

Saving the Many and the Value of Human Life in Scanlon's Contractualism

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ABSTRACT: It has been widely thought that Scanlon's contractualism cannot adequately account for the class of moral cases in which an agent is forced to choose between saving a smaller number of lives and saving a larger number. This paper argues that this is incorrect, and that Scanlon, his critics, and his defenders have so far overlooked a way that contractualism can deliver the intuitively correct result in these cases without revision anywhere in the theory and in particular without recourse to interpersonal aggregation. All that is required is that we accept Scanlon's claim that we all agree that human life is of great value. Accepting this claim, it is argued, entails a class of agent-relative or "personal" reasons that are determinative of the intuitively correct results in these cases, and in relevantly similar ones.

§

Consider a standard example in moral philosophy. There has been an inexplicable shipwreck on a calm sea. Astride the sinking ship are two lifeboats. The first (*A*) is occupied by two people, Andrea and Abigail. The second (*B*) is occupied by one person, Barbara. A rescue boat arrives and sees that the tragedy is soon to compound: both lifeboats are themselves capsizing. Stipulate that the rescue boat is at one point of a perfectly equilateral triangle each of whose other points is occupied by a lifeboat, and so on, such that there are – at least apparently – no decision-relevant factors from the perspective of the operator of the rescue boat (Rachel) other than each lifeboat occupant's need to be saved. Stipulate also that Rachel can see that she will only be able to reach one of the boats in time to save its inhabitants.

In this case (*Lifeboats*) and similar ones, what is at issue is that someone is faced with a choice between saving one stranger from death and saving two other strangers from the same fate. Our moral intuitions emphatically indicate that Rachel should save the boat inhabited by the two passengers. However, many have argued that Scanlon's contractualism will not allow Rachel to adopt a principle that favors saving the greater number of lives (*Save the Many*) in this situation.¹ This is because, on contractualism, Rachel must decide for such a principle on the basis on the comparative strength of the sets of objections that she can expect to be posed by each of the people whose lives are being threatened. If the strongest set of objections that any relevant agent can make is to a principle that requires Rachel to ϕ , then Rachel must adopt a principle of not ϕ ing, and vice versa. However, in *Lifeboats*, it seems that each person other than

¹ This point expressly belongs to Joseph Raz, in Raz (2003), but there are many similar arguments. See, particularly, Otsuka (2000), and in response Kumar (2001). References to "contractualism" below are shorthand for Scanlon's contractualism, as explicated in Scanlon 1998. Inline references will be to this work unless indicated otherwise.

Rachel herself has an equally forceful complaint to Rachel’s adopting a policy that does not save her life. Since no one objection seems stronger than any other, it seems that Rachel is left to make her decision by flipping a fair coin or holding a weighted lottery, both of which Scanlon convincingly rejects (232-34). So what to do?

I

A contractualist moral agent is licensed to ϕ in circumstances C only if a principle permitting ϕ ing in C would be allowed "by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement" (153). Specifically, a principle cannot be reasonably rejected just in case a set of *objections to prohibition* that any relevant agent may hold are stronger than a set of *objections to permission* that any other relevant agent holds. Objections to permission are a list of burdens that would be imposed on an individual in a situation where some other person was permitted to ϕ in C. Objections to prohibition are a list of burdens that would be imposed on an individual in a situation where some other person was forbidden from ϕ ing in C (195). The strength of an objection (of either type) flows directly from the strength of the reasons that motivate it. In *Lifeboats*, Rachel takes each Andrea and Abigail to have an objection to prohibition, and Barbara to have an objection to permission to *Save the Many*, where each objection flows from the strong reason each person has to want to live (204). Rachel is licensed to understand the objections on the table in this way because on contractualism, each person’s reasons count as considerations for the decision-maker to accept or reject a principle insofar as they are associated with a generic point of view for an individual in the relevant circumstances (202-6). Rachel takes each person’s “needing to be saved” as flowing from a strong generic reason that individuals in their situation generally have to want to be saved. Call each of these objections a “personal well-being” objection (PWB). The problem, of course, is that all three PWB objections are equally strong, and that contractualism "confines itself to reasons for rejection arising from individual standpoints" (230). To wit, here is Rachel’s dilemma.

Table 1: Adopt a “*Save the Many*” principle?

	Objections to Permission	Objections to Prohibition
Andrea		PWB
Abigail		PWB
Barbara	PWB	

Given this matrix of objections, Rachel cannot decide based on comparing the strengths of any single individual’s objections to permission with the strength of any single individual’s objections to prohibition. This seems to indicate that she needs some alternative criterion if she

wants to adopt *Save the Many*, rather than, say, a principle that requires her to flip a coin to decide which boat she will save. The obvious candidate here is for Rachel to adopt *Save the Many* because it maximizes the dimension of value that motivates each objection (that is, to consider the value of Andrea and Abigail's outcomes in aggregate, or to combine the force of their individual claims). The lure of this intuition is amplified by the fact that although Scanlon explicitly rejects views that allow for interpersonal aggregation, citing consequentialism's "highly implausible implications" (230), his supposed alternative account does not actually seem to offer an alternative at all.

