

Contractualism, Autonomy and Demands of Beneficence

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Abstract

This paper is intended to approach the question of whether Thomas Scanlon's moral contractualism, just as he claims, constitutes a powerful alternative to any consequentialist moral theory. By focusing on the structure of his contractualism as well as his treatment of some relevant issues, I try to show that Scanlon fails to fulfill the purpose he specifies for himself.

Elsewhere¹ I had argued that a sensible consequentialism should integrate an objective value theory, weigh reasons for different moral claims, and finally maximize some specified overall value from an impartial point of view. I believe that this form of consequentialism successfully avoids most of usual objections to the classical, hedonist version of utilitarianism. I also interpreted the distinction between consequentialist and non-consequentialist moralities as corresponding to the distinction between an ethics of responsibility and an ethics of conviction, and argued that the former should take up a prior and primary place in our moral practice and moral epistemology.

The only serious obstacle to the form of consequentialism I am advancing, as far as I can see, involves the moral status of the innocent. It is thought that there are constraints on promoting overall best consequences. For example, we must not kill one innocent, non-threatening person for his organs to save five others.² If a consequentialist could not accept the intuitively plausible idea, then consequentialism would have to be abandoned firstly in theory. However, the issues concerning the moral status of the innocent are quite complex, and they cannot be thought to directly entail rejection of consequentialism. For, as I have shown, the plausible idea can be in fact accommodated in a consequence-based framework of moral thinking. While the proponents of a non-consequentialist morality contend that constraints of this kind entail rejection of consequentialism, it seems that they have adopted a very limited and narrow understanding of consequentialism. I have shown, for example, that the consequential-

1 Xu Xiangdong, "Agent-centered Constraints, Self-ownership, and Responsibility for Others", awarded paper for the Jonathan Lieberman Graduate Best Essays Competition, Columbia University, 1998.

2 Cf., for example, F. Kamm (1992), "Non-consequentialism, the Person as an End-in-itself, and the Significance of Status", *Philosophy & Public Affairs* 21: 354–389; R. Brook (1991), "Agency and Morality", *Journal of Philosophy* 4: 190–212.

ist moral point of view is not incompatible with the appeal to cost, properly understood, and that the air of paradoxicality and irrationality of deontological constraints would presumably disappear once the consequentialist had adopted a more global, impartial point of view. From the consequentialist moral point of view, there is no reason to think that moral life should be confined only to negative duties, or only concerned with one's intrinsic moral integrity—given the ambiguity of this notion.

However, a further defense of this view will require examining the very idea of equal respect and moral autonomy. Actually I do not believe that consequentialism cannot, as it is usually conceived, be made to embody the supreme moral ideal of respect for persons. The problem of a fundamental importance is not whether consequentialism cannot, by its very nature, embody such an ideal. But rather it is, in the first place, *how* the moral ideal of respect for persons should be properly understood. The problem is genuinely complicated and strongly controversial at least because an adequate understanding of equality depends on the purpose we want the notion to serve. Conceiving of such a purpose is too often intermingled with political struggle and ideological debate. In spite of the fact, the idea of equality should be understood as a purely moral claim—equality between persons is first and foremost equality between their moral status, although moral equality cannot make significant sense when it is conceived in abstraction, for instance, from political and economical equality. Given an adequate understanding of equality and the moral imperfection of the actual world, a consequentialist conception of equal respect for persons, I believe, will take more plausibility than other alternatives do. I also believe, in this matter, that there is a significant convergence between consequentialist moral thinking and the contractalist one: neither can work well without another. More precisely, the contractalist moral thinking should be seen as *constitutive* of a sensible consequentialist moral thinking in the following sense. While consequentialism can give the moral claim of each person a weight, it is still one of its essential purposes to promote some specified overall value. For the consequentialist, trade-offs are inevitable in actual moral decisions, but more importantly they must be reasonably justified. The ground of justification is also the consequentialist standard of moral rightness.

My strategy for argument can be briefly sketched as follows. Firstly, given that the ideas of respect for persons and moral autonomy typically originate from the Kantian tradition, I shall show that these ideas cannot be adequately understood unless it is combined with the Kantian notion of kingdom of ends. Then I shall show that a teleological interpretation of Kant's ethics is quite congenial with the idea of a normative consequentialism. Secondly, I shall argue that the Scanlonian version of contractualism cannot acquire its full intelligibility unless it incorporates an element of the normative consequentialism. If the argument is successful, it will help close the alleged 'gulf' between consequentialism and contractualism. Finally, I shall attack on the traditional distinction between perfect and imperfect duties, and try to further illuminate the relationship between justice and benevolence. I hope that all the arguments to be undertaken in the essay will provide a rationale for rejecting a morality of self-ownership.

1 Equal Respect for Persons: A Preview

We need firstly say something about equality in general before discussing equal respect for persons. While equality is generally defended as a right kind of distributive principle, there are two different

types of understanding of equality. On the teleological view, we aim for equality because equality makes the outcome better. On the deontological view, on the other hand, we aim for equality not because it makes the outcome better but because equality itself is of an intrinsic value, for example, each person has rights to equal share.³ But I tend to think that neither of these two views is independently complete. We should aim for equality because equality will make the outcome better and it will do so because the claim of equality, as a moral claim, provides moral reasons with us that make *each* of us have rights to a good life. Therefore, equality has both intrinsic and instrumental value. These two kinds of value were not separable because equality would lose its moral importance if it were treated only as an abstract moral claim. Therefore, when the claim of equality accords each of us with the same rights to a good life, it will be quite natural, on the egalitarian view, to attribute a greater weight to the value of improving the situation of those who are worse off than to the value of improving the situation of those who are better off. Of course, the priority claim does not, for its reasonable fulfillment, eliminate strategic considerations, for example, those that are formulated by Rawls's difference principle. Once this point is clarified, there are no *a priori* reasons to think that consequentialism will not be able to accommodate the value of equality. What is at issue still remains the understanding of the purpose equality is specified to serve. In fact, the consequentialist view of equality more easily accommodates the claim of priority in that, on this view, it is better to have more of what is good and less of what is bad in the world. In contrast, it is not very clear how successfully the deontological view of equality can do so, since this view entails that inequalities are not wrong when they do not result from wrongs of one against another, and since it insists that inequalities in distribution cannot be corrected when doing so involves interfering with some people's rights and liberties. It is really a 'paradox' of egalitarianism that pursuit of equality will inevitably require the sacrifice of rights or interests of some individuals to some others.⁴ Therefore, the reasonableness of a moral point of view also depends on how successful it is in settling conflicts among the interests of different people. It seems to me that consequentialism will certainly win out in the point, if there are such conflicts at all.

A crucial step to see how consequentialism accommodates equal respect for persons is to dismiss the usual misunderstanding of it to the effect that consequentialist maximization is *not* a distributive principle. Indeed, maximization involves merging or aggregating persons' interests into a single moral judgment. It does so in terms of the Benthamic formula that everybody counts for one, nobody counts for more than one. But once the consequentialist goal is reasonably specified, for example, the goal is to promote the interests of those who are worse off, it is not clear why aggregation is implausible. Here, aggregation is in fact a kind of redistribution. Once the goal of aggregation is reasonably specified, the consequentialist can fulfill the goal in ways that are most congenial to its attainment. It is naturally not true that justification of a goal can always be separated from justification of the procedure for performing it. However, although contractualism places so great an emphasis on procedural fairness, as will be seen, it is not clear how procedural fairness is performed without presupposing that the individuals involved have a strong moral sensitivity

³ See Derek Parfit (1991), "Equality or Priority", The Lindley Lecture, University of Kansas.

⁴ For some analysis of the 'paradox', see Thomas Nagel (1991), *Equality and Partiality* (New York: Oxford University Press).

to some specified goal. Any plausible principle of equality is based on the idea that each person matters and matters equally. To insist on only the formal features of distribution is simply to recall the 'equally' but to forget the 'matters'. We can seek to promote the interests of those who are worse off precisely because they will not have been equally treated if their disadvantaged situation has not been adequately corrected to at least as good as the situation wherein the better off are. I do believe R. M. Hare is right in claiming that "to have equal concern for all people is to seek to promote their good, or give equal weight to their interests, [which] is exactly what utilitarianism requires, [and] not to fail to 'insist on the separateness of persons.'"⁵

Although not until the third section shall I not undertake a detailed contrastive analysis between consequentialism and contractualism with respect to their respective treatment of equality and aggregation, it is convenient here to have a preview of the contractualist conception of equal respect. There are some superficial similarities between contractualism and consequentialism. For example, both of them are committed to an impartial moral standpoint, although they can disagree in their respective understanding of impartiality. We can notice that Rawls's contractualism also contains a consequentialist element since, on Rawls's view, assessment of social institutions should be made on the basis of their consequences.⁶ The alleged essential difference between contractualism and consequentialism consists in the claim that the perspective of the ideal contractor yields a cut-off for all consequentialist trade-offs, although every society allows, as a matter of fact, some trade-offs between the common good and disastrous drops in some persons' life prospects. Inequalities are allowed, in both Rawls and Nagel, at least because they serve as incentives for efficiency and productivity. Contractualism yields the principle of non-trade-offness in its notion of equal respect since the principles of justice, in contractualists like Rawls, must issue from a conception of persons as free and equal moral agents. However, rational bargaining based on self-interest is not sufficient to generate the principles of justice Rawls desires.⁷ On the other hand, if self-interest must be dropped as the contractor's motivation and if the unanimous agreement contractualism desires is to be reached, the contractualist will have to allow thicker moral elements into the considerations of unanimous agreement. Therefore, it is not clear, at the very least, how the non-trade-offness is to be understood in contractualism. Certainly, if the contractualist believes that pursuit of equality inevitably involves sacrificing the interests of some individuals, then sacrifice can make fully reasonable sense only if it is seen from a moral point of view.⁸ But then I do not believe that there will be important differences between consequentialism and contractualism, if the consequential-

5 R. M. Hare (1984), "Rights, Utility, and Universalization: Reply to J. L. Mackie", in *Utility and Rights*, ed., R. G. Frey (Oxford: Basil Blackwell), 106–20, quoted on p. 107.

6 For a discussion of in what sense Rawls's theory is consequentialist, see Thomas Pogge (1989), *Realizing Rawls* (Ithaca: Cornell University Press), pp. 36–47. For a criticism of Rawls's understanding of the distinction between teleology and deontology, see Will Kymlicka (1988), "Rawls on Teleology and Deontology", *Philosophy & Public Affairs* 17: 173–190. For a defense of Rawls against Kymlicka's critique, see S. Freeman (1994), "Utilitarianism, Deontology and the Priority of Right", *Philosophy & Public Affairs* 23: 313–349.

7 For a detailed analysis of this point, see Brian Barry (1995), *Justice as Impartiality* (Oxford: Clarendon), pp. 52–66.

8 Cf., David Brink (1993), "The Separateness of Persons, Distributive Norms, and Moral Theory", in *Value, Welfare and Morality* (edited by R. G. Frey and C. W. Morris, Cambridge: Cambridge University Press), pp. 252–89.

ist goal of maximizing the good can be reasonably specified and justified.

Of course, the ultimate problem is still whether the agent-centered constraints on the maximization of the good mean a principled prohibition of sacrifice, even when it is seen from some moral point of view or other. Is the very idea of moral autonomy, by its very nature, incompatible or even in conflict with any form of consequentialism? Such libertarians as Robert Nozick frequently claim that they find out the rationale for agent-centered constraints on maximizing the good from Kant's idea of respect for persons. I believe, however, that a proper understanding of this idea will show that treating persons as ends-in-themselves does not directly imply the implausibility of sacrifice of the innocent, if such sacrifice will have to happen. Now let me spell out this point.⁹

2 Moral Autonomy and Respect for Persons: A Kantian Perspective

In fact, as can be observed, Bernard Williams, in his radical attack on consequentialism, has noticed some interesting similarities between consequentialism and Kantianism. For him, both of them require the universality and prescriptiveness of moral judgments, with the result that they commit themselves to the principle of impartiality.¹⁰ The difference between them is only formal: while Kantianism abstracts in moral thought from the identity of persons, consequentialism strikingly abstracts from their separateness. Further, the commitment to the impartiality, on Williams's view, leads both of them to the complete ignorance of particular personal character and situation. Although Williams's assertion is, as I have shown, suspicious and questionable, his juxtaposition of consequentialism and Kantianism does seem to suggest some deeper connection between them.

Deontologists usually think that Kant's formula of humanity provides a justification for agent-centered constraints. Now the formula says that "act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."¹¹ It is thus said that consequentialism is simply treating persons as a means when its maximization requires some persons to make sacrifice in favor of the overall best consequences. But the problem is more complicated than it is usually conceived. In the first place, we are not clear whether any sacrifice will necessarily lead to damaging or threatening one person's 'integrity' if we have not had a prior idea of what moral autonomy is exactly. In the second place, we are not clear whether it is fundamentally illegitimate to sacrifice one person's interest in favor of a greater interest either. Answer to these questions will first depend on making explicit the very implication of the notion of respect for persons.

