

Phil 104, March 20, 2007
Scanlon: What Should We Do If We Are Contractualists?

Contrast with other contract theories

Some other moral philosophies appeal to a “contract” to determine what we are morally required to do. They ask: What is it *rational* to choose—which is most often defined as what serves one’s desires—in *a situation that forces one to take into account the interests of others?*

- Recall Harsanyi, for example. He asks: What rule would it be rational for you to choose, if you did not know who you would be?
- *Answer*: the rule that maximize expected utility, given an equal chance of being anyone:
$$P_1 * U_1 + P_2 * U_2 + \dots + P_n * U_n$$
, given that $P_1 = P_2 = \dots = P_n$
where P_i is the probability of being person i and U_i is the utility of person i .
$$= 1/n * U_1 + 1/n * U_2 + \dots + 1/n * U_n$$

$$= (U_1 + U_2 + \dots + U_n)/n$$

= average utility.
- Thus, we would choose average utilitarianism.

Scanlon’s question is different: What principles could no one reasonably reject, if he had the aim of finding principles that no one else could reasonably reject?

- “This gives us a direct reason to be concerned with other people’s points of view: not because we might, for all we know, actually be them, ... but in order to find principles that they, as well as we, have reason to accept.”
- Reasonable: not *rational* in the sense of serving one’s desires, but *reasonable* given the aim of finding principles that no one else could reasonably reject.
 - It might be reasonable for us to insist on water rights, but not rational to do so (since this will irritate the landowner), and
 - it might be reasonable of him to accept our request for water rights, but not rational for him to do so (since he desires not to have his legitimacy questioned).

How do we decide whether a principle is reasonably rejectable?

Roughly: a principle permitting us to X could be reasonably rejected if any individual’s objections to permitting X are stronger than any individual’s objections to prohibiting X

An individual’s only objections to a principle are based only on how that principle affects him.

- Not, for example, how it affects total happiness, Picasso’s *Guernica*, etc., except insofar as these things affect him.

There are other objections to a principle, besides its lowering one’s well-being.

- For example, it may treat one arbitrarily.

There is no absolute “threshold of reasonable rejection: a level of cost such that it is reasonable to reject any principle that would lead to one’s suffering a cost that great, and reasonable to do this no matter what objections others might have to alternative principles.”

- The fact that a principle would prevent one from doing something necessary for e.(g.) one’s own survival does not always make it reasonable to reject a principle.
- It depends on what objections others have to alternative principles.

Contractualism’s rejection of Aggregation

- Recall the problem of Aggregation. If permissibility depends on total (or average) well-being, then it will be permissible to impose extreme suffering on a few in order to give much smaller benefits to many.

- For example, we should let Jones suffer electric shocks, if enough World Cup viewers would be inconvenienced by rescuing him.
- One wants to say: “*No one* enjoys the *sum* of all of these tiny benefits. There are only *individuals*.”
- Contractualism makes sense of this thought, since it compares the objections to permission of *each individual* against the objection to prohibition of *each individual*.
- For example, Jones has a stronger objection to permitting us to let him suffer than any of the viewers has to prohibiting us from letting him suffer. Therefore, he can reasonably reject a principle permitting us to let him suffer.

First problem: Shouldn't we save the greater number from the same harm?

Suppose that we could either save *one* from some harm or save *two* others from the *same* harm.

- Aren't we morally required to save the two?
- How can we explain this by simply comparing the objections of individuals? If the *individual harms* are the same, aren't the *individual objections* the same?
- Don't we need to appeal to the *sum* of harms?

Scanlon's reply:

- Consider a case in which we can either save person A or person B. In this case, we are clearly permitted to save A rather than B.
- Now return to the case in which we can either save person A or persons B and C. Suppose we propose that, in this case, we are permitted to save person A rather than persons B and C.
- On this proposal, his interests make no difference to our decision. We make the same decision that we would have made if he were not involved.
- Isn't this an individual objection that C has to this proposal?

Second problem: Shouldn't we be less concerned with less likely harms?

Scanlon: If the fact that permitting X would harm someone is an objection to permitting X, this objection does *not* weaken as the *probability* that permitting X will harm *decreases*.

- This rules out a “principle licensing us to impose very severe hardships on a tiny minority of people, chosen at random (by making them involuntary subjects of painful and dangerous medical experiments, for example), in order to benefit a much larger majority.” Notice that, except for “chosen at random,” this is precisely the same problem as with Aggregation.
- But doesn't the probability of harm affect permissibility? Isn't it sometimes permissible to do something that carries a small risk of injuring others (e.g., driving according to the rules of the road), whereas it would be impermissible to do something that is certain to injure others (e.g., plowing into a pedestrian mall)?

Scanlon's reply:

- Usually, the cost of *refraining from X-ing increases* as the probability that X-ing will harm *decreases*.
- For example, it is *not* very costly to refrain from plowing into pedestrian mall, which has a high probability of injuring others, but it is *very* costly to refrain from driving.
- Thus, usually, the strength of the objection to *prohibiting X increases* as the probability that X-ing will harm decreases.
- So, *even if* the strength of the objection to *permitting X does not* decrease as the probability that X-ing will harm decreases, it will usually become less reasonable to reject permitting X as the probability that X-ing will cause harm decreases—because the cost of *refraining from X-ing* will usually increase.