

A lonelier contractualism

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1. A definition

A theory of some normative domain is *contractualist* if, having said what it is for a person to *accept a principle* in that domain, and having described a deliberative situation in which a person is to decide whether to accept various principles, the theory holds (i) that there are principles that are *generally acceptable* in the sense that every person would have reason to accept those principles if she were in that situation and (ii) that the domain includes normative facts that obtain in virtue of those principles' being generally acceptable.

2. Action-directing action

The oldest contractualisms are political. They're addressed to situations in which people take other people's actions as intentional objects of their own action and deliberation. When sovereigns command their subjects to obey the laws they've made, or when citizens reach joint decisions that each regards as governing the actions of all, these people intend to bring it about that other people do things. Political contractualists claim that people should be guided in these acts of directing others' action by considerations of what the others can accept.

If a principle that you have reason to accept recommends that you x, or if it recommends that, for all y, you y when I command you to y, this might make permissible my commanding you to x, by making it the case that my command serves reasons that you have. Or if a principle that you have reason to accept recommends that you and I together act in some way, this might make permissible my helping to bring it about that we do.

The contribution that acceptability to others makes to these pieces of political reasoning is explained by their common focus on action-directing action. Why should the sovereign concern herself with the reasons that her subjects have? Why should each citizen subject her own participation in public activity to principles that all citizens can accept? However these questions are answered in detail, their answers appeal to the fact that each of these people is acting so as to get others to do things.

3. General ethical contractualism: too general?

T. M. Scanlon is the contractualist of a larger domain. He thinks that all of the actions by which a person might affect the lives and interests of other people answer to standards that owe their reason-giving force to their being generally acceptable.¹

To the political contractualist this looks like a mistake. By changing the subject, from action-directing action to action in general, Scanlon deprives acceptability-to-others of the moral rationale that I've just described for it. It's not obvious, outside the political special case in which I intend with my action to affect yours, why my action should respond to the reasons you have. Why suppose that a principle's being acceptable to others gives me reason to follow it? Until this question is answered without invoking the direction of action, Scanlon's general ethical contractualism looks like an *overgeneralization* from the political kind.

4. Justification to others

Scanlon says that a person should follow his kind of generally acceptable principles so as to ensure that others can't reasonably object to what she does. He also says that a person should follow those principles so as to ensure that her action can be justified to others. I interpret him as using "the fact that A can reasonably object to x" and "the fact that x cannot be justified to A" to refer to the same fact.

Call the reason that each person has to ensure that other people can't object to what she does "S." Scanlon argues for the existence of this reason by reporting that he feels its force and by arguing that it can help to explain otherwise mysterious features of our moral judgments but not by accounting for its force in terms of other considerations.

This way of arguing for S makes me think that, for Scanlon, there are no considerations beyond S itself that make it a reason for us. I think he regards this reason as basic, undervived.

5. Basicness and productivity

Say that a reason for or against some act is *precontractualist* just in case it does not depend for its force on S. You might think that, for any x such that there's a fact of the form *I have most reason not to x*, a fact of the same form holds in virtue of the precontractualist reasons alone. You might think that, though S possibly adds *something* to the considerations that count against objectionable acts, S fails to make it the case that we have most reason not to do them.

Scanlon claims to the contrary that some such facts depend for their facthood on considerations of justifiability to others. He claims that the reason S is, as I'll say, *productive*.

Do I have a basic and productive reason to ensure that you can't object to what I do?

6. The basicness of justifiability to others

I think that an act's being justifiable to a person consists in the person's having good reason to believe that the act is well supported by reasons. On this *simple* conception of justifiability to a person, it's at least credible that I have an undervived reason to ensure that my action is justifiable to you.

Suppose that my action is well supported by the various reasons I am given by the interests and claims of persons. One thing to be said for my acting in this way is that these reasons support it. But it might draw further support from the fact that, after thinking well about what I do, you will conclude that it's well supported by those reasons and so that it responds well to your interests and claims. I should, perhaps, attach an importance to *your being able to reach this conclusion* beyond what I attach to the conclusion's *being true*. It is, maybe, valuable in itself that, having put you in a position to affirm that I've taken adequate account of your interests and claims, I can look you in the eye.

7. The productivity of reasonable rejection

Scanlon recommends that we follow principles that "no person could reasonably reject as a basis for informed, unforced general agreement" or ones "that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject."

In deciding whether or not to reject a principle, Scanlon's deliberator does not ask herself whether she and others have most reason to follow that principle in light of the various precontractualist reasons they are given by persons' interests and claims. If that were the content of her thinking about whether to reject, this procedure would have no hope of being productive. It could only ratify in its end result the judgments about reasons that form the theorist's precontractualist starting point.