For the purpose, I will first show that Kant's ethics contains a two-level structure of value,

⁹ This part is a revised version of the third section of my "Consequentialism, Deontology and Moral Thinking". The possibility of giving a teleological interpretation of Kant's ethics can be traced to my thinking about Kant's explicitly acknowledged failure to deduce morality from the notion of rational nature. Cummiskey advances a similar view in some detail in David Cummiskey (1996), *Kantian Consequentialism* (Oxford: Oxford University Press).

¹⁰ B. Williams (1971), "Persons, Character and Morality", reprinted in his (1981), *Moral Luck* (Cambridge: Cambridge University Press), pp. 1–19.

¹¹ Kant, *Grounding for the Metaphysics of Morals*, tr., J. W. Ellington (Indianapolis: Hackett Publishing Company, 1981).

which has its root just in his principle of humanity and the related formula of ends-in-themselves. The argument for this point may have a clearer representation in *The Metaphysics of Morals* than in the *Groundwork*. This argument also involves Kant's distinction between perfect and imperfect duties and his account of their relationship between them. Since my purpose in the essay is not to give a special interpretation of Kant's ethics, my discussion of Kant will be confined only to the main points relevant to the central theme of the essay.

Respect for persons is, for Kant, really respect for humanity. Kant regards the power to set end, or any end whatsoever, as characteristic of humanity as distinguished from animality (MM, 51).¹² The very nature of rational beings is thus embodied in the fact that a rational being necessarily wills the fullest realization of all possible, morally permissible purposes. Such a being cannot fail to will the preservation and development of the power to realize all these possible purposes. It is in the sense that Kant says that humanity, namely, rational nature of human beings, should be taken as an end in itself, as a precondition of all autonomous willing and of fully rational action. Rational nature is an end in itself in two principal senses. In the first place, it is an *objective* end, the end to which any rational being adopting and pursuing any other end must be committed. In the second, it is a self-sufficient end in that it provides the precondition of the value of all other ends, but the end itself is not conditioned by anything else. Since rational nature is the source of all values, it is the fundamental end of moral action.

Respect for rational nature is expressed as moral obligation just because our human beings are not perfect rational beings: we often act not in accordance with the principles of perfect rationality. Consequently, morality, as categorical imperatives, requires that a conscientious moral agent act from duty, not from self-interest or inclination. However, while Kant establishes the principle of acting from duty as the principle of right action, he does not deny that one can have legitimate right to pursue one's own happiness. Acting from duty implies acting out of respecting one's own and others' rational nature, which includes, among other things, the preservation and promotion of those conditions necessary to the existence of rational nature. Happiness or pursuit of happiness is certainly among those conditions. Indeed, Kant grants that one's pursuit of his own happiness is a natural end. It is possible that "humanity might indeed subsist if nobody contributes anything to the happiness of others, provided he did not intentionally impair their happiness" (Gr., 430). This is merely a negative way to harmonize with the kingdom of ends. While the negative duties constitute the main content of moral obligation, Kant does also insist that one should, if possible, promote others' happiness. This is because "the ends of any subject who is an end in himself must as far as possible be my ends also, if that conception of an end in itself is to have its full effect in me" (Gr., 430, see also 398, 423, 441). Kant's notion of kingdom of ends-in-themselves and his (non-categorical) requirement that one harmonize with the kingdom of ends, I believe, make it possible for a Kantian ethics to be able to have a natural affinity with consequentialist morality. The following paragraph typically suggests the plausibility of the interpretation.

Concerning meritorious duty to others, the natural end that all men have is their own

¹² Kant, *The Metaphysics of Morals* (MM) (translated by Mary Gregor, Cambridge: Cambridge University Press, 1991).

happiness. Now humanity might indeed subsist if nobody contributed anything to the happiness of others, provided he did not intentionally impair their happiness. But this, after all, would harmonize only negatively and not positively with humanity as an end in itself, if everyone does not also strive, as much as he can, to further the ends of others. For the ends of any subject who is an end in himself must as far as possible be my end also, if that conception of an end in itself is to have its full effect in me (Gr, 430).

It is evident from this paragraph that the full fulfillment of the categorical imperative—or, of humanity—will require treating others' ends as my ends. Since Kant treats an end as “an object of the choice (*Willkur*) (of a rational being), through the representation of which choice is determined to an action to bring this object about” (MM, 381), treating others' ends as my ends means that it is under my obligation to contribute myself to the fulfillment of others' ends. Therefore, if I make the ends of others my ends, I shall, in adjudicating between them when they conflict, treat them in the same way as I would treat my own ends—that is, give the same weight to their interests as well as to my interests. To see more clearly the similarity between Kant and a consequentialist, it is worth quoting a paragraph from J. S. Mill:

The rooted conception which every individual even now has of himself as a social being, tends to make him feel it one of his natural wants that there should be harmony between his feelings and aims and those of his fellow-creatures. If differences of opinion and mental culture make it impossible for him to share many of their actual feelings—perhaps make him denounce and defy those feelings—he still needs to be conscious that his real aim and theirs do not conflict; that he is not opposing himself to what they really wish for, namely their own good, but is, on the contrary, promoting it.¹³

Then, how is the comparison between Kant's notion of kingdom of ends and consequentialist requirement of maximizing the good applied to cast light on the issues regarding respect for persons in the case of *prima facie* conflicts of moral obligations? To answer the question, we must first look at Kant's two-level theory of value that emerges out of Kant's principle of humanity. This theory seems this. First, respect for rational nature must be considered as first of all prior to the value of happiness; second, the general good should be maximized as far as possible under the precondition of respecting human rational nature. These two requirements can be harmonious with each other since both of them are the necessary conditions of the fullest fulfillment of humanity, despite the fact that respect for rational nature is prior to promotion of human happiness. Kant's thought in the point can be interpreted to mean that respect for rational nature of persons is the basic prerequisite for human happiness and its promotion. “This principle of humanity and of every rational nature generally as an end in itself”, Kant writes, “is the supreme limiting condition of every man's freedom of action” (Gr., 130–1). Any legitimate happiness, in fact, according to Kant, any human happiness, must be fulfilled under the requirement of conforming to the moral law.

13 J. S. Mill, *Utilitarianism*, in Mary Warnock (ed.), *Utilitarianism, On Liberty and Other Essays* (New York: A Meridian Book, 1962), p.287.

However, when the promotion of the general good enters the requirement of the moral law as an essential element, as the formula of humanity demands, it seems that Kant did not fully realize the possibility of the conflict between moral obligations. He lacked explicit concern with the conflicting grounds of duty simply because of his commitment to a natural teleology and his assumption of a necessarily harmonious kingdom of ends. For Kant, there could not be unsolvable conflicts of duty. Since the concept of duty involves the objective practical necessity of an action, a conflict of duties is a conceptual impossibility. *Prima facie* conflicts of duties occur because *grounds* of obligations can conflict. That is, Kant seemed to think that *prima facie* moral conflicts come from conflicts between moral reasons. Although Kant had not very explicitly explained how conflicts between the grounds of obligation are settled, there are some traceable ideas in his ethics about solution of conflicts of this kind.

Conflicts between moral obligations occur not only between deontological constraints and the consequentialist requirement of maximization but also between strictly agent-centered duties. In the latter case, the principles of practical rationality tend to support the maximizing rationality. But there are really complex connections between practical rationality and moral rationality, which call for an explanation. Although the emphasis on the *value* of respect for persons alone cannot provide a rationale for agent-centered constraints, it is actually important to make clear what it is meant by respect for persons. Respect for persons, as has been shown in Kant, means respect for rational nature of every person. Deontologists usually rephrase this as meaning honoring some particular agent-centered constraints on actions. This interpretation, however, has no logically intelligible relation to Kant's own derivation of the formula of humanity. In practice, Kant's notion of respect for persons can be seen as agent-neutral, since Kant explicitly held that the respect involves respect for the moral law within oneself or others. By emphasizing that respect for persons is to be realized through honoring the moral law, Kant tried to distinguish moral motivation from incentives of self-love. Respect for persons cannot be thought of as the object of inclination. Instead, the object of respect is, Kant wrote, "nothing but law—indeed that very law which we impose on ourselves and yet recognizes as necessary. ...All respect for a person is properly only for the law (of honesty, etc.) of which the person provides an example" (Gr., 402n). It should be evident from this that, since the object of respect is established as the moral law, respect for persons cannot be coherently construed as an agent-centered value. This point is made more explicit in *The Metaphysics of Morals* where Kant pointed out "it [the respect] is not to be understood as the mere *feeling* that comes from comparing our own *worth* with another's. It is rather to be understood as the *maxim* of limiting our self-esteem by the dignity of humanity in another person, and so as respect in a practical sense" (MM, 449). In other words, since every rational being has his own dignity which is issued by his rational nature, one's self-esteem, one's realization of the values which he endorses, can never transgress *the dignity of humanity* in another person. But since the dignity of humanity is a universal matter, it follows that it cannot be limited only to some particular persons. Respect for humanity must thus be treated as agent-neutral. Each person is worth respecting only because he embodies the dignity of humanity. Further, since the dignity of persons as an intrinsic worth cannot be amounted to any other price, it is thus not exchangeable for anything that has merely such a price (Gr., 434-35). Respect for persons thus presupposes that all persons have equal moral status, that is, the same dignity.

Accordingly, Kant's doctrine of respect for persons is agent-neutral. The doctrine does not logically lend support to agent-centered constraints on maximizing the good. Even if the two-tier model of value we are advancing here requires that the value of rational nature be lexically prior to the value of happiness, one does not get agent-centered constraints. For the rationale for the constraints does not come from the disvalue of their being violated. On the other hand, however, it is not clear either, in Kant, whether it supports the consequentialist maximizing rationality requirement. But it seems to me that a limited defense of the requirement can be acquired by associating the doctrine with Kant's formula of kingdom of ends. I am conscious that, against the dominating trend in the interpretation of Kant's ethics, it is actually a quite dangerous task to try to introduce a normative consequentialist element into Kant's ethics. But let me make the tentative effort as plausible as possible.

The task first depends on showing that Kant's moral theory has a teleological structure. Since there have been fine and systematic arguments for the claim,¹⁴ I shall simply take it as granted. In fact, Kant's moral theory is teleological in a very simple sense—that is, Kant regards the ultimate purpose of moral life as *promoting* the fullest fulfillment and perfection of humanity. Now if we can show that the promotion of the kingdom of ends does not involve a basic priority of negative over positive duties, then Kant's ethics will have a consequentialist structure. For the thesis that there are agent-centered constraints can be seen as a refinement of the claim that negative duties are more stringent than positive duties.

Positive duties are frequently characterized as duties to aid, and negative duties as ones not to harm. For the sake of argument, we shall characterize these two notions in terms of Kant's terminology. While negative duties require treating persons as ends but not interfering with their pursuit of their legitimate ends, positive duties require not only treating persons as ends but also endeavoring to promote their legitimate ends. It is evident that, according to Kant's formula of humanity, a conscientious moral agent should perform not only negative duties but also positive duties so as to promote the harmonization of the kingdom of ends. Now, since rational nature is the source of all values and is thus the only thing that has unconditional value, it is lexically prior to all conditional values. It follows that we have a prior duty to save lives and promote liberty to the extent that they are taken to be prerequisite for the normal functioning of one's rational nature. Therefore, if we can do so without incurring significant loss or sacrifice on our part, we should do. "To be benevolent", Kant told us, is "to promote according to one's means the happiness of others in need, without hoping for something in return, is everyone's duty" (MM, 453). On this view, Kant did not even think that the loss or sacrifice made under the name of benevolence requires return or compensation. About the duty of beneficence I shall say more in the final section.

Now the hardest problem does involve sacrificing one person's rational nature itself, or sacrificing another's rational nature by oneself in favor of the rational nature of some others. We are

¹⁴ See, for example, Thomas Auxter (1982), *Kant's Moral Teleology* (Mercer University Press). Traditional interpretations of Kant's ethics usually ignore the contribution of the third *Critique* to Kant's ethical thought. The third *Critique* provides not only a well-founded rationale for interpreting Kant's ethics as essentially teleological, but also a coherent understanding of Kant's whole system of practical philosophy. See, for example, Y. Yovel (1980), *Kant and the Philosophy of History* (Princeton: Princeton University Press), and Harry van der Linden (1988), *Kantian Ethics and Socialism* (Indianapolis: Hackett Publishing Company).

naturally obligated to promote the conditions necessary for the existence of rational beings and the ends or happiness of rational beings as well. However, how can a concern for the value of rational beings lead to a refusal to sacrifice rational beings even when this would prevent other more extensive losses of rational beings? The paradox of deontology is reflected even more sharply in the Kantian notion of persons as ends-in-themselves. According to the Kantian line of thought, if we are able to sacrifice ourselves to promoting the harmonization of kingdom of ends, it seems that we should do so. However, are we simply treating others as means when we have to sacrifice them in order to promote the harmonization of kingdom of ends? If self-sacrifice is not incoherently treating oneself as means only, it seems that we are not treating others as means either in the case where promoting the harmonization of the kingdom of ends will involve sacrificing others.¹⁵ But this does stand in need of explanation.

