

**THE END OF WELFARE AS WE KNOW IT? SCANLON VERSUS
WELFARIST CONSEQUENTIALISM**

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A notable achievement of T.M. Scanlon's *What We Owe to Each Other*¹ is its sustained critique of welfarist consequentialism.² Consequentialism is the doctrine that one morally ought always to do an act, of the alternatives, that brings about a state of affairs that is no less good than any other one could bring about. Welfarism is the view that what makes a state of affairs better or worse is some increasing function of the welfare for persons realized in it. I shall argue that Scanlon's critique, though containing much of interest, fails on its own terms.

Scanlon's book addresses fundamental issues of moral theory, and his discussions of welfarism and consequentialism are intricately woven into his treatments of these issues. On several of these large topics his insights are profound, so the reader might easily gain the impression that a strong momentum of argument against welfarist consequentialism is developing. Assessing the argument at each of its nested stages corrects this mistaken impression. Scanlon's arguments are indeed insightful but not in ways that should budge the consequentialist from her position.

REASONS

Scanlon has the idea that reasons often function to frame deliberation and choice, and do so in ways that indicate that choosing and acting reasonably are not matters of maximizing the fulfillment of some complex overarching goal in the way that

consequentialists suppose is the case. Reasons often work to exclude classes of considerations from having any bearing on subsequent choices. Adopting something as a goal gives that thing a special weight and place in decision making; from then on the adopted goal does not just compete on equal terms with the myriad other things that might have been adopted as goals in determinations of what should be sought and promoted. As an example of a choice-framing and consideration-excluding reason, Scanlon cites the decision to play to win when one meets a friend for a tennis match. The thought that one should play to win screens off what might otherwise have been salient considerations in deciding how to play, such as the consideration that if the friend loses the match his feelings might be hurt. Practical reasoning does not then take the form of maximizing the production of best outcomes all things considered, and not all reasons take the form of considerations that affect the calculation of best outcomes. A reason is a different kind of animal from what the consequentialist takes it to be.

What Scanlon says about tennis playing and playing to win sounds right to me but has no tendency to impugn a sensible consequentialism. The key here is to keep straight the different levels of abstraction in describing the consequentialist approach to practical reasoning. As is well known, the consequentialist principle just states a criterion of right action, and is not per se a practical guide to decision making. Since human brains do not have limitless computing capacity, we could not at each moment of choice review all possible acts and all their possible outcomes and calculate what to do according to some maximizing function. Hence as a practical matter we need short cuts to decision making such as heuristics, rules, social norms, training and habit, and deference to established convention and authority. All of these props and guides to decision making are to be

assessed according to their tendency to promote better decisions than alternative modes of decision. The decisive clue that these props and guides are tools to the promotion of best consequences is that in a case where one happens to come to know that ignoring the guidelines will lead to a better outcome in this case, the supposed reasons generated by the guidelines simply evaporate. In the tennis play example, deciding whether or not to play to win and abiding by the decision and ignoring counterconsiderations to some extent may be well and good for imperfect human reasoners. But if we imagine that one suddenly realizes that one's friend, huffing and wheezing, is in danger of physical collapse unless play is slowed down, or that one's friend is a far better competitor than one had thought and is toying with one's best efforts and rendering them merely ridiculous, so that carrying through on one's resolve to play to win has avoidably bad consequences, its status as a reason just dissolves without residue. This train of thought under inspection yields no argument against consequentialism.

STATES OF AFFAIRS

One strand in Scanlon's critique consists in observing that there are many kinds of reason and ways in which things are valuable and that consequentialism errs in suppressing this plurality and supposing that there is just one way in which something can be valuable: to be valuable is to be promoted. Examples of the plurality Scanlon discerns: wine is to be savored, persons are to be respected. To value human life is not necessarily to hold that one should produce more human lives.

Here the target of Scanlon's shots is a doctrine about the good that he calls "teleology." It is a building block in consequentialist theories of what is morally right.

Teleology holds that (1) “the primary bearers of value are states of affairs or, over time, ways the world might go,” (2) states of affairs have intrinsic value, (3) so far as value is concerned, what we have reason to do is to bring about the states of affairs that are best, i.e., have the most intrinsic value. Following Elizabeth Anderson, Scanlon finds it erroneous to suppose that states of affairs or ways the world might be are the primary bearers of intrinsic value.³ Anderson asserts that states of affairs are generally only extrinsically, not intrinsically valuable. The state of affairs in which a person enjoys good fortune is valuable only if the person is valuable. On this view, the teleologist misunderstands the nature of value, and the consequentialist builds a theory of right on this false foundation.