The Scanlonian rejector of principles has a different problem. She asks about her own interests and claims whether they form an adequate basis for rejecting a principle given her aim of agreement. She considers the interests and claims of other people, not as direct grounds for rejecting a principle in her own right, but only insofar as they give such grounds to other people and so put general agreement out of reach.

Ask a different question and you may get a different answer. The principles that survive every person's application of this special test need not coincide with the principles best supported by precontractualist reasons considered apart from it. If we have reason to follow these principles, that reason is possibly productive.

8. A missing link

In section 6 I granted the possibility that, on a simple conception of justifiability to a person, I have a basic reason to ensure that my action is justifiable to every person. And in section 7 I've allowed that, if we have reason to follow the principles that no one can reject given that she shares with others the aim of agreeing on principles, then this reason might be generative of new normative facts.

Though I've never taken Scanlon's view that there's a reason S that's both basic and productive, I've found it hard to dismiss, mainly because I didn't see how to dismiss the section 6 thought about basicness of justifiability to others and the section 7 point about the productivity of reasonable rejection. But here's what bothers me about this pair of considerations understood as a single case for basicness and productivity. They add up to a case for basicness and productivity only if the reasons they mention are appropriately connected—only if justifiability to others is identical with, or otherwise requires, compliance with Scanlon's nonrejectable principles. And I don't see how this connection is to be made.²

Suppose you accept some argument that, without appeal to the reason S, shows that we have most reason to follow Scanlon's nonrejectable principles. On the simple conception of justifiability to others, your action is justifiable only if it's well supported by reasons. So you can conclude that your action is justifiable to others if it conforms to those principles. But if that's the link between justifiability to others and nonrejectability, the reason S is not after all productive. For the argument I mentioned establishes that what we have most reason to do is independent of S.

Another possibility is to adopt a *relativist* view of justifiability to others. You might claim that whether A has reason to believe that B's act is well supported by reasons depends in a special way on whether there's an objection to it based in *A's own interests and claims*. With this relativism in place, you might then argue that, if B's action is to be justifiable to A, B must follow principles that A can't reject by appeal to her interests.

But this proposal is incredible. I'd need to see a very good argument before I'd accept its relativist premise about reasons for believing that an act is supported by reasons.

The relativist proposal retains the simple view, on which an action's being justifiable to you consists in your having reason to believe that it's well supported by reasons, and adds a relativist understanding of the latter fact. A third possibility is to drop the simple view of justifiability and instead to identify the fact that an act is justifiable to A with the fact that it's allowed by a principle that survives the Scanlon procedure.

This identification makes it plausible that S is productive but implausible, I think, that S is basic. Maybe I should aim to make it the case that you can judge that my action takes adequate heed of your interests, and maybe there's no answer to the question why I should do this. But if we have reason to follow the principles that can't be rejected by people who aim for agreement on nonrejectable principles, this must be in virtue of some further fact about the way in which we respond well to reasons by following those principles.

9. Moral gridlock and the incompleteness of precontractualist ethics

Scanlon mentions a different and more promising motivation for his contractualism. The world is full of people, each leading a difficult and complicated life, and these billions of lives confront each of us with thousands of billions of reasons to do things that will make them go better or that will promote or respect what's valuable in them. You might suppose that, taken by themselves, these reasons fail to tell us how we're to resolve the conflicts among them, which take priority over others, and which we may overlook. If so, we face, as Scanlon puts it, moral gridlock.³

Scanlon's rejection procedure offers to break up the gridlock. Because the standards that govern persons' rejection of principles are responsible to the aim of agreeing with others on principles that no one can reject, these standards are rigged to ensure that some set of principles survives rejection and hence that our practical questions have answers.

An example. Some possible act of mine is bad for you and good for me, and the burden you bear if I do it is bigger than its benefit to me. It might be that these facts fail to make it the case that I shouldn't do this thing. In finding the balance of reasons, I might allow the fact that my burden is mine to outweigh the fact that it is smaller.

But now I ask which principles you and I can reject. From the fact that your burden's bigger, I should conclude that, if the going standards of rejection allow me to reject a prohibition of the act, *a fortiori* they allow you to reject permission of it. But then no principle survives. Since the correct standards of rejection serve the aim of achieving unanimity, I should revise these standards so that they instruct me not to reject prohibition, restoring the possibility of agreement.

In this way contractualism might crank out new priorities among precontractualist interest-based reasons that admit of no clear winners and losers when they're considered apart from the aim of agreement.