Kant's formula of ends-in-themselves requires that one not use another merely as a means to serve a *subjective* end. However, Kant did not seem to tell us that persons cannot be used as a means to an *objective* end—the end that is the fulfillment of the universal duty to promote the well-being of others (MM, 452). When we have to sacrifice others in order to promote the general good, we aim at preserving the lives and liberties that would be otherwise lost by a prolonged conflict, and thus promote the well-being of more people. Since all rational agents have the same value, namely the same dignity, it seems practically reasonable to dissolve such moral dilemmas by preserving and promoting the lives and liberties of individuals to some maximal extent.

The defense of consequentialism from a Kantian perspective is limited. For it is dependent upon the assumption that, in the kingdom of ends, the maxims a rational individual wills would be in harmony with the maxims which every other rational will would will, and consequently, all would coexist in a state of lawful freedom. It follows that, in such a kingdom of ends, a fully rational being would be willing to take on such self-sacrifice to the extent that he had recognized that the sacrifice were necessary to promote the harmonization of the kingdom of ends. If the agent has to sacrifice others to promote a greater good, he does not seem to be treating them as means only. It is evident that the plausibility of the limited defense depends on whether the notion of kingdom of ends itself makes sense. But if morality must be understood as a cooperative undertaking, I believe that this notion does make some sense, though perhaps not in the Kantian sense. Even though the defense fails, it should be noticed that *it is from the consequentialist perspective* that we can show that the sacrifice of the innocent cannot be defended as a principle of public policy. Such kind of moral dilemma that involves the sacrifice of the innocent cannot be expected to be resolved in a moralized manner. But rather its solution will considerably lean on the general performance of social justice by reasonably arranged social institutions.

Now I need briefly to discuss the related problem about moral autonomy. The problem is especially relevant, given that moral autonomy is usually seen as providing the most important rationale for agent-centered constraints.¹⁶ Unfortunately, however, the defenders of constraints frequently

¹⁵ Harms to others involve moral offensiveness. For a detailed analysis of this issue, see S. Kagan (1989), *Limits of Morality* (Oxford: Clarendon Press), pp. 87–101.

¹⁶ See, for example, M. Slote (1985), *Common-Sense Morality and Consequentialism* (London: Routledge), chapter 2. Nozick is of course typical in connecting autonomy with side constraints.

lack a proper understanding of the concept. As a consequence, the rationale they try to provide for constraints also loses the desired force. Kant's theory of moral autonomy seems to me to remain the most influential and reasonable account of this idea. However, I shall show, once again, that Kant's account of moral autonomy does not lend support to the agent-centered constraints on maximizing the good, although it does indeed help to explicate the very nature of agent-centered constraints. The brief remark on moral autonomy also will serve to introduce the subject of the next section through the discussion.¹⁷

There is a vaguely delineated distinction between personal autonomy and moral autonomy. Even if the distinction is sound, I shall suppose that the notion of personal autonomy will not make sense without moral autonomy as its foundation. Therefore, my discussion is limited to moral autonomy.

Michael Slote's criticism of Bernard Williams in connection with his attack on utilitarianism is partly right because "even permissions to pursue personal projects and commitments cannot properly be explained or justified in terms of integrity or the unreasonable demandingness of act-utilitarianism."¹⁸ He is right because he recognizes that common-sense morality also allows one person to sacrifice his own interest, even if doing so does not aim at maximizing the general good. Therefore, it is the notion of moral autonomy, on his view, that provides the underlying rationale for the broad class of project-related and commitment-related permissions. Thus, an autonomous agent is usually regarded as the one whose capacities, beliefs and values are identifiable as *integral* to him and are the source from which his actions spring. But the characterization of autonomy has not sufficed to capture the essence of moral autonomy. For it seems impossible to decide whether an agent is autonomous in isolation from some shared attitudes and norms. However, if the willing of an autonomous agent appears subject to socially shared and applied norms that are not chosen by the agent, in what sense is he autonomous?

The question directly leads us to Kant's conception of autonomy. Kant distinguishes the 'true self' of practical reason from the 'natural self' of desires and inclinations. The true self is self-determining in virtue of rationally legislating the moral law for itself. Moral agents are autonomous in that they are not bound to any external authority and have the power to give law through their own wills. This is a familiar story that needs not to be repeated here. What is important is to see the implications of self-legislation. First of all we can notice that Kant introduces the notion of moral autonomy, in the *Groundwork*, to bridge between the necessity and universality of moral requirements and moral agents as a kind of sovereign legislator bound only by self-given laws. The transition can be explained by means of analyzing Kant's interpretation of the Categorical Imperative.

Simply put, Kant understands the Categorical Imperatives as a principle that is constitutive of a certain kind of rational activity and that creates and confers on rational agents certain powers. It serves as a higher-order 'decision procedure' through which the moral agent can assess the substantive maxims that underlie particular choices and actions.¹⁹ Kant's formula of humanity dictates the idea of

17 Here I have been indebted to Reath's discussion of the topic. See Andrew Reath (1997), "Legislating for a Realm of Ends: The Social Dimension of Autonomy", in *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge: Cambridge University Press), pp. 214–39.

18 Slote, *ibid.*, pp.25–6.

19 For the interpretation of the categorical imperative, see B. Herman (1985), "The Practice of Moral Judg-

universalizability test of one's maxim of action. The substantive implication of the universalizability test is of course that the reasons for action expressed in one's maxim should be reasons which anyone can regard as sufficient. Therefore, the Categorical Imperative is in fact a higher-order requirement of acting only from reasons that anyone can regard as sufficient, and thus it limits the range of permissible conduct. However, since it is through the universalizability test dictated by the Categorical Imperative that we decide whether reasons for an action are permissible, the Categorical Imperative also sets out and structures the activity of justification. Further, since a rational agent will be free when he acts in accordance with the moral law, and since acting in accordance with the moral law means making the maxim of action pass the universalizability test, autonomy can be understood as the capacity to formulate and act from reasons and principles that can be justified to other rational agents.

If autonomy is the capacity to construct and act from reasons and principles that can be justified to other rational agents, then autonomy can be meaningfully exercised only among a community of rational agents. For the justifiability of the reasons of one's action or the principle from which he acts will first depend on the reactive and evaluative attitudes from others. If one's action is to be made to embody the values or ends that reflect the dignity of a rational agent as a sovereign legislator, he must make his action to gain the agreement of the members of a community of rational agents. That is, his action must be guided by practical reasoning that any rational agent can acknowledge as valid and authoritative. This point is of a particular importance for our central thesis because it means that one must make his pursuit of ends fully compatible with the same pursuit of others. Insofar as one's exercise of his autonomy presupposes the possibility of shared reactive and evaluative attitudes, one person has a duty to promote the development and exercise of others' autonomy. For autonomy, when it is specified as a capacity to engage in deliberation through which one creates reasons for others, presupposes as the locus of its exercise a community of agents with the ability to guide their conduct by what they regard as good reasons. Certainly, Kant regards the exercise of autonomy as embodying and realizing the freedom of a rational agent from constraint by external authority to engage in certain kinds of rational activities. Autonomy is thus a symbol of the human endeavor to commonly step toward the kingdom of ends. Kant's concept of autonomy thus requires that one overcome private conditions in oneself, and think and act from a point of view that has universal validity and authority. Kant's account of moral autonomy will, I believe, lead to the thought that each individual should seek his own moral perfection with a view to promote and realize the moral ideal of the highest good, which must certainly be a cooperative undertaking. It is appropriate to close the section by quoting a paragraph that is also used by Kant to conclude his *Lectures on Ethics*:

The universal end of mankind is the highest moral perfection. If we all so ordered our conduct that it should be in harmony with the universal end of mankind, the highest perfection would be attained. We must each of us, therefore, endeavor to guide our conduct to this end; each of us must make such a contribution of his own that if all contributed similarly the result would be perfection.²⁰

ment", reprinted in her (1993), *The Practice of Moral Judgment* (Cambridge: Harvard University Press), pp. 73–93.

20 Kant, *Lectures on Ethics*, p. 252.

3 Contractualism, Fairness and Aggregation

The brief analysis of Kant's concepts of respect for persons and moral autonomy is intended to serve two purposes. First of all it is designed to deliver the important idea that morality must be seen as a common good and an essentially cooperative enterprise. Put this more precisely, not only is each person's interest best pursued together with others' interests under common moral rules and moral norms, but each person also has an obligation or duty to promote others' pursuit of their interests. It is undoubtedly true that any reasonable morality must somehow integrate or harmonize the self-interested perspective with the moral perspective. What is at stake is how the moral point of view should be conceived in the face of conflicting self-interests. I have been advocating that the moral point of view must be impartial in some sense for it to have universal authority and validity. In this respect, consequentialist morality is not out of the line with Kantian morality—as least as much as I understand them. I also showed that if the impartiality was to construed to mean some overdemandingness at all, then morality is really stringent and overriding in any event. But the claim that morality must be demanding and overriding is to be understood properly against the morally imperfect situations of the actual world, and its overdemandingness does not at all imply its inhumanity. For any plausible morality must serve human purpose and promote human well-being—but certainly not points to only some particular individual's purpose and well-being. I believe that the better we cooperate morally, the less exacting the requirements of morality are. In the second place, as I have tried to argue, if Kant's notion of kingdom of ends is genuinely a morally significant idea, then it is congenial with the consequentialist principled claim to maximize the general good. We have no reason to doubt moral reasonableness of the claim if we actually believe that certain values are certainly worth promoting generally and can reasonably specify them. Further, if it is irrelevant from what motivations we *objectively* promote the general good, it will also be irrelevant what decision procedure we adopt to arrive at the consequentialist goal of promoting the good. In the section, I shall mainly show that some form of contractualism—in my discussion, the Scanlon's version contractualism—actually specifies such a decision procedure, and that if the version of contractualism is to try to understand some plausible aggregations, it must be consequentially oriented. While contractualism generally leans on the idea of fairness, it is importantly noted that the idea cannot make reasonable sense and have a practical feasibility unless a deep-level idea of moral cooperation is first presupposed.

Contractualism has a complex spectrum. It is neither possible nor necessary to examine systematically every version in the spectrum. In particular, I have no space to discuss David Gauthier's contractarianism, despite the fact that it is important and actually relevant to our theme. I choose to examine Scanlon's contractualism because it is generally thought that it makes significant improvements of both Rawls' and Gauthier's contractualism, and has a wider range of application than its precedents.²¹ The reason for choosing Scanlon also consists in the fact that Scanlon recently

²¹ Scanlon has recently systematized his ideas in Thomas Scanlon (1998), *What We Owe to Each Other* (Cambridge: Harvard University Press). For a particularly preferred development of Scanlon's contractualism, see Barry (1995), *op.cit.*, especially pp. 67–71, 195–213. The widespread application of the Scanlonian contractualism is probably attributed to its natural affinity with Habermas as well, which Scanlon himself explicitly acknowledges.

has systematized his ideas on this matter and made his contractualism built on a more substantive philosophical foundation. However, my analysis of Scanlon's contractualism, too, has to be highly selective. For example, I shall not, for the time being, try to attack on his account of moral reasons and his views on well-being, nor do I discuss his contractualist reconstruction of various kinds of obligations that we owe to each other. Instead I shall only focus my attention on the essential ideas and the structure of his version of contractualism. My interest in examining his theory is limited. Firstly I want to inquire the way in which the notion of fairness is understood and applied. Secondly I want to show how Scanlon's present model is distinct from the complaint model that has been originally attributed to Scanlon (by, for example, Derek Parfit). The purpose to examine contractualism is to reveal its contribution to understanding the demands of morality.

Before entering discussion of Scanlon, I need to say something about why contractualism is particularly concerned with the problem of fairness and why it is accorded a (or even, *the*) central place in contractualist moral and political theories. This problem is, in our present context, traceable to Rawls's critique of and revolt against utilitarianism. The classical criticism of utilitarianism, which has been made famous mainly through Rawls and Bernard Williams, is of course that utilitarianism seriously disrespects the integrity and separateness of persons. As I have tried to show,²² the criticism is extremely radical and inappropriately exaggerated, not only because too much in the criticism still remains to be clarified, but also because we can completely separate a sensible consequentialism from the classical utilitarianism which is the target of Rawls's and Williams's attack. However, the notion of fairness does seem, at least in the contractualist, to mark the distinction between consequentialism and contractualism, insofar as the contractualist insists that the claim of *each individual* should be given a *separate* consideration. Although it is not very clear how the contractualist does this because even Rawls's difference principle can contain—in fact, it does contain—an aggregative element, the notion of fairness is itself worth a special attention.

The issues of fairness typically arise in the context of social cooperation where there is cooperative effort among individuals that is aimed to achieve some beneficial goal. In the context of social cooperation, thus, we can identify at least three levels of fairness: each of which involves respectively the procedures of cooperation, the rules of cooperation and the distribution of benefits and burdens. Therefore, the value of fairness is seen as mainly related to the moral claim of equality. If equality were of an intrinsic value, then fair distribution, fair arrangement of social institution and fair procedure would have to be regarded as intrinsically good.