In response: it is not the case that the consequentialist must accept teleology as characterized by Scanlon. The consequentialist will hold that what we can bring about by our actions and omissions are states of affairs or ways the world might go. These are the objects of striving. The proper ultimate objects of striving are states of affairs that are desirable for their own sakes rather than just as means to further goals. But asserting this is fully compatible with holding states of affairs to be extrinsically or for that matter conditionally valuable. Nonteleological consequentialism will hold that the states of affairs to be promoted are those whose conditions of value are fulfilled. A story about intrinsic and extrinsic value must be told. But if teleology has defects, these are defects the consequentialist can avoid.

Another way to put this point is to observe that consequentialism per se is committed only to the thesis that what is morally right is producing the best obtainable consequences. This commitment leaves it entirely open what the standard should be that

assesses consequences as better and worse. Consequentialism is opposed to deontology (the doctrine that there are moral constraints limiting the actions that one may choose that are independent of concerns about maximization) and to a relaxed morality that permits options (the doctrine that it is morally all right to perform any of several innocent actions, provided they do not violate the rights of others, even if those actions produce less good consequences than one could bring about). Consequentialism competes with these claims about the structure of right. But consequentialism as standardly understood does not include even a thin theory of human value.

A second response is that not much hinges on the choice to stipulate that persons and other things rather than states of affairs are intrinsically valuable. This may be a metaphysical or ontological issue without much normative content. Whatever one means by insisting that persons are intrinsically valuable will show up in the framework in which states of affairs are deemed intrinsically valuable: states of affairs in which a person gains good fortune, achieves her rational ends, avoids suffering and pain, and so on will have more intrinsic value than corresponding states of affairs in which a monkey or a fish enjoys good fortune, achieves its ends, and gets pleasure rather than pain. Corresponding to the claim in the one vocabulary that persons are intrinsically valuable will be a great many claims about the greater comparative intrinsic value of states of affairs involving persons than structurally similar states of affairs in which persons do not figure.

Moreover, the teleologist is not barred from recognizing whatever diversity and plurality values exhibit. If wine is to be savored and beer to be gulped, then properly appreciating the distinct kinds of value that inhere in wine drinking and beer drinking

involves noting the differences. States of affairs in which beer is gulped with gusto and wine is savored slowly are then intrinsically better, other things equal, than states of affairs in which wine is gulped and beer savored. If great art is to be admired, then the states of affairs to be promoted in which great art figures are ones in which appropriate admiration occurs.

The same goes for friendship and science, goods that Scanlon believes the teleologist must analyze in a twisted way that misses the actual character of their value.

Suppose it is agreed that friendship is valuable. According to teleology, this means that states of affairs in which friendship occurs are to be promoted. According to Scanlon, this teleological construal mischaracterizes the reasons that recognition of the value of friendship brings to our attention. Recognizing the value of friendship, we have reason to bring it about that other people as well as we ourselves have friendships, but this is not primary kind of reasons that friendship generates. We have reason to develop friends and to be good friends, which involves conforming to the norms of friendship. Being a good friend is not acting efficiently to promote a certain kind of desirable states of affairs. Rather being a good friend is being loyal to one's friend, acting for the good of the friend from concern for her, seeking out experiences in which the company of one's friend will provide mutual enjoyment. These reasons involved in being a good friend take priority over reasons to promote the occurrence of friendship, according to Scanlon. He observes, "We would not say that it showed how much a person valued friendship if he betrayed one friend in order to bring it about that other people had more friends" (p. 89).

But if the state of affairs in which one person is a good friend to another is a desirable state of affairs, it follows that the state of affairs in which one observes the norms of friendship and thereby is a good friend is desirable. According to teleology, this state of affairs is to be promoted. If disloyalty and betrayal among friends are odious, then the state of affairs in which one friend is betrayed in order to bring about friendships for others may be undesirable all things considered. The issue here is not the unacceptability of teleological accounts of value but the inadequacy of a too coarse-grained analysis of what constitutes valuable friendship.⁴ Of course, no matter how bad betrayal of a friend is, betraying one friend to prevent two comparable betrayals by others cannot be faulted from the standpoint of the amount of value and disvalue that is thereby brought about. Moreover, no matter how much greater the disvalue of betrayal of friendship as compared to the nonexistence of a friendship that might have occurred, short of a lexical priority ranking, there will be some amount of betrayal that by bringing about new friendships produces net value added all things considered. There is room for disagreement between teleologists and opponents, but I do not see that the assumption of teleology by itself precludes understanding the value of friendship and appreciating the reasons for action that arise from this value.