The catch, of course, is that a mere promise of determinacy is not a sufficient reason to accept the contractualism that would deliver it. There are many ways of making up our minds what to do. We want to know why we should seek determinacy from this contractualist source rather than by writing to Dear Abby or rolling a thousands-of-billions-sided die. For that matter, we should not dismiss without argument the possibility

that the ethical facts from which we hope for guidance just don't exist. We might instead come to admit that gridlock is our normative lot.

We need some further and independent rationale for accepting the output of the contractualist reasoning, then. I've argued in section 8 that the pure demand of justifiability to others can't by itself constitute that rationale.

This leaves the possibility of arguing that the precontractualist reasons themselves favor the Scanlon procedure as a source of answers to questions that they fail to answer independently of that procedure. Here is a plan of argument that follows this lead.

10. A plan

Describe a problem that I face in respect of the precontractualist reasons that I am given by the interests and claims of persons. Argue that the precontractualist reasons, taken independently of contractualism, fail to supply a good answer to this question. Argue that I can solve this problem and so act adequately on the reasons I am given by others' interests and claims by following generally acceptable principles. Argue that I should follow generally acceptable principles, not because I have an underived reason to ensure that others can't object to what I do, but because I will thereby better respond to the reasons I am given by the interests and claims of others.

11. A problem

Here's a problem about the reasons I am given by the interests of persons.

I believe that some of my beliefs about this are justified in virtue of a fact that I will call the *moral equality of persons*. Each of two strangers needs my help. For example each will die in a flood if I don't help her to high ground. I believe that, in needing to be saved, each needs from me help of the same kind and that getting it would play the same role in each person's life—that the two persons' interests in being saved from drowning are interests of the same kind. One stranger is black and the other white, and I help only the white stranger because she is white. My acting and deliberating in these ways is, I believe, contrary to the reasons I have. I believe that this belief is best justified by the abstract fact of moral equality, which I identify provisionally with the fact that my action and deliberation should treat the similar interests of different persons similarly. Because its truth offers the best available justification of my belief, I believe that this fact of equality is indeed a fact.

I don't understand this fact very well. To understand it better I'll need a fuller-fledged conception of the similarity of interests and a fuller-fledged conception of interests' being treated similarly within a person's deliberation. But I understand these things well enough to conclude that saving the white stranger because she is white is inconsistent with the fact of equality and that a verdict of rational and moral failure is justified in virtue of this fact.

Another belief. There are situations in which I can help, in the same kind of way, either myself or another person. I believe that in some such situations I should help myself and not the other person because I'll then be helping myself rather than the other.

It seems that, in believing this second thing, I believe that it's okay for my action and deliberation to treat my interest and that of the other person differently. If so, this second belief is inconsistent with my first belief in the moral equality of persons.

I say only “seems” because of the announced open-endedness of moral equality. It might turn out that on the correct final conception of treating similar interests similarly—on that conception on which the claim that I ought to treat similar interests similarly is true and on which it does a good job of explaining beliefs like my belief about the flood—I do after all treat similar interests similarly when I help only myself because I am that person.

So my acceptance of equality and of the judgments that it justifies, and my acceptance of judgments that show or endorse a *partiality* toward my own interests, are at least apparently inconsistent. My options are to revise some of these judgments, to look for a characterization of their content on which they’re not inconsistent, or to go on acting on these judgments in the knowledge that I am then making at least one mistake in my response to the reasons I’m given by persons’ interests. The third option is no good. That leaves the first two as ones to try out, possibly in combination. My problem is to work out the best-justified mixture of revisions to, and characterizations of the content of, my equality judgments and my partiality judgments on which they turn out to be consistent. After Thomas Nagel, whose *Equality and partiality* finds a basis for contractualist ethics in a version of this problem, I’ll call it the *equality/partiality problem*.⁴

12. Population-level moral egalitarianism

A crude idealization of practical reasoning. For each reason or set of reasons, the reasoner-actor can assign this a numerical weight. She has most reason to do something if the set of all reasons for it weighs more than the set of all reasons against it. Partiality is the deliberative practice of putting more weight on your own interest than on the similar interest of another person because only the first interest is yours.

Suppose there are n of us and that each is partial in this way. There is nonetheless a respect in which we together treat the similar interests of persons similarly. Each person’s interest enters the sum of our deliberations via the same pattern of attention to it: there is one actor who attaches extra weight to a reason based in that interest, and there are $n - 1$ actors who attach smaller weights to that interest.