It is certainly false, however, that consequentialism or even utilitarianism generally resists the ideal of fairness. First, if fairness is intrinsically good, it is a value that is worth promoting in its own right in the consequentialist moral framework. Second, if fairness is instrumentally valuable, that is, if fair social arrangement, fair procedure and fair distribution themselves are productive of social utility, then the consequentialist or the utilitarian has no reason to reject the idea of fairness. Therefore, there is no conflict between fairness and utility when the former is applied in order to maximize utility. The utilitarian can also provide a justification for the inequalities his system permits if the sum of advantages is greater than it would be without the inequality. Of course, if the utilitarian could accept the ideal of equality, he might assert that an inequality was acceptable

22 See note 1.

only if it benefited everyone. If the utilitarian aims at maximizing utility, then his acceptance of the ideal of equality does not hinder him from adopting strategic considerations to do so. On the other hand, when unfairness leads to disutilities, the utilitarian will naturally reject it. In some trivial sense, fairness can always be reduced to utility, although whether we accept this as a reduction will depend on conventions. This thought is strategically similar to rule-consequentialism. The rule-consequentialist can maintain the methodological 'meta'-rule that any rule is always to be dropped from the system of rules if actual or hypothetical acceptance of the rule would bring about counterproductive or even disastrous effects.

If fairness is to be regarded as part of well-being,²³ then there cannot be conflict between fairness and the maximization of well-being. But this solution to conflict is at best ad hoc. It does not seem the case that liberal egalitarianism requires treating each person as absolutely equal at the expense of the possibility of raising the aggregative level of well-being. Aggregation would not be unacceptable if the advantages it produced would be larger than those any other alternative could, and if redistribution of the advantages could benefit everyone in some way. Therefore, what is genuinely significant is how we should cope with the relationship between fairness and the maximization of the good if there are really conflicts between them. Since fairness is made to reflect the ideal of equality, answer to the question will, thus, first depend on our understanding of equality and of equality of what. The latter problem is, as it is well-known, extraordinarily complicated, and cannot be systematically dealt with here. For, in order to answer the question, we have to first make clear the relation between natural unfairness and social injustice, the relation between efficiency and incentives in connection with free market, and finally the relation between personal responsibility and social responsibility.²⁴ I present the complexity so as to point out that it may be that neither contractualism nor consequentialism represents the last word on the problem of fairness.

It is very difficult matter to find a general solution to the conflict among equality, rights and utility. It is easy to see that both rights and utility can limit pursuit of equality since equality is not, after all, the only value. Although the interests represented by rights are among the most basic, a moral view that gives no weight to the value of overall outcomes, as Nagel has convincingly argued,²⁵ cannot be correct. In fact, there is a closer connection between egalitarianism and utilitarianism than between egalitarianism and libertarianism. Both of them have a much richer, though more obscure, conception of moral equality, and are applied first to the assessment of outcomes rather than of actions. The difference between them is often expressed as consisting in an understanding of the moral claim of equality. While classical utilitarianism counts everyone fully and equally in terms of his contribution to maximizing social utility, egalitarianism marks itself by taking into account the relative urgency or importance of every individual's interests and needs. The egalitarian attributes a priority to improving the well-being of the worse off over the well-being of the better off. Thus, moral equality as seen from the egalitarian point of view consists in taking into account

23 The proposal is made by John Broome. See John Broome (1990-1991), "Fairness", *Proceedings of the Aristotelian Society* 91: 87-102.

24 These problems have been moderately discussed by Nagel in his (1991), op.cit.

25 This is derived from Nagel's critique of Nozick, see Nagel (1975), "Libertarianism without Foundation", reprinted in Thomas Nagel (1995), *Other Minds: Critical Essays 1969-1994* (New York: Oxford University Press), pp. 137-149.

the interests of each person, subject to the claim of priority, in determining what would be best overall. However, it should be noted that the utilitarian need not, in general, to resist the claim of priority if he can look at social utility in adequate ways. He can accept egalitarianism as a strategic consideration. He can, for example, see the effects brought about by radical inequality (say, social instability) as disutilities. This requires, of course, the utilitarian to adopt a more global perspective in trying to maximize utility. There can be an affinity between utilitarianism and egalitarianism because both of them adopt a consequentialist perspective in evaluating social institutions.

The problem is now this. Egalitarianism gives one way to settle the conflicts between personal interests. But the consideration of priority does not solve all conflicts because conflicts can exist even at the level of the most basic claims. How can the claims of each person given a separate consideration when conflicts occur at the same level of moral claims? This is a question that the contractualist claims to solve. The typical line of thought for the contractualist is to design an original bargaining position wherein the parties can arrive at unanimous agreement under certain hypothetical conditions. It is not need necessary to repeat the contractualist's design of the position and specification of the conditions. What concerns me is the difference, if any, between the Ideal Contractor perspective and the Ideal Spectator perspective.

The difference is, according to Rawls, the one between a distributive conception of impartiality and an aggregative conception of impartiality. The characterization is, as I have pointed out, misleading because it sees an aggregative principle in this way as if it could not also be fully deliberately distributive.²⁶ The maximizing feature of a principle is not incompatible with the fact that it can also be distributive. For example, we can conceive that the consequentialist can maximize in such a way that he specifies differentiated weights to the interests of different individuals involved. As a result, we can generate globally aggregative outcomes from locally distributive values. What is important here is, of course, that maximization must be subject to certain morally reasonable constraints, no matter whether it is aggregative or not. Now Rawls tries to build the requirement of fairness into the original position by designing a 'veil of ignorance' that temporarily deprives the parties of the knowledge of their identities. However, if fairness is to be acquired on a footing of equality, Rawls's original position leaves no room for the parties to bargain to each other precisely because the deprivation of their identities makes the parties ignorant of their actual ends. Therefore, it is unclear how Rawls's contractualism settles the problem of conflicting interests. The veil of ignorance may be too thick so that it does not seem to take the claims of each person into account in a fully separate manner. Even in order to accommodate his fundamental egalitarian idea that principles of justice have to be acceptable above all to those who stand to do least well under them, Rawls would have to import "an ethically driven baseline."²⁷ Rawls's argument for his principles of justice, as Brian Barry observes,²⁸ does not end up with the contractualist procedure of rational choice until he begins to introduce the "strains of commitment," which represent substantive moral considerations. If the problem of justifying equality becomes the problem of justifying the pursuit

26 See Rawls (1971), *A Theory of Justice* (Cambridge: Harvard University Press), pp.36, 44; Rawls (1974-75), "The Independence of Moral Theory", *Proceedings and Addresses of the American Philosophical Association* 47, especially p. 19.

27 Rawls (1971), *ibid.*, p. 59.

28 See Jonathan Dancy (1993), *Moral Reasons* (Oxford: Basic Blackwell), pp. 52–67.

of results that are acceptable to each person involved, then self-interests cannot be taken as the starting point of bargaining for reasonable unanimity. The claim of equality is a genuinely moral claim, and it cannot be fully understood only on the basis of the consideration of self-interests.

It is time to return to Scanlon's treatment of the problem, which, as will be seen, in practice represents the complex tendency to combine deontological with consequentialist evaluation standards.²⁹ To see this, we need to examine some essential features of Scanlon's contractualism.³⁰

Two things mark the departure of Scanlon's contractualism from Rawls's. The first one is that Scanlon completely gives up the notion of the veil of ignorance: the parties are aware of their identities and hence of their own interests. The second is that "the parties are assumed not merely to be seeking some kind of advantage but also to be moved by the aim of finding principles that others, similarly motivated, could not reasonably reject" (p.4). The motivation to seek reasonable agreement seems to me to be most characteristic of Scanlon's contractualism. For Scanlon, the mere wish to seek to justify one's action to others on principles they have no reason to reject provides *both the motivation and content of morality*. This is so because Scanlon takes as the standard of moral rightness of an action the reasonable non-rejectability of a principle from which the agent acts. For Scanlon, the reasons that guide our thinking about right and wrong are also the reasons that motivate us to act in a certain way. For both of them "flow from the same more general reason: the reason we have to live with others on terms that they could not reasonably reject insofar as they are also motivated by this ideal" (p.214). Scanlon's own full statement of the underlying principle of his theory is as follows:

Scanlonian Principle:

An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior which no one could reasonably reject as a basis for informed, unformed general agreement.

Indeed there are problems even only insofar as the interpretation of the principle is concerned.³¹ Since I do not aim at giving an all-aspect evaluation of Scanlon's contractualism, I will not get involved in all such problems. But rather my leading purpose here is to show that the reasonable non-rejectability principle of moral rightness—as I call it now—is not morally unladen at all. This is not surprising. For once the veil of ignorance is thoroughly given up and self-interests are no longer considered as the starting point of rational bargaining, reasonable agreement cannot be reached except by appealing to our shared moral intuitions. This is not to deny the theoretical importance of Scanlon's contractualism, but rather his contractualism is, I believe, a more realistic one. For even if it cannot pretend to draw morality itself, it would have been a quite important achievement if

29 According to Nagel, almost all theories of justice are theories of procedural justice. But we can have two kinds of standards for evaluating the system that adopts some theory of justice. Consequentialist standards evaluate each system on the basis of the kinds of results it tends reliably to produce. Deontological standards evaluate each system on the basis of the intrinsic character of the procedures themselves. See Thomas Nagel (1997), "Justice and Nature", *Oxford Journal of Legal Studies* 17 (2) 302–321.

30 The page numbers indicated in the text will be referred to Scanlon's book in question.

31 Barry discusses some of such problems, see Barry (1995), *op.cit.*, pp. 67–72.

specific moral principles and norms could be derived from and through the procedure of reasonable rejection.

In fact, the desire to justify one's action to others on principles which they could not reasonably reject is itself, or at least embodies, a genuinely moral motive, because having the desire has assumed that one should live and act on terms that other can at least reasonably accept—if not reject at all. This should be very clear, I believe, from Scanlon's intentional emphasis on the point that he is speaking of “‘principles which no one could *reasonably* reject’ rather than ‘principles which no one could *rationaly* reject’” (p. 191). The distinction between the rational and the reasonable, as far as I can see, can be illustrated as follows. While the former can be understood as mere prudence, namely, being rational means doing whatever most conduces to the fulfillment of one's own aims, the latter exhibits a moral disposition, namely, being reasonable means having the particular form of moral sensitivity that underlies the desire to engage in fair cooperation.³² The basic motive can be used to derive morality itself only when the desire to engage in fair cooperation and to shape the terms of fair cooperation can be explained in a non-begging question way. But I have not seen this possibility in Scanlon's case.

This should be clear, I believe, firstly from Scanlon's account of reasons for reasonable rejection. The kind of reason is what Scanlon has termed ‘generic reasons’—reasons that we can see that “people have in virtue of their situation, characterized in general terms” (p. 204). Generic reasons thus characterize certain general characteristics that people have in certain situations. Each of such reasons derives its force solely from the features that the subject has in virtue of the particular situation he is in. Hence they are not limited, as Scanlon repeatedly insists, only to considerations or claims of well-being. But rather they can include even reasons generated by moral considerations, for example, of fairness and responsibility. Insofar as principles represent general conclusions about the status of reasons for actions, some principles can be reasonably rejected even if actions from them do not significantly influence well-being, narrowly understood as Scanlon does. In particular, an account of moral motivation cannot be reduced to considerations of well-being. For, according to Scanlon, judgment based on the gain or loss in well-being can make sense only within a specific moral framework. Although such gain or loss can be in many cases the most relevant factor in deciding whether or not a proposed principle could be reasonably rejected, we can give the notion of well-being moral significance and ascertain its boundaries only when substantive moral choices and moral claims are invoked. It is easily seen, therefore, that once the veil of ignorance is thoroughly abandoned, some unanimous agreement can be reached in terms of the generic reasons model only when it is made on a thick moral basis. Scanlon's present model thus contains too many things in the reasonable rejection.

For Scanlon, to be moral is of course to make one's action fully justifiable even from the standpoints of others: To justify an action to others is to offer reasons supporting it and to claim that they are sufficient to defeat any objections other may have. It is evident that the procedure of reasonable rejection is to be made to reflect the familiar idea of universalizability test. However, for the agent to be able to apply the universalizability test, he must first of all have some foreknowledge

³² For a further explication of the distinction, see John Rawls, *Political Liberalism* (New York: Columbia University Press, second edition, 1995), pp. 48–52.

of what reasons should be excluded from the realm of relevant reasons and what reasons should be included in it. Scanlon even thinks that justification of an action involves not only a process of weighing or comparing the seriousness of conflicting interests, but rather it also must be considered within some more complex background structure. We can say, therefore, that justification involves practical deliberation and judgment of relevant reasons against our shared norms of practical life. Insofar as morality is a specific subset of those norms, Scanlon can agree, I believe, that the personal standpoint must be able to integrate somehow some moral point of view in order for reasonable agreement to be reached.

If the principle of reasonable non-rejectability by every single individual is merely, in my opinion, a formal decision procedure from and through which specific moral norms and principles are derived against our shared norms of lives, then it is not surprising that reasonable agreement cannot be reached except on the basis of certain substantive moral reasons. Scanlon himself is happy to acknowledge this point. For example, he writes that our judgment of what forms of justification are sufficient “is guided by, and expresses, our understanding of a moral principle”(p.201). Barbara Herman more appropriately formulates this point in her interpretation of Kant’s categorical imperative:

But if actions are to be assessed (directly) by the CI procedure through their maxims, there is a need in the Kantian system for some kind of independent moral knowledge. An agent who came to the CI procedure with no knowledge of the moral characteristics of actions would be very unlikely to describe his action in a morally appropriate way. Kant’s moral agents are not morally naïve. ... It is because [the agents] already realize that the actions they want to do are morally questionable that they test their permissibility. It is hard to see how any system of moral judgment that assesses maxims of action could work with morally naïve or ignorant agents.³³

In fact, if our interpretation of Kant’s notion of moral autonomy is correct, then the wish to justify one’s action to others on terms that they could not reasonably reject embodies in itself a desire to be morally autonomous.

Scanlon’s contractualism has a stronger flexibility by both building context-sensitivity into the procedure of reasonable rejection and adopting the generic reasons model as the basis of reasonable rejection. The guiding reason for Scanlon to employ the model is to preserve the separateness of considerations of the claims of each person and try to overcome the aggregative objections that can be placed on the original complaint model. The appeal to generic reasons evidently incurs, as Scanlon himself realizes, a charge of circularity with respect to Scanlon’s attempt to derive substantive moral principles from the procedure of reasonable rejection. Scanlon’s response to the objection is to argue that, in his contractualist framework, moral justification will take a holistic or coherentist form rather than a foundationalist form. Here I will not deal with the circularity objection because I believe that Scanlon can be right in the matter if his contractualism is not so ambitious to pretend to ‘deduce’ morality itself. What I am interested is in showing how some consequentialist element

³³ B. Herman (1993), *op.cit.*, p. 75.

can occur significantly in his treatment of priority and aggregation, and how his contractualism can find its most essential representation still in the spirit of the complaint model, when complaint is treated in a moralized manner.

The first thing we need to do is to see what the complaint model looks. Utilitarianism is thought to combine the point of views of different individuals by adding together benefits and harms that belong to different lives. For the egalitarian, the points of view of different individuals must be kept separate and implausible aggregation of gains and losses must be abandoned. One way to do this is to determine the best outcome by means of what Nagel calls ‘pairwise comparisons.’³⁴ We compare the situation of each individual with the situation of every other individual against each possible alternative until we find the individual with the strongest claim to be helped. Once such comparisons have been made, then the best result will be, according to Nagel, the one that is least unacceptable to whom it is most unacceptable. We thus get the minimax complaint model, which can be conveniently formulated in Scanlon’s terminology as follows:

The Minimax Complaint Model:

An individual can reasonably reject a proposed principle just in case general acceptance of the principle will generate a complaint in the individual that is significantly greater than that which anyone else will have under some alternative principle.

Intuitively speaking, the complaint model means that best outcome is the one that makes the strongest complaint as weak as possible. It should be immediately noted that there could be quite different interpretations of who is the person to whom an outcome is most unacceptable. If we interpret it as meaning the worse off, then the formula will generate the principle of maximin, which says that the best outcome is the one in which the worse off person is best off. On the principle of maximin, those who are worse off are to be given an absolute priority: we should benefit them even though we can benefit them less than we could benefit others. Further, if how unacceptable an outcome is to someone is determined by how much worse it is for him than the outcome that would have been best for him, we have the principle of minimax loss, which says that the best outcome is the one in which the greatest loser loses least. In the end, if, in judging how acceptable an outcome is to someone, we need to consider both his level and his loss, then we get the principle of minimax weighted loss, which says that the best outcome is the one in which the greatest weighted loss is as small as possible.³⁵ It should also be noted that Scanlon’s formula can generate what is essentially similar to the principle. The difference is that while Nagel’s formula is applied to outcome, Scanlon’s formula is applied to choice—the best choice is the one that no one could reasonably reject.

These different interpretations are linked to the way in which a complaint is measured. Although how to measure a complaint is not our central concern, it is helpful to take a brief look at the difference between these different interpretations. First of all it should be noted that among the

³⁴ See Nagel, “Equality”, in *Mortal Questions* (Cambridge: Cambridge University Press, 1979), pp. 106–127; also see Thomas Nagel (1991), op.cit., pp. 67–8.

³⁵ These complexities are approached in much detail by Parfit in Derek Parfit (1989), *On Giving Priority to the Worse off*, unpublished manuscript.

three interpretations, only the last one has an anti-aggregative implication. The maximin principle represents a moral asymmetry, that is, the thesis of priority. The principle allows aggregation over benefits and burdens if such aggregation would generate complaints as least as small as any alternative. The principle is a consequentialist one in the sense that it takes the value to be promoted to be the satisfaction of complaints in proportion to their seriousness. It is possible to combine the maximin with minimax's claims about moral asymmetry without generating an anti-aggregative implication of the latter. For example, when complaint minimization must take into account the numbers of complaints and the size of individual complaints, where the latter might be measured in terms of the relative level of well-being, the size of loss (i.e., the amount by which she is worse off than she would have been under some alternative) and absolute level of well-being.

It is not hard to see that, while the claim to give priority to those who have bigger complaints or are worse off in some way undermines both certain versions of utilitarianism and libertarianism, it does not, in general, have an anti-aggregative implication. Therefore, if the separateness of persons means that the claim of each person should be given a separate and distinct consideration, and if egalitarianism is marked by the thesis of priority, it is not clear how there can be a positive connection between egalitarianism and the separateness thesis,³⁶ precisely because the thesis of priority is not incompatible with—but instead it even requires—aggregation. It is thus quite odd when Nagel claims that the unanimous acceptability is achieved by seeking the outcome that is least unacceptable to whom it is most unacceptable. Nagel's claim is odd because his egalitarian principle is essentially a maximin principle, and the principle dictates choosing the individually least unacceptable outcome only in the sense that it chooses the outcome whose worse off individual is better off than the worse off individual in any other outcome. A maximin principle may choose an outcome that everyone finds it unacceptable except for the person who is worse off. Therefore, the interest in seeking an individually least unacceptable outcome does not straightforwardly turn into the interest in unanimity. It is not clear at all that why a principle assigns certain benefits to everyone directly makes the principle or its results acceptable to everyone. To finish the transmission, Nagel needs to explain that providing a person with a minimum level of welfare should be interpreted as making the outcome acceptable to that person. However, Nagel seems to deny this point because he even thinks it is not true that the worse off cannot reject the guaranteed minimum in favor of more equality.³⁷

The point of this discussion is, of course, that it is ill-conceived to argue from the priority claim to (the approximation to) unanimity. We give priority to those who are worse off through no fault of their own, ultimately speaking, not because we need to seek the unanimity in opinion, but because it is *morally* objectionable that people's overall life prospects should be very different through no fault of their own. The claim of priority is a genuinely moral claim, rooted in our basic moral consciousness. It is, in my view, to be seen as a cornerstone and, at the same time, a touchstone of any adequate moral theory, but not as something of which a moral theory pretends to provide a theoretical explanation. Thus, it seems to me doubtful that any contractualism can

36 For a detailed argument for this point, see D. McKerlie (1988), "Egalitarianism and the Separateness of Persons", *Canadian Journal of Philosophy* 18 (2): 205–226.

37 See Nagel (1991), *op.cit.*, pp. 80–81.

provide a non-begging question explanation for it. This point should be clear from both Rawls's and Scanlon's case.

Both Rawls and Scanlon believe that the separateness of persons provides support for contractualism. Their rationale is, of course, that the separateness of persons requires seeking distributions that are acceptable to each individual involved, rather than seeking the biggest balance of benefits over harms across lives. Rawls's version of contractualism explicitly eschews unanimous agreement among actual individuals with self-knowledge of their full identities and established preference. As a result, in Rawls's contractualism, the problem of rational bargaining among different parties collapses into a problem of rational choice for a *single* individual under certain conditions specified by the veil of ignorance. As John Harsanyi had neatly argued, bargaining under uncertain conditions remarkably leads to the version of utilitarianism that maximizes average utility, not to Rawls's version of contractualism that has the difference principle as a component of it.³⁸ Rawls supposes that the difference principle is what mutually disinterested people choosing principles to advance their own interests from a veil of ignorance would agree in choosing. However, as has been convincingly argued, it is simply false that the difference principle is derived from Rawls's original position, even though the principle does pick a unique Pareto-optimal point that is a Pareto improvement on an equal distribution.³⁹ If the argument is sound, then Rawls's egalitarianism cannot be derived from his contractualist original position. Even though the separateness of persons might be supposed to lend some support to contractualism, it is not clear at all how contractualism results in egalitarianism. The claim of separateness is evidently incompatible with the permissibility that egalitarianism can accord to aggregation.

The conclusion thus far reached is that, if the egalitarian thesis of priority is morally well-founded, then it is not the case that sacrifice of some persons or their interests in favor of some others is never permissible. If distribution happens at all, it always makes at least some individual have complaint, namely, that individual who is at least a little worse off than he would have been under some alternative. The problem is now this. If some sacrifice is morally justified or permissible, how does it happen that a principle which requires or grants such a sacrifice could be reasonably rejected by every individual involved or affected? How is contractualism reconciled with the permissibility of moralized sacrifice? If the contractualist attempts to accommodate the claim of priority and some plausible intuitions about aggregations within his framework, the version of contractualism will too have to be 'moralized' in some way. But once contractualism must, for its full intelligibility, be moralized, the so-called opposition between contractualism and consequentialism will significantly narrow down. For this version of contractualism will also have to integrate a teleological ingredient into its conceptual framework. Let me explain.

It is not very clear, at a first glance, how Scanlon's contractualism accommodates the claim of priority. It may be surprising, as Scanlon himself is aware, that the claim of priority can unexpectedly play a central role in the argument for Rawls's difference principle because that is seen as

38 John Harsanyi (1977), *Rational Behavior and Bargaining Equilibrium in Games and Social Situations* (Cambridge: Cambridge University Press).

39 For a detailed discussion of this point, see Brian Barry (1989), *Theories of Justice* (Berkeley: University of California Press), especially pp. 213–134, 330–339.

a paradigm of contractualist argumentation (p. 223). But of course the claim cannot be derived from the original position alone. This is surprising exactly because the claim of priority should, as Scanlon concedes, be regarded as a feature of certain particular moral context rather than a general structural feature of contractualist moral argument. However, here arises a puzzle. The problem of priority for the worse off typically involves the personal reasons for rejecting a principle that concern components of well-being. Given Scanlon's present generic reasons model, considerations from well-being cannot be the only factors dictating the rejection of a principle. Moreover, judgments of loss or gain in well-being are not, for Scanlon, made only against the cost to the individuals involved. This point, in his words, is:

In deciding whether a principle could be reasonably rejected we do not just compare the costs, to individuals on various situations, of abiding by it, or not doing so, on a specific occasion. We have to consider also the general costs (and benefits) of its acceptance. ... Rejecting a principle on this ground does not involve giving special weight to one's interests (pp. 224–5).

It thus becomes quite unclear whether some people should be given priority if certain other generic reasons outweigh somehow the reasons concerning the loss of well-being of those people. If these other generic reasons were concerned with rights and entitlements, some claims of priority would definitely be unlikely to be met might their satisfaction mean some full or even only partial loss to the rights or entitlements of some other people. The appeal to generic reasons would thus make the claim of priority become less clear and definite. The contractualist essential intention to make the claims of each person considered separately and distinctly seems incompatible with some inevitable aggregation with regard to giving priority to those who are worse off or have the most urgent need.

Of course, Scanlon may be saying that consideration of priority should be based on a global estimation of the general costs and a more plausible measurement of the strongest complaints. The problem is thus whether contractualism is, in principle, capable of accommodating the thesis of priority. That is, whether contractualism can recognize at all the moral priority of the worse off or the needy. Scanlon does think that his version of contractualism can accommodate the thesis of priority by treating it not as a general structural feature of contractualism, but as a matter of applying the rule of reasonable rejectability to principles of a certain kind—those that concern distribution of some transferable good. We are thus to explain why certain principles of priority such as the rescue principle and the principle of reasonable helpfulness could not reasonably be rejected by every individual involved.⁴⁰

However, it seems that Scanlon has done nothing to argue for this point except by claiming that “it is very plausible to *suppose* that this (rescue) principle ...is one that could not reasonably be

⁴⁰ According to Scanlon, the rescue principle says that if you are presented with a situation in which you can prevent something very bad from happening, or alleviate someone's dire plight, by making only a slight or even moderate sacrifice, then it would be wrong not to do so. The principle of reasonable helpfulness says that it would be wrong to reject some help even when it did not involve significant sacrifice on our part.

rejected, at least not if the threshold of sacrifice is understood to take account of previous contributions” (p. 224, my emphasis). A complete explanation of this can be provided only when Scanlon has shown that we have a duty or obligation to help the needy. The duty cannot be understood in the light of the contractualist model because we do not usually think that doing benevolence is one thing that is issued under some contract. For, according to contractualism, we owe obligations to other only if others owe similar obligations to us, as can be easily seen in the case of commitment, promise, and assurance. What the contractualist model normally results in are perfect duties, not imperfect duties, although the distinction is, as will be seen in the next section, questionable.