Scanlon cites science as another value whose nature teleology is doomed to misrepresent. His objection is that from the standpoint of teleology, complex intrinsic values and reasons are flattened into a one-dimensional notion that states of affairs are to be promoted. In the case of science, the states of affairs deemed intrinsically valuable are those in which systematic understanding of the natural world is discovered and learned and in which this knowledge is pursued through excellent activity. One might wonder

what is wrong with this thumbnail account. Scanlon writes, “An alternative line of explanation would begin with the idea that we have good reason to be curious about the natural world and to try to understand how it works. A person who responds to nature in this way is right to do so, and someone who fails to have this response is missing something” (p. 93).

The objection seems to be that the teleological approach forces us to turn the simple and direct account of what should move us into an indirect account that turns our concerns upside down. Rather than say it is appropriate to be curious about how the world works and worthwhile to seek to satisfy that curiosity, we must say that states of affairs in which systematic knowledge is attained and promulgated are valuable.

I may be failing to hear the music and hence unresponsive to the dance Scanlon is doing. But I cannot see an objection here. If acting from the motive of curiosity is valuable, and superior somehow to the motive of seeking to produce the state of affairs in which knowledge is increased, then states of affairs in which action is motivated in the former way will count as better states of affairs, other things being equal, in a teleological reckoning of value. In a similar way, if spontaneously acting on one’s love for a particular person is more valuable in and of itself than acting from a more generic concern that lovers treat their beloved well, then this fact about value too should be registered in the standard of value that the teleologist embraces. (In passing I note that I am not quite sure why the appropriateness of a curious response to natural phenomena is deemed the core that explains the value of science. Suppose that humans were utterly incapable of satisfying this curiosity in ways that generate actual systematic knowledge, so that humans were just as incapable of doing physics as monkeys or dogs. In that case I

do not see that experiencing curiosity and acting directly on it, absent any prospect of gaining knowledge, would be so valuable.)

WELFARE

The idea of welfare or well-being is the notion of what makes a life go better rather than worse for the person whose life it is. In his 1982 essay "Contractualism and Utilitarianism" Scanlon identified "philosophical utilitarianism" as the position that morality is concerned with welfare and its distribution across persons.⁵

Given the different accounts that have been offered of welfare and the objections to each, Scanlon is doubtful that we will ever get a theory of welfare of the kind that would be needed if it were to play the role of "master value" as envisaged in some forms of consequentialism. Such a theory would enable us to make at least rough quantitative comparisons of the amount of welfare, within a single person's life or across an aggregate of persons, that different life plans or social policies would deliver. Roughly, Scanlon thinks the more plausible accounts of welfare are more vague and less amenable to quantification than their implausible but potentially precise rivals. Here Scanlon identifies genuine (though in my judgment tractable) difficulties, but familiar ones.

A more interesting and original part of his discussion queries whether we really need a theory of welfare anyway. Neither from the first-person nor the third-person perspective is there significant work for the concept of welfare to do.

From a first-person perspective, one might think one needs the concept of welfare to explain what matters to an individual, and one might think one needs it to explain the

line between welfare and other things that matter. In both cases, according to Scanlon, what one might think is wrong.

Since welfare is an inclusive good, it is a container for separate and distinct goods whose value and importance to the agent are completely identifiable quite apart from their presence in the container. If friendship, love, satisfying family connections, good sex, day to day happiness, and meaningful work are included in my welfare, I do not need to invoke the concept of welfare to explain why they are valuable and to what degree.

Some goods that are clearly valuable from an individual's perspective and worthy of pursuit may be such that it is inherently clear whether gaining them advances one's welfare and to what extent. But typically nothing hinges on resolving this ambiguity. For example, given that it is clear to me that there are good and compelling reasons to contribute resources to pay for my children's college tuition, what does it matter whether these are reasons to do what advances my welfare or my children's welfare or some blurry mix? When one raises the question, one sees it does not matter. In deciding what path to follow in life, one does not think through the likely consequences of choosing one or another path and compare the quantity of welfare each path promises to yield. What one wants to decide is which path one might take is most choiceworthy. Lines of action one could take are appealing and attractive, and reasonably so, for many types of reason, that may resist neat pigeonholing into the categories of my self-interest and other people's self-interest.

Scanlon concludes that the concept of welfare plays no significant role, nor should it, from the first-person perspective of an individual planning her life and making

choices. This is an interesting line of thought but I think Scanlon draws the wrong conclusion.

There are cases in which one thinks a line of action is clearly choiceworthy and a welfarist consequentialist should agree, quite independently of any calculation of how one's own welfare is affected. If the proposed action is clearly superior from the standpoint of advancing (the function of) human welfare in the way that counts as just, then one should take it, even if one is quite unsure how much of the bounty of welfare accrues to oneself.

But many other cases are not like this. In many cases what one is morally permitted or required to do hinges on the costs or benefits to oneself as compared to the costs or benefits the proposed act would impose on others. In these cases it matters what