This holds hope for a resolution of the equality/partiality problem. You might claim that we act consistently with the moral equality of persons by deliberating and acting in a pattern that qualifies us as treating similar interests similarly in the respect I’ve just described. And you might claim that this fact about *us* qualifies *me* as acting consistently with moral equality notwithstanding my practice of putting extra weight on my own interest because it is mine.

As it stands the suggestion is no help. From the claim that we treat like alike in some way, it fails to follow that I treat like alike in any way. I am not us. I am me. For all that I’ve said, I am only a person who puts extra weight on his interests, surrounded by a bunch of other people who put extra weight on their interests. For all that I’ve said, the pattern in which we act is not a fact about my action that matters for its moral character.

13. Something we can do together

But now suppose that I do my member of a set of acts because this helps to make it the case that we do the set and because I think that we should do the set. And suppose that I judge that we should do the set in part for the reason that, when we do it, we treat like interests alike. In this special case it is after all appropriate to describe *me* as deliberating

and acting in a way that treats like interests alike in virtue of the way in which *we* treat like interests alike.

Treating like interests alike is something we can do together, and it's something that I can do when I act as a member of a group that does it and *for the reason that we should do it*.

This suggests a program for bringing my action under the regulation of moral equality. I should first find a principle such that, when we all follow it, we together count as treating similar interests similarly; I'll need to identify some property, call it X, that our action and deliberation have when they're governed by this principle and in virtue of which we treat similar interests similarly. I should then follow the principle on the ground that my doing this helps to make it the case that X is realized at the population level. By doing this I qualify my own action as treating similar interests similarly.

Of course there are many distinct X-properties and correspondingly many distinct principles that might play the role I've just described. For example we might follow a principle that mimics egoism by directing each person to serve only her own interests. If X is the property of advancing every person's interest by assigning to one and only one actor the job of promoting that interest, universal adherence to mock-egoism has X, and in virtue of X it treats like interests alike.

But I won't accept just any principle that realizes just any X. The reason that moral equality gives me to join a population-level program for treating like interests alike is not the only consideration that bears on whether I should join such a program.

14. Acceptability to partial me

I start with specific judgments about what I have reason to do in virtue of the interests of persons. And I am looking for a way of upholding moral equality, and hence for a principle that realizes an X at the population level, that I can endorse while also endorsing those initial judgments or their descendents.

These judgments are judgments about what I have reason to do in virtue of my own and others' interests. When I comply with a principle because this helps to make it the case that the population as a whole complies with the principle, what I am doing is helping to make it the case that the interests of persons are respected, protected, and promoted in the ways the principle provides for. So I must ask whether, according to my judgments about my reasons for action based in the interests of persons, I have reason to help make it the case that the interests of persons are respected, protected, and promoted in those ways.

Many of my judgments are partial. They instruct me to give priority to my own interest because it is mine. This was the source of the equality-partiality problem, and it threatens to reinstate it at the level of my deliberation about which principle to accept. If the principles I accept are marked in their content by my special regard for my own interests, can they nonetheless treat the similar interests of different persons similarly?

So I'm to solve for an X such that X is compatible with acceptability to partial me.

15. General acceptability as the partial person's moral equality

You see where this is going. An X that's compatible with acceptability to me is acceptability to every person.

The thing to notice is that versions of the claims I've made about the reasons I have are true of the reasons every other person has. Every person has an equality/partiality problem that can be solved by accepting an X-realizing principle. So for any principle and person we can ask whether the person has reason to accept it in light of her partiality-ridden initial reason judgments and her moral interest in adopting an X-realizing principle.

Consider a principle that every person has reason to accept in virtue of those two considerations. Each person's interests enter the selection of this principle in the same way: with a partiality markup through that person's own reasoning about what to accept and at a partiality discount through the reasoning of every other person. When we resolve to adopt a principle only if everyone can accept it, we accord each person's interests an identical final protection: the possibility that the person might veto the principle on grounds of those interests.

Acceptability to everyone is in these respects a standard of the similar treatment of similar interests. And it has acceptability to me built in.

16. Is it acceptable?

Having adopted general acceptability as a standard of moral equality, I must set the standards that govern my acceptance of principles so that they make possible everyone's accepting some set of principles.

I sketched a typical piece of this standard-setting in section 9. If my less important interest favors permission of some act while your more important interest favors prohibition, I will notice that a standard that allows me to reject prohibition must also allow you to reject permission and hence that it can't sustain agreement on a set of principles. Revising the standards so as to restore a prospect of unanimity, I'll conclude that I should accept prohibition after all.