Hence, if Scanlon is to argue that in deciding rejectability of a principle, “what is appealed to is not the weight of my interests or yours but rather the generic reasons that everyone in the position of an agent has” (p. 225), and thus that such principles as the rescue principle could not be reasonably rejected, then he includes too many *moral* considerations in the process of reasonable rejection. We could not reasonably reject some principle of priority probably because we can always conceive that each of us might sometimes have to be at bad situations and thus ask for help. In the point, Scanlon, like Hume, is building some sympathy mechanism into our moral judgment because he does believe that whether a principle of priority could be reasonably rejected depends on the standpoint of those whose level of well-being is lowest. However, it is actually unclear, as in the case of Nagel, that whether the standpoint from the worse off must be unanimously accepted by all people, which at least calls for an argument. In this respect, the only difference between Scanlon and a utilitarian like Mill is that sympathy or compassion, though inevitable, is still very limited in Scanlon. For Scanlon believes that we are morally required to take others’ interests into account only when “we can very easily do so” (p. 225). The only contribution contractualism makes to the problem of priority is, by my lights, that the rule of reasonable rejection by everyone may help to establish the upper limit of permissible sacrifice.

Earlier I said that Scanlon’s contractualism presupposed but not explained the claim of priority. But indeed just only in one sense the claim, as a mark of egalitarianism, is genuinely relevant to the more general idea of reasonable rejection. Both Nagel and Rawls want the principle of priority to reflect some egalitarian requirement. But both of them approach the problem from the notion of social division of responsibility between social institutions on the one hand and individuals on the other hand. The basic function of social institutions is to perform social justice through the legal, political and economic framework of a society. If the basic social structure performs the function in such a way that individuals would have no reasonable complaints about their access to what it is designed to guarantee—for example, various kinds of rights and opportunities to economic rewards—then individuals would be able to pursue freely their own ends within this framework. For Scanlon, however, the two-subject approach may disregard the role personal choice and personal responsibility may play in individuals’ lives, which a fuller idea of equality would have to consider. Therefore, for Scanlon, any morally important principle must, for its legitimacy and reasonableness, make reference to separate claims of each person.

This is undoubtedly an important idea. But I have failed to see that it is particularly relevant to the thesis of priority, just as Nagel’s argument for the maximin principle has not established the unanimity requirement. In fact, I believe that the thesis of priority has other moral foundation than the one the contractualist provides. For the contractualist account of non-rejectability of

certain *specific* principles of priority will have to suppose in advance that we have a duty to help the needy, as a consequentialist can recognize the claim of priority because he regards some inequalities as particularly bad states of affairs that must be avoided or even eliminated as far as possible. The moral equality of egalitarianism itself embodies an aggregative idea, namely, it requires giving priority to the group that is worse off, in determining what would be best overall. When the contractualist like Scanlon can recognize the moral reasonableness of the claim of priority, but attempts, at the same time, to preserve the contractualist requirement to give the claim of each individual a separate concern, the only way in which he can accommodate both is by supposing that each individual has been able to recognize the moral importance of the priority claim—that is, recognize that each greatest complaint should bear a special moral weight—and build it into his own moral deliberation. It turns out that this is really the way in which Scanlon deals with aggregation, to which we now turn.

I have attempted to show that aggregation is not in principle implausible. Even utilitarian aggregation is not generally unacceptable. An aggregative principle may be implausible not because it is not distributive, given that aggregation *can* be one way to distribute. The plausibility of an aggregative principle depends on the moral justification we can provide for it, which depends, in turn, on the particular moral standpoint from which the justification is made and the particular context wherein the principle is applied. Therefore, the debate over aggregation is substantially a debate over alternative moral standpoints. The claimed difference between contractualism and consequentialism is, among other things, that the former pretends to give the claims of each person a separate concern. This is made possible, for Scanlon, since “all the grounds for rejecting a principle ... arise from generic reasons that each individual would have who occupied a certain position in the situations to which that principle applies” (p. 229).

Since the contractualist model is essentially anti-aggregative, it is not clear how plausible aggregation can be explained within the model. Even when Nagel urges that the best way to find the individually least unacceptable alternative is by the method of individual pairwise comparison, he frankly concedes that “no plausible theory can avoid the relevance of numbers completely.”⁴¹ As Nagel, Scanlon himself is explicitly aware that contractualism may “go too far in the opposite direction, disallowing any appeal to aggregative benefits even in cases in which the right thing to do does seem to depend not only on the impact that various actions would have on particular individuals but also the number of individuals who would be so affected” (p. 230). Thus, if contractualism is of any full plausibility, it must be able to accommodate some of our intuitions about the moral relevance of numbers. The problem is thus this: insofar as the simplest case is concerned, how can contractualism accommodate the belief that we are permitted or even required to save the greater number in the cases of equal harms?

The problem is particularly acute for contractualism since it requires giving each individual’s generic reasons a separate consideration. In contrast, consequentialism can easily deal with this case because it takes maximizing the general good, or minimizing harms, as a standard of moral rightness. Therefore, for a consequentialist, maximizing the good is *morally required*, unless we have particularly overriding moral reasons not to do so. If contractualism is to deal with this case,

41 Nagel, “Equality”, p. 125.

it must explain that every single individual involved cannot reasonably reject a principle favoring a greater number. However, at a first glance, no aggregative case can pass so strong a requirement like this. For, whichever group is favored, any one member in another group can always complain that he would have been better off if the alternative principle had been adopted. Moreover, he might even have been better off if the choice were randomly determined. In this case, therefore, it seems that no principle can pass the test of reasonable non-rejectability by every single individual.

Now Scanlon's solution to the puzzle is by appealing to two things: one is the idea of formal or procedural fairness, the other is the assumption that the reasons for rejecting a principle are not merely based on considerations of the cost to any particular individual. The assumption implies that the contractualist treatment of aggregation also depends on "factors other than effects on [individuals'] well-being" (p.231). Thus, for Scanlon to be able to cope with the case of aggregation, he must be able to show that we have morally acceptable reason for favoring some aggregative consideration. However, if we have already had a certain *moral* reason for an aggregative case, then it would seem to risk circularity for Scanlon to establish the principle supporting aggregation by the procedure of reasonable rejection.

Of course, Scanlon does not think that circularity is genuinely involved here. His strategy is to make appeal to procedural fairness. Given that every individual's life is of the same value and the same importance, it seems morally arbitrary to favor one group to another one, because the members in the group that is not favored always have morally plausible complaints. That is, if the moral claims of every single individual must be separately considered, then it seems that we could not get morally particularly satisfactory account of why one group rather than another one is favored. We must somehow find a morally acceptable reason to break the symmetry in moral complaints between the members of two groups, separately considered. Here Scanlon's claim is this. The idea of the same value and same importance of every individual's life entails the morally acceptable reason that every individual has the same chance for survival (or, more generally, the same chance for life prospect). Thus, if the importance of saving every individual member had been fully taken into account, it would not be unfair, other things being equal, to favor a greater number. That is to say, it would not be unfair to choose which group is favored by means of a weighted lottery procedure. For example, suppose that A has five members, B three members. Then the agent has a 5/8 chance of favoring A and a 3/8 chance of favoring B. Therefore, *from the agent's point of view*, A should be favored.

However, the solution is plausibly acceptable only when it is seen from the agent's point of view, which is an impersonal standpoint. It should be noted that the strongest objections to consequentialism arise, not from the agent-neutral perspective, but from the agent-centered perspective—in particular, the point of view of the victim(s). As we have seen, any member of the group that is not favored can always have moral complaints. If every individual has a right to life, and if rights, as libertarians usually claim, cannot be overridden, then it seem that no individual's rights can be sacrificed, not even for the greater good of the same kind. *Therefore, those individuals that are not saved could recognize the principle favoring a greater number as reasonably non-rejectable, only if they had accepted or even internalized an impartial point of view.* They must acknowledge, in other words, that every individual has a reason to promote the greater good, even when it would require sacrificing themselves.

In fact, Scanlon concedes that, from the point of view of the victims, “it is not clear that they can reasonably reject this principle [favoring a greater number]” (p. 234). Certainly the members in smaller numbers may even favor to determine their luck not by a weighted lottery but by a random procedure of choice. In spite of the fact, Scanlon writes, “it does not follow that they have reasonable grounds for rejecting the principle” (p. 234). What the ‘reasonable grounds’ means exactly here? For Scanlon, such grounds do not arise from the procedure of a weighted lottery itself. But rather they come from the obviously moral consideration that, when the importance of every individual’s life has been fully taken into account, morally right actions are those that yield the greater benefits. The claim is of course a consequentialist one. However, it is to be compatible with the contractualist formula only when, as I have pointed out, we suppose that reasons for rejecting a principle must, too, be seen from an impersonal or impartial point of view. A principle supporting some aggregation cannot be reasonably rejected, not (or, at least, not merely) from the standpoints of the individuals involved, but (or but also) from a certain objective point of view. Put this in another way, a principle cannot be reasonably rejected by every single individual involved only if those individuals have somehow ‘internalized’ an impartial point of view. This, I believe, gives a much clear sense in which reasonable rejection depends not only on the cost to *any particular individual*, but also—probably more importantly—on substantive moral reasons.

The idea of procedural fairness may be useful in determining whether a principle could be reasonably rejected. But it is evidently incomplete in moral justification. It is not difficult to illustrate this point by some examples. John Broome, for instance, believes that the only adequate theory of fairness will be a natural extension of the fairness of lotteries, because the notion of fairness gives a good sense of what is equality.⁴² To get some sense of what the fairness is meant, we can consider an example that is taken from Broome. Suppose that someone has to be sent on a very dangerous and probably fatal mission. One person out of a group must be chosen to go. Among the people, one, called Wang Jun, has special talents that make him more likely than the others to accomplish the mission well without risking his life. For the consequentialist, it is morally permissible to make Wang Jun sent to accomplish the mission. However, for Broome, this would be unfair to Wang Jun. It would be fairer to hold a lottery among all the candidates. Of course, Broome concedes that if it is very important to have the mission preformed well, fairness may have to give way to expediency, and thus Wang Jun should be sent. However, even if sending Wang Jun without a lottery were, on balance, be right, it would nevertheless be unfair to Wang Jun. Therefore, it seems that there is a tension between fairness and rightness.

Now let’s consider another example to see how the notion of fairness works.⁴³ Suppose that one hundred people were to be sent to remove an unexploded mine that was situated in a certain field. They would work at enough distance from each other so that if one encountered the mine, he alone would be injured. But certainly one of them would encounter the mine if it had not been removed. Wang Jun was especially good at doing this since he had ever been an engineer. It follows

⁴² See John Broome (1990–1991), op.cit., Cf. Broome (1991), *Weighing Goods* (Oxford: Basil Blackwell), pp. 192–201.

⁴³ The example is taken from Sophia Reibetanz (1998), “Contractualism and Aggregation”, *Ethics* 108: 296–311. But I use it to serve another different purpose.

that he would not be injured when he happened to find the mine. But he happened to be at weak bodily conditions at that time. It follows that he would undoubtedly catch serious cold if he took the task. Let's suppose that the amount of harm Wang Jun would receive from catching a cold is H , and that the amount of harm any other person than Wang Jun would receive is $20H$. Given that each person had a chance of only $1/100$ encountering the mine, each had an expected harm of $1/100 \times 20H$, or $1/5H$. Therefore, according to the principle of reasonable rejectability under the procedural fairness, it seems that none of other people could reasonably reject a principle that permits Wang Jun not to go out to remove the mine.

It is not the case, of course, that the person who happened to be injured if Wang Jun would not take the task could not reasonably reject the principle in question, because he can really. We may accommodate the objection by adopting actual harm rather than expected harm as a measure of complaint, even if I shall not discuss the possibility.⁴⁴ But I need to point out that whatever way we adopt to refine the principle of reasonable rejectability, we are supposing that the consideration of moral seriousness of consequences must play a more important role than the consideration from procedural fairness does in determining the reasonable rejectability of a proposed principle. It follows that the principle of reasonable rejectability must integrate a consequentialist ingredient into its rational ground. Further, it is also easily seen that we can always have worries and disagreements about what is fair, which makes it highly unlikely to decide upon reasonable rejection merely on the basis of procedural fairness. In fact, I believe that we could not have proper understanding of what is fair apart from what is morally reasonable.

This point can be illustrated more clearly by means of substantial examples. For example, consider Scanlon's own example about Jones. Here, Jones worked in a TV station. Unfortunately, in working, some electric equipment fell on his arm, and he was undergoing severe pain. But Jones could not be rescued unless the transmitter would be turned off for fifteen minutes. However, a World Cup football match was being processed and a huge number of people were watching. Scanlon agrees, quite compatible with our ordinary moral intuition, that, in that case, a principle would be unlikely to be reasonably rejected, which says that Jones should be saved from his suffering. The audience could not reasonably reject the principle because they suffered only slight inconveniences, namely, a short-term interference with their amusement. The principle is aggregative because it is based on summing up the relative costs of the two groups, and no point of view in the group of audience is separately taken into account.