...any nonrejectable principle must direct an agent to recognize a positive reason for saving each person. Since a second reason of this kind can balance the first—turning into a situation in which one must save one into one in which it is permissible to save either of the two people—the reason presented by the needs of a second person in one of these two groups must at least have the power to break this tie. (232; my emphasis)

It is left to the reader to gather just how Scanlon understands his suggested tie-breaking procedure to work without appeal to the interpersonal aggregation of claims.² Indeed, given only Scanlon's formulation of the *Tie Breaker View*, many readers worry that contractualism *must* surreptitiously rely on interpersonal aggregation in *Lifeboats* and in similar types of situations. I do not think that this is the case. The interpersonally aggregative understanding of the *Tie Breaker View* is not the only one available to the contractualist in handling this type of case, nor is it the best.

II

Scanlon tells us that others "figure twice" into a contractualist account of right and wrong. First, they figure "as those who might or might not be able reasonably to reject certain principles." Second, they figure "as those to whom justification is owed" (202). In deciding for or against a candidate moral principle, other people factor in both as a source of reasons for licensing or rejecting the moral principle *and* as a source of the normative force for the consideration of these reasons. It is not enough that someone else may be able to reject some candidate principle. It must also be that their ability to do so makes a moral claim on us in

² This is no small task. At times, it seems almost explicit that Scanlon concedes the need to allow interpersonal aggregation in cases like these. "[F]rom the fact that a certain consideration is morally relevant it does not follow that its moral significance takes the form of a reason that is 'added to' the force of other reasons. But there are grounds for thinking that in this case the significance of saving the additional life does take this form." (397, fn. 35) Scanlon also seems to come close to conceding this point in reply to his critics. "The question...is whether there is a way of understanding the grounds of reasonable rejection that would get the intuitively correct result in these cases, but would not be ad hoc, or in conflict with other elements of contractualism. I am not sure that the 'tie-breaking' argument which I offer...meets this test," Scanlon (2003: 431).

deciding for or against that principle. It is now worth asking why, on Scanlon's contractualism, we owe this justification to others, or why others should be taken as a source of normative force.

For Scanlon, understanding that other human agents are the source of the normative force of moral requirements is just a function of our ability to correctly appreciate the value of each human life. He asserts that the normative force of moral claims flows directly from the positive value of living in a relation of mutual justifiability with others (162). The positive value of this way of living is in turn directly related to the positive value of each human life. Scanlon is also explicit that this is the case. Correctly appreciating the value of human life, he says, "requires us to treat rational creatures only in ways that they could not reasonably reject" (106), or to act in ways that are justifiable to them.

Importantly, correctly appreciating the value of human life also involves "seeing that we have strong reason not to destroy it and reason to protect it when we can" (104). For Scanlon, we all greatly value human life (103), and therefore we all have reason both to protect it and to want to stand in relationships of mutual justifiability with each other. It is also the case that "many of the most powerful of these reasons...are matters of respect and concern for the person whose life it is rather than of respect for human life...in a more abstract sense" (104). This means that insofar as we all value human life, we all have reason to protect *each* human life, and we all have reason to want to stand in a relationship of mutual justifiability with *each* other person.

I take this to show that insofar as Rachel in *Lifeboats* is concerned with the justifiability of her actions to each other person it must also be the case that she herself has a positive reason to save the life of each person if she can. This fact is an important one. It shows that the PWB class of reasons is not exhaustive for a contractualist decision, even in a situation that is supposed to have no other relevant factors. In addition to the PWB reasons given above, a contractualist moral agent in a rescue situation like *Lifeboats* has *her own reason* for wanting each person to be saved; namely, that she wants to live her life in a way that correctly appreciates or respects the value of the life of that person. In what follows, I will call this kind of reason, the one that Rachel personally possesses, a "value of human life" (VHL) reason.

There may be a *prima facie* concern that VHL reasons are not what Scanlon calls "personal" reasons, and therefore are not admissible as salient considerations in Rachel's moral deliberation. I do not think that this worry obtains. Even if the high value that Rachel places on each person's life is a species of "impersonal" or agent-neutral value, Rachel's reason for wanting to live her life in a way that respects that value remains decidedly "personal" or agent-relative (221). Scanlon is clear that personal reasons can stem from judgments of impersonal value. In his example, there are legitimate personal reasons to claim that the Grand Canyon should not be flooded. These reasons involve an impersonal reason, namely a belief in the agent-neutral value of Grand Canyon, but this latter derives in part from personal reasons, for example the agent-relative view that the Grand Canyon is "worth seeing and should be admired" (220). Scanlon is also clear that the relevant class of personal reasons are not uniformly reducible to reasons of the PWB type; rather, they can also arise "from the importance, for an individual, of being able to live in a way that recognizes certain values" (221). Therefore, it makes sense to say

that Rachel's belief in the agent-neutral value of each person's life, and her subsequent commitment to the view that each life is "worth protecting and should, if possible, be saved", at least partially derives from a personal reason, namely, that she values living her life in a way that protects each human life. Assuming that I have got Scanlon right here, we can introduce Rachel's VHL reasons into *Lifeboats*, and thus complicate her consideration of *Save the Many*.

