremely generous advice and support over many years.

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