The pursuit of unanimity in this way leads me to accept principles that require many changes in my beliefs about what I have reason to do. The warrant for these revisions is that I also began by believing in the fact of moral equality and in taking it to be inconsistent with some of my initial reasons judgments. I have no rational choice but to change some of part what I believe.

But there are presumably many consistency-establishing revisions. What makes this the one to carry out? I can think of two ways in which an alternative might do better than this one. It might offer, in place of general acceptability, some other conception of the similar treatment of similar interests that is substantively better, for example better able to account for the initial judgments that I traced to the fact of moral equality. Or it might offer a standard such that the revisions of my first-order beliefs required for consistency with this standard leave me closer, in some measure of overall distance between systems of beliefs, to my reflective initial condition.

I can't rule out either of these possibilities. I claim only that, until one or both of them is made plain, I have reason to join the others in accepting principles whose acceptability to everyone qualifies us all as treating like interests alike.

17. A shallower constructivism

The proposal is constructivist. It says that we have reason to follow certain principles in virtue of their being the output of a procedure of reasoning that takes as given certain other judgments about the reasons we have. The procedure does not give evidence for the independently constituted correctness of the principles it selects. Its selecting them makes it the case that we should follow them.

This is a shallow constructivism that announces such a status for only some of the normative facts. The rest it takes to hold independently of the procedures it recommends. As Sharon Street would say, it's a restricted rather than a metaethical constructivism. As David Enoch might say, it's a boring rather than an interesting constructivism. As Derek Parfit would say, it stands on a nonconstructivist normative base.⁵ Disagreeing with Street, I agree with Enoch and Parfit that practical normativity can't be constructive all the way down. So the motivation for this constructivism is nothing to do with normative antirealism. It's a more modest matter of noticing that the nonconstructivistly affirmed facts about some domain imply that we have reason to follow a certain procedure to an acceptance of its output, not because those facts directly make it the case that the output is the right answer, but because they give to structural features of the procedure a value that's independent of any tendency to arrive at directly valued outcomes.

The procedure of asking what everyone can accept given the aim of general acceptance owes its authority to just such a feature, the equal attention that it pays to every person's interests by according to each the same veto over principles. And this feature derives its value from the fact of moral equality that I included in the preconstructivist moral material.

18. A lonelier contractualism

This argument for general acceptability claims only that it's a standard of moral equality that partial persons can embrace. Perhaps some different standard better develops this ideal under that constraint. General acceptability is recommended provisionally as the standard to apply until an alternative arrives. Until it does, you have an equality/partiality problem, and you should follow generally acceptable principles as a way of solving it.

Maybe you don't share Scanlon's underived concern with justifiability to others. I've argued that you nonetheless have reason to follow generally acceptable principles. This is an argument for deciding what you will do as though you were deciding with others. But it comes to you in your individual struggle to discover what the interests of persons require of you. It's a lonelier contractualism but one that would deliver the people who accept it to a kind of community.

Notes

I thank Pamela Hieronymi and Jacob Rosen for their advice.

1. T. M. Scanlon, *What we owe to each other*, Harvard, 1998. Scanlon argues that the wrongness of an act consists in its being disallowed by generally acceptable principles. I want to concentrate on a weaker claim about reasons implied by this account of wrongness: that a person has reason not to do a thing in virtue of the thing's being disallowed by the relevant principles.

2. When Scanlon goes to explain what's valuable about following his principles, he tends to appeal to such things as the ideal of living with others on terms justifiable to everyone or the reason each has to ensure that others can't object. But when he turns to showing that this reason is productive, he tends to replace general formulas of justifiability to others with the specific proposal that we follow principles that survive his reasonable rejection test. What if anything justifies that substitution?

3. Pamela Hieronymi helped to me see that dispersing the gridlock is part of Scanlon's motivation for contractualism. On p. 106 he says this: "We cannot respond to all the reasons that every human creature has for wanting his or her life to go well; so we must select among these reasons" by following contractualist principles.

4. My proposal owes a large debt to Nagel's arguments. In fact it might just be Nagel's arguments expressed in uglier writing. See especially the discussion of "four stages of political theory" in *Equality and partiality*, Oxford, 1991, chapter 2. And see also part 3 of *The possibility of altruism*, Oxford, 1970; "Equality" in *Mortal questions*, Oxford, 1979, especially pp. 126-7; and *The view from nowhere*, Oxford, 1986, chapters 8 and 9.

5. Sharon Street, "Constructivism about reasons"; David Enoch, *An argument for robust metanormative realism*; Derek Parfit, *Rediscovering reasons*.