Table 2: Adopt a "Save the Many" principle?

	Objections to Permission	Objections to Prohibition
Andrea (A ₁)		PWB
Abigail (A ₂)		PWB
Barbara (B ₁)	PWB	
Rachel	VHL(B ₁)	VHL(A ₁), VHL(A ₂)

It is now clear that Rachel has two personal reasons to save boat A. What's more, Scanlon explicitly allows for the *intrapersonal* aggregation of reasons, "aggregation *within* each person's life...rather than aggregation *across* lives" (237). This means that the possibility of trying to assess the relative strength of Rachel's two VHL reasons against Barbara's single PWB reason is now available. That prospect is unappealing, though, as it is doubtful that such an assessment would seem definitive in hard cases, and also because it might seem to let interpersonal aggregation in through the back door. Luckily, the contractualist framework provides Rachel with even more decision-making resources than these.

Recall that if Rachel's VHL reasons are to bear on her consideration of *Save the Many*, they must be *generic* ones. Since the adoption of *Save the Many* requires that we consider the consequences of its acceptance in general, not merely in this or that particular case, Rachel cannot base her assessment on "the particular aims, preferences, and other specific characteristics of specific individuals." She must instead employ reasons based on "commonly available information about what people have reason to want" (204). She takes it that people commonly have reason to want to avoid dying, for example. It is thus importantly not the case that what is at stake are Abigail, Andrea, Barbara's and her own actual reasons, but rather the reasons that can be said to obtain from the relevant generic individual standpoints given the circumstances.

This brings to the fore another important feature of contractualism. In choosing whether to accept or reject a principle, an agent is concerned with reasons from a generic individual standpoint where the occupant of such a standpoint is also stipulated to be "seeking principles of mutual governance which other rational creatures could not reasonably reject" (106). Insofar as any individual seeks such principles, as I have suggested, she would also have to take it that the justifiability of her actions to other people bears importantly on her decision, which entails that she take other people's reasons to make normatively forceful moral claims on her. It seems to me plausible, as it does to Scanlon (103), that this force is categorically derived from the high value

each person places on human life, although it is worth noting that in order for Rachel's VHL reasons to be appropriately generic, this need not be the case. All that is required is that this value is generally held, and that the various reasons it entails are ones that people have "in virtue of certain general characteristics" (205). Therefore, if people generally assign a value to each human life, Rachel's VHL reasons are appropriately generic, and this has further consequences.

Namely, insofar as Rachel is concerned with the generic reasons people might have in a given set of circumstances, and insofar as individuals generally value being able to live their lives in a way that respects the value of each other person, then Rachel is licensed to consider each Andrea, Abigail and Barbara as having a VHL reason to want to save each of the others. This means that the set of reasons relevant to Rachel's decision is much more complicated than it first appeared, and so is the pursuant matrix of objections to adopting a *Save the Many* principle.

Table 3: Adopt a "Save the Many" principle?

	Objections to Permission	Objections to Prohibition
Andrea (A ₁)	VHL(B ₁)	PWB, VHL(A ₂)
Abigail (A ₂)	VHL(B ₁)	PWB, VHL(A ₁)
Barbara (B ₁)	PWB	VHL(A ₁), VHL(A ₂)
Rachel	VHL(B ₁)	VHL(A ₁), VHL(A ₂)

If this is the correctly filled out matrix of objections for considering *Save the Many*, then it is clearly the case that a contractualist moral agent can be licensed to adopt this, the intuitively correct principle, merely by reference to the intrapersonal aggregation of reasons. Notice that this does not require that we stipulate any level of strength for a VHL reason relative to the level of strength represented by a PWB reason. VHL reasons can have nearly infinitely less strength than PWB reasons, but as long as they are morally forceful *at all*, the correct result is achieved in all similar cases. The strongest objection to permission still belongs to Barbara, and it flows from a single PWB reason. However, both Andrea and Abigail have objections to prohibition that flow from a single PWB reason *and* a single VHL reason. In comparing either of these sets of objections to prohibition to Barbara's objection to permission, the PWB reasons (stipulated to be of equal force) "balance each other out" (232) leaving the matter to be decided on the force of a VHL reason. I take this all to show that a contractualist decision-maker can achieve intuitively satisfying results without recourse to interpersonal aggregation.³

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