Now, let's imagine another case in which a principle may not be reasonably rejectable *from a single individual's point of view*, but rather a special weight is given to an aggregative consideration. Suppose that Li Yang worked in, not a TV station, but a nuclear power station. Further suppose that his arm was suddenly twined by some electric wires that were connected to some falling equipment, through no fault of his own. It would not threaten his life in a short term, say, twenty minutes. But nonetheless he would suffer extremely painful electric shocks. Li Yang would be saved from his pains only if the electric supply was immediately cut off, which would, however, lead to emitting some nuclear pollution, and some people would thereby be killed. However, it is no guarantee that the accident would be removed within twenty minutes. In that case, Li Yang's life was really in

⁴⁴ This is the approach Reibetanz intends to adopt.

danger. In spite of the uncertainty, in the case, the right principle, I believe, would be the one that does not permit to cut off immediately the electric supply.

These examples show that whether or not a principle is reasonably rejectable would depend on the relative costs and benefits which acceptance of the principle would supposedly bring about. How to weigh between costs and benefits is a practical problem, which is not our present concern. But basically speaking, the balance between costs and benefits is normally connected to the greatest complaints. A morally acceptable principle must always be the one that would make the weighted greatest complaint as small as possible, as compared to any other alternative. As we have seen, the greatest complaint can be aggregative, i.e., coming from a certain group, although it can also arise from separate individuals. Therefore, at least in the case of aggregation, the generic reasons model Scanlon now holds is not, in its essence, distinct from the complaint model. The only difference Scanlon emphasizes between these two models is that we must also take into account other generic reasons than effects on well-being in the reasonable rejection of a principle. However, what Scanlon's examples and other similar ones have shown is merely that considerations of the cost to single individuals are not the only determining factors as for whether a principle is to be rejected. For moral seriousness of consequences or effects which acceptance of a principle would bring about is not merely determined by considerations of such cost. The generic reasons model is designed to guarantee that even an aggregative principle could not reasonably be rejected by every individual. But this is made possible only if the grounds for reasonable rejection are morally thick reasons.

Therefore, it seems obvious that the problem with contractualism is not whether or not it allows an aggregative principle. Where aggregation is concerned, what is at stake is the problem of justification. The question of whether an aggregation is plausibly acceptable cannot be solved only by reference to formal fairness. But rather it involves *substantial moral considerations*. If the plausibility of an aggregation depends on substantive moral considerations, it is highly doubtful that insofar as aggregation is concerned, contractualism "provides a clear alternative to utilitarianism and other forms of consequentialism" (p. 229). Here I am not claiming that contractualism does not, *in general*, constitute an alternative to consequentialism. For contractualism itself is intended as an alternative to utilitarianism or consequentialism. I am only claiming here that *if* contractualism is to accommodate aggregation within the framework of its principle of reasonable non-rejectability by every single individual involved, then not only must it integrate some consequentialist ingredients, but also the grounds for rejections must be morally thick. This point is, in Scanlon's words, that if "the case for aggregation and the constraints on it" are to be "grounded in a unified conception of the consideration owed to each individual" (p.231), it is possible only if each individual involved also holds an impartial moral point of view. In other words, the separateness of consideration can accommodate aggregation only if a certain impersonal point of view is generally accepted and endorsed. Let me spell out this point.

First of all, we observe that the reasons for rejecting a principle can—frequently, must—based on substantive moral considerations. Even in the case where only procedural fairness is invoked, a principle favoring a greater number is justified just by the substantive moral consideration, as Scanlon puts it, that "everyone's presence makes a difference to the procedure that is followed, counting in favor of the action that would lead to his or her being saved" (p.234). This does not constitute a refutation of consequentialism precisely because a consequentialist can completely agree and accept

the claim. The consequentialist, we must remember, can be a value pluralist. He can adopt a certain ranking principle that assigns different weights to the relevant moral claims of affected individuals in accordance with their relations to the value to be promoted. For example, if equality was the consequentialist goal to be promoted, the consequentialist could assign extraordinarily great weights to the claims of the worse off to the extent that it would promote equality. In this case, aggregation will not be morally unjustified.

There is no problem with the consequentialist's adoption of value pluralism and relevant ranking principles. The only worry about the 'ranking' version of consequentialism, as far as I can see, arises from the thesis of value incommensurability. If the relevant values are not commensurable, then the consequentialist cannot properly weigh and rank them. As a result, he cannot plausibly establish and perform some maximizing goal either. However, if incommensurability is really a problem with consequentialism at all, presumably it too constitutes problem with Scanlon's generic reasons model. For if reasons are, epistemologically speaking, based on recognition and judgment of values, then incommensurability means that we could not form shared reasons.

Nevertheless, I do not believe that our *basic* values are ultimately incommensurable at least because we can, as a matter of fact, form shared reasons. Without the possibility, it does not make sense to speak of justifying one's action to others. In fact, the desire to form shared reasons simply originates from our basic motive to justify our actions to others. If justifiability to others, together with the related test of universalizability, provided a rationale for moral rightness of actions, and if there were some positive enforcement mechanism for morally right actions, then people would probably tend to form shared reasons in deliberating about their actions. Therefore, if contractualism can deal with aggregation on the basis of shared reasons, then consequentialist maximization can be also justified by appealing to the reasons we can morally share. As I have noticed, the contractualist treatment of aggregation requires assuming an impartial moral point of view while it also claims, at the same time, to preserve the individualist basis of contractualism. However, the 'individualist basis of contractualist' can be compatible with aggregation only if we suppose that aggregation itself embodies, in a liberal sense, some 'general will' that can be shared by every individual involved or affected. But if there were really such a will for the case of aggregation, then consequentialism would not be practically implausible were it made to reflect this will. Scanlon's insistence on the difference between the generic reasons model and the complaint model is essentially, in my opinion, an emphasis on the importance of an impartial moral point of view in solving the problem of aggregation in a way compatible with the alleged individualist basis of contractualism. It is undoubtedly important to make any principle acceptable to the individuals involved or affected. But in most cases, unanimity will crucially depend on recognition and endorsement of moral reasons.

So far I have given a critical examination of Scanlon's treatment of aggregation. I have shown that aggregation is not *in principle* incompatible with the 'individualist basis' of contractualism if we can really share certain morally important reasons. This idea is, I believe, what Scanlon wants the generic reasons model to represent. For Scanlon, aggregation is not impermissible in principle, but the only plausible form of aggregation is, on his view, the one that is produced on an 'individualist basis'. However, if plausible aggregation is virtually based on the reasons we can share, I do not see how it is significantly different from the alleged contractualist distribution. Nevertheless,

Scanlon does think that there is a difference between ‘contractualist’ aggregation and ‘consequentialist’ aggregation:

The contractualist argument I have just stated includes a form of aggregation, but it is aggregation *within* each person’s life, summing up all the ways in which a principle demanding a certain level of care would constrain that life, rather than aggregation *across* lives, adding up the costs or benefits to different individuals (p. 237).

Plausible aggregation is not achieved by “summing up the small benefits to many individuals to reach a sum that outweighs the serious losses to a few” (p. 237). But this says nothing more than the fact that number is not the only determining factor in deciding whether aggregation is plausible. But rather moral seriousness of consequences is crucial. Moral seriousness, of course, is not merely a matter of addition of numbers. No sensible consequentialists decide upon which course of action should be favored solely in terms of numbers. Instead they make judgment in the light of moral seriousness of consequences. Given that aggregation is essentially a matter that involves different individuals or different lives, Scanlon’s conception of ‘intrapersonal aggregation’ strikes me as quite puzzling. This notion makes sense only relative to interpersonal comparison with regard to the moral claims of individuals about well-being or something like this. Of course, we do perhaps have a way to understand the notion of intrapersonal aggregation, that is, in terms of the idea of temporal neutrality to the effect that one should give equal weight to one’s own interests (not limited only to his self-interest, narrowly interpreted) *across time*. This is actually what the term ‘prudence’ usually means.⁴⁵ But this does not seem what Scanlon wants to mean when he speaks of intrapersonal aggregation.

It seems that the notion of intrapersonal aggregation is closer to the idea that aggregation is plausible only if no individual has reason to object to it. It is usually thought that one way to achieve this aim is to make a series of pairwise comparisons, which has been claimed to be capable of producing non-aggregative outcomes. However, as I have shown, it is not very explicit that pairwise comparison would result in unanimity. Moreover, pairwise comparison does not necessarily generate non-aggregative results, depending on the interpretations we may have of complaint. On the other hand, if pairwise comparison is essentially non-aggregative, then contractualism will probably disallow aggregation at all. Aggregation is talked about only in a metaphorical sense: nobody can reasonably reject a principle that favors one group to another. However, if one group had to sacrifice their interests in a certain way in favor of another group, then the kind of sacrifice could not reasonably be rejected only if, as insisted in the above, the individuals in the sacrificed group had been so fully impartial that they could understand and endorse the moral requirements implicit in substantively fair considerations.

Up to this point we are in the position to see Scanlon’s intention in insisting on the difference between his present generic reasons model and the complaint model. If the reasons for rejecting a principle would only depend on considerations of the cost to the well-being of some particular

⁴⁵ See Nagel (1970), *The Possibility of Altruism* (Princeton: Princeton University Press, 2nd ed., 1978) and Derek Parfit (1984), *Reasons and Persons* (New York: Oxford University Press), Part II.

individuals, then it seems that no such principle could pass the test of reasonable non-rejectability by every single individual. It is possible, however, only if the reasons for rejecting a principle also include substantive moral reasons. It is really under the generic reasons model that contractualism is likely to solve the problem of aggregation. We can favor an aggregative principle to a non-aggregative principle also because the acceptance of the former would bring about morally less serious consequences than the acceptance of the latter would. Here, moral seriousness of consequences is judged not only by number but also, and probably more importantly, by the magnitude of harms. However, judgment about moral seriousness of consequences would depend on our shared reasons, and in particular, on our adoption of an impartial moral point of view. Full fairness should therefore be understood as *impartiality under moral requirements*.

The essential difference between contractualism and consequentialism with regard to moral rightness is, Scanlon claims, that the former regards moral rightness of actions as depending only on whether a principle can be reasonably rejected from various individual standpoints, while the latter defines it as producing the best overall effect. But the contrast is evidently somewhat misleading. For the contractualist does not refuse—in fact, he has to require—adoption of a consequentialist ingredient in his deliberation about the reasonable rejectability. Promoting the good is still the only standard of moral rightness we have, even though it is not morally irrelevant in what way we do that. Reasonable unanimity from every different standpoint is itself a morally desirable goal that is worth promoting because it embodies the idea of equal respect. However, it is quite interesting to note that reasonable unanimity could not be arrived at in a moral vacuum. If we can really achieve reasonable unanimity, it is because we can recognize and share certain important moral reasons. Achievement of reasonable agreement is to be seen as constitutive and productive of the promotion of the good. We need reasonable agreement because we need form an impartial moral point of view that issues the rational authority of morality and provides a basis for dissolving further disagreements.

My central aim in the paper has been to refute a ‘possessive individualism’ in moral theory and to argue for an ethics of responsibility. For the purpose I have been trying to show how the ideal of equal respect should be understood, both from a Kantian perspective and from a contractualist perspective, although I do not pretend that my argument for this has been sufficiently complete. It is true that Kant’s legal philosophy may actually be described as focusing on individual rights. But it would be a seriously incomplete, if not ultimately mistaken, understanding of Kant if we ignore at all the important point Kant himself makes, namely, that rights themselves express a deeper concern for human dignity. Human dignity is in turn the capacity of humans to act responsibly. Therefore, it is the awareness of responsibility that opens up the way to a profound understanding of human freedom and to a genuinely normative conception of rights. Moral responsibility is that which requires us to cooperate to take responsibility for the world where we live and prosper. Kant’s duty-based ethics can have a natural affinity with consequentialist morality because the latter is essentially, on my understanding, an ethics of responsibility. In the remaining section, I shall try to show how the idea can be used to cast light on our understanding of the demands of beneficence.

4 Moral Demands and the Duty of Beneficence

There are many difficult and complex problems under the title of this section. It is extremely impractical to deal with all these problems in the limited space. For my purpose, it will be enough to focus on only two problems. One is concerned with the rationale for the distinction between perfect and imperfect duties, another with understanding of the demands of beneficence if it turns out that the distinction in question cannot be properly drawn as some people usually hold. Both of these two problems are closely relevant to our central theme. For I am advocating that every human agent has a duty to promote the general good precisely in the same sense as the one in which he has certain strictly deontological duties. Since the distinction between duties of justice and duties of beneficence is typically thought to derive from Kant, it is both convenient and favorable to concentrate only on his ideas on this matter.

The problem we are considering must, first of all, be connected with our attitudes toward supererogatory acts. It is usually thought, in our long ethical tradition, that we should demarcate a clear line between what is obliged to do and what would be morally good and praiseworthy to do so that we can leave room for supererogation.⁴⁶ Supererogatory acts are regarded as those that are lie ‘above and beyond the call of duty’. In viewing them as supererogatory, we are thinking of them as actions that it is not wrong of the agent not to do. This idea makes at least certain moral acts—typically, those that concern doing benevolence—*optional*. If the idea is correct, it seems that we are not morally *required* to promote the good, even if it would be morally permissible or even good for us to do. Therefore, a complete defense of consequentialism needs to show why this idea is flawed.

There are a lot of attempts, from quite different motivations, to keep supererogation as a distinctive category of an adequate ethical theory. For example, some writers argue that there is a *general* conflict between reasons of autonomy and reasons of beneficence, and that the endeavor to be morally perfect will prevent one person from being taking a direct interest in anything other than keeping moral rules (Kant) or the welfare of others (utilitarianism).⁴⁷ This view seems to me completely wrong because it assumes, in an *a priori* way, that morality and good lives ultimately conflict. I believe that my account of moral autonomy has been able to account for why this view is wrong. It is argued that the principled reason for taking the duties of beneficence as optional is importantly related to consideration of the cost to the agent. This is a point that a consequentialist can agree and endorse. But the fact that it is within the agent’s moral rights for him to hold back from sacrifice does not fundamentally mean that beneficence is not a duty. To see this, we must be clear what kind of duty beneficence is.

To answer the question, let’s turn to Kant. Two things need to be done in the regard. First we need to show that beneficence is, for Kant, a duty. That the duty is imperfect does not imply at all that it is optional. The distinction between perfect and imperfect duties is not the one between what one is obliged to do and what is good to do but strictly optional, because it is all quite alien to Kant’s ethics to divide what he means by duty into what one really must do and what it would be good to do. It is about the second point that we need to say something more.

⁴⁶ For example, see J. O. Urmson (1958), “Saints and Heroes,” in *Essays in Moral Philosophy* (edited by A. I. Melden, Madison: University of Washington Press).

⁴⁷ Cf. Susan Wolf (1982), “Moral Saints”, *Journal of Philosophy* 79: 419–39.

Given our foregoing discussion of Kant's notions of respect for persons and moral autonomy, it will be relatively easy to illustrate the first point. As has been seen, Kant's formula of humanity requires that a conscientious agent perform not only negative duties but also positive duties as far as possible so as to further the harmonization of the kingdom of ends. "To be beneficent, that is, to promote according to one's means the happiness of others in need, without hoping for someone in return," Kant says, "is everyone's duty" (MM, 453). Beneficence is everyone's duty because it is indispensable for promoting the harmonization of the kingdom of ends, which is, for Kant, the fundamental aim of human lives. Beneficence is a duty, however, in a more fundamental sense, namely, it is a means to help others to fulfill and perfect their rational nature, which embodies the moral ideal of respect for persons. However, respect is a duty that is to be "put under obligations to duties" (MM, 402). Beneficence is necessary, Kant also realizes, because it is a necessary means for correcting the consequences brought about by unjust social institutions:

Having the resources to practice such beneficence as depends on the goods of fortune is, for the most part, a result of certain human beings being favored through the injustice of the government, which introduces an inequality of wealth that makes others need their beneficence. Under such circumstances, does a rich man's help to the needy, on which he so readily prides himself as something meritorious, really deserve to be called beneficence at all? (MM, 454)

Two important ideas emerge out of the passage. In the first place, beneficence is made necessary because the unjust arrangement of social institutions make some people disadvantaged through no fault of their own. In the second, Kant evidently did not think that the beneficence is something whose performance is universally worth calling as embodying some meritorious kind of act. It is simply a duty whose fundamental aim is at respecting the rational nature of each person—in the case, those who are in need.

Then, in what sense is beneficence an imperfect duty? The perfect/imperfect distinction is not, for Kant, correspondent to the distinction between what one has a duty to do and what is 'above and beyond the call of duty' to do, since an imperfect duty is a genuine duty in its own right. Answer to the question may be found in the statement that "beneficence is the maxim of making others' happiness one's end, and the duty to it consists in the subject's being constrained by his reason to adopt this maxim as a universal law" (MM, 452). The perfect/imperfect distinction thus should be understood as a contrast between the duties to act directly in accordance with a certain specified rule and the duties to adopt a maxim or embrace an end. That is to say, imperfect duties have some indeterminacy in their performance: they allow a 'play room.' Like perfect duties, imperfect duties alike require us to act. But what we are to do exactly cannot be spelled out in general terms. Imperfect duties allow some latitude not allowed to perfect duties. They permit latitude not only in the sense that they set very broad parameters for satisfying a maxim, but also in the sense that the agent has a freedom to determine how he performs an imperfect duty in accordance with the actual situations he is in. It is possible that a principle of beneficence would permit the agent to omit altogether to act beneficently in certain circumstances in which he might have practical difficulties in helping others, provided that he acts beneficently in other circumstances, and that he

really had adopted a maxim of beneficence.

The essential features of imperfect duties can be further explained by examining Kant's approach to the limits of beneficence. Although Kant did not believe that beneficence requires getting repaid, he did think that there could be limits to the sacrifices that beneficence requires making of the agent. Moreover, he did not, in general, make the limits of sacrifice fully explicit:

But I ought to sacrifice a part of my welfare to others without hope of return, because this is a duty, and it is impossible to assign determinate limits to the extent of the sacrifice. How far it should extend depends, in large part, on what each person's true need is in view of his sensibilities, and it must be left to each to decide this for himself. For, a maxim of promoting others' happiness at the sacrifice of one's own happiness, one's true needs, would conflict with itself if it were made a universal law. Hence this duty is only a *wide* one; the duty has in it a latitude for doing more or less, and no specific limits can be assigned to what should be done. The law holds only for maxims, not for determinate actions (MM, 393).

Nevertheless, a more explicit specification of the limits can be found in the statement that "How far should one expend one's resources in practicing beneficence? Surely not to the extent that he himself would finally come to need the beneficence of others" (MM, 454). Kant's guiding idea in deciding the limits of sacrifice may be summarized in the following thesis: one has a duty to advance his own rational nature and help others to promote their rational nature, to the extent that his doing so does not involve unreasonable sacrifice on his part and does not involve acting immorally. The reasonableness of sacrifice is decided upon in terms of whether it would lead to significant loss of the conditions necessary for preserving one's own rational nature.⁴⁸ The latter limitation can be understood in terms of the aim of beneficence, that is, beneficence is one way of promoting the harmonization of the kingdom of ends.

Now we are in the position to make some further comparisons between perfect and imperfect duties. Early I had mentioned that one way to alleviate the clash between personal and impersonal standpoints is to put much of the responsibility for securing impersonal values such as beneficence into the hands of social institutions. There are two main problems in the proposal that are worth discussing. The first one is concerned with its fundamental feasibility or practicability. It is usually said that the duty of beneficence is an imperfect duty, and thus that it cannot be enforced by impersonal social institutions. Here the duties of beneficence are contrasting with such perfect duties as the duties of justice, which are thought to be enforceable. I am not certain that the claim is right. If beneficence is a public good (it seems to me it is), then it is not implausible for it to be enforced in some ways, should the cost of enforcement be far lower than the cost of attaining the good in alternative ways and far smaller than the benefit of attaining the good.⁴⁹ It would not be implausible, for example, that part of the differentiated taxation for each citizen should be used to

⁴⁸ This is evidently close to Peter Singer's principle as well as to Scanlon's rescue principle.

⁴⁹ Allan Buchanan discussed this point in some detail in his (1987), "Justice and Charity", *Ethics* 97: 558–575

serve the enterprise of benevolence. This is actually one way to make the distribution of moral demands fully fair. It is largely because moral demands have not been fully abided by that they appear to be quite demanding. Under the conditions of merely partial compliance, the moral requirement of promoting the good as possible as one can do, especially when it is considered as a rightness standard of actions, necessarily appears too demanding for those who do so.⁵⁰ The requirement of full compliance is in reality in conformity with some facts about our moral psychology—it embodies, for example, the idea of fair play.

The problem is of course whether the duties of beneficence can be enforced at all. Kant's remarks on the limits of sacrifice in doing beneficence seem to mean that the maxim of beneficence cannot be sanctioned as a universal law. That is to say, the permissible latitude with regard to the duties of beneficence makes them unsuitable for enforcement since attempts would be afflicted by abuse and arbitrariness and would lead to, in the end, highly unpredictable intrusions. Here we are thus faced with a dilemma that is fully similar to the paradox of deontology we discussed before. If beneficence would have to involve harms to someone in some way that this person cannot fully consent to, how should I do? On the one hand, if I failed to act, I would fail to do my duty to those who are in need and thus fail to promote an objective end. On the other hand, if I acted, I would have to result in harm to at least some individuals. Kant's position on the extent of the demands of beneficence is not very explicit. As I have shown, we can have a limited justification of the sacrifice of or harm to the innocent that is used to serve an objective end, if the benefits are sufficiently large *and* if the victim can recognize the importance of harmonizing the kingdom of ends. It should be noted that the latter condition only makes sense within the Kantian moral system. For the formula of the kingdom of ends implies that the maxims a rational agent wills are in harmony with the maxims that every other rational agent would will. In spite of the fact, the limiting feature of the justification nonetheless has a positive implication, namely, that each rational agent should in principle avoid doing harm.

It may be that full compliance of moral demands will inevitably result in some coercion, provided that it is done under the non-ideal conditions of the world. Kant was in fact aware that coercive activity is not at all inconsistent with respect for moral autonomy of persons if coercion is pointed to those who fail to act as they morally ought. Indeed, "coercion is itself a hindrance or resistance to freedom." But "if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this is consistent with freedom in accordance with universal laws, that is, it is right" (MM, 231). Furthermore, although beneficence itself cannot be externally legislated (see MM, 231–232), Kant nevertheless thought that the *duties* of beneficence sometimes must be established as a demand of justice, and thus can be externally enforced.⁵¹

50 For a further discussion, see Liam Murphy (1993), "The Demands of Beneficence", *Philosophy & Public Affairs* 22: 267–192.

51 More sufficient account can be found in *The Metaphysics of Morals* 323–328. For example, a typical paragraph is this: "The general will of the people has united itself into a society is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to

Of course, it is not true that the duties of beneficence are to be externally enforced in a *general* way. For in practice it cannot be done in the way. We can aid others not merely through providing material resources with them, even though their basic needs are usually satisfied in that way. But the non-enforceability of the duties of beneficence does not mean that it is morally permissible to disregard them in some circumstances. It is completely wrong for you to fail to save a drowning child if you can do so with only slight or even moderate loss to you and if you are the only one who is expected to rely on. That the duties of beneficence are imperfect should be understood to mean that performance of this kind of duties depends on particular conditions or circumstances that are concerned with both the agent and the aided. If there are two drowning children, and you and another individual happen to pass through the path nearby the lake, it may be permissible for you save one of them and leave another to the other individual if you have to catch a flight. It is not morally wrong, according to Liam Murphy, for you only to do your duty (or your share of some duty) under the condition of full compliance, even if you actually do it only under the condition of partial compliance. Of course, it will be morally praiseworthy if you do more even under the condition of partial compliance. This, I think, provides a quite sensible explanation of supererogatory acts. That is to say, supererogatory acts are *not* acts that are above and beyond the call of duty. They are acts that are beyond the partial compliance of moral demands. Supererogation is thus a matter of degree. In particular, for Kant, supererogation is not a distinctive ethical category that is over and beyond the range of duty, since his notion of the kingdom of ends assumes the conditions of the full compliance of moral demands.

It seems to me that, in principle, there are no limits to the demands of morality's requirement that we promote the good. Promoting the good is the only fundamental standard of moral rightness there is and the ultimate aim of our moral lives as well. I have tried to show that what is crucial to understanding the 'limits' consists in clarifying the notion of the good and settling the fair distribution of moral demands. Both of these problems are strongly controversial and concerned with our understanding of the moral point of view. The desirable moral point of view is, as I see it, an impartial one, which is to be achieved by living under the idea(l) of Kant's kingdom of ends. This means that it is shaped through the reasons we can share, and through the mutual recognition of and respect for rational nature of each person as a human being. This is a conclusion that, I believe, can be reasonably drawn from my discussion of Kant's ethics and Scanlon's contractualism. It is from the impartial point of view that the good of every rational agent also should be included in the consideration of the general good that is to be promoted. This idea is also crucial to resolving the paradox of deontology. While the appeal to the cost to the self can provide a rationale for agent-centered constraints, I had also shown that they should not be understood as imposing *general* limitations to the promotion of the good. This can be further seen from my analysis of Kant's ideas on moral autonomy and respect for persons. All I have said is not to deny that there can really be conflict and clash between the standpoint of some particular individual and the impartial moral point of view. The tension between conflicts of this kind can be alleviated only through, as far as I can see, some positive interaction between individual moral consciousness and collective social justice. This is an idea that also has been foreseen by Kant in that he thought that social and po-

provide for even their most necessary natural needs" (MM, 326).

litical institutions are aimed to provide external conditions necessary for moral perfection: “true politics cannot take a single step without first paying homage to morals.”⁵² The moral standpoint I am advancing will tend to lend some support to a liberal republicanism, and result in a refusal of a morality of self-ownership.

⁵² For a further explication of the relationship between morality and politics/legality, see, for example, Patrick Riley (1982), *Will and Political Legitimacy* (Cambridge: Harvard University Press), chapter 5; Riley (1983), *Kant's Political Philosophy* (New Jersey: Rowman and Littlefield). Riley's interpretation of Kant is powerful, although I do not agree with him that Kant is the most adequate of social contract theorists. In this respect, I find Mulholland's view more plausible. Mulholland has convincingly argued that Kant's views effectively balance the idea of separateness of persons with the idea that property depends on a public general will that is able to redistribute wealth. See L. A. Mulholland (1989), *Kant's System of Rights* (New York: Columbia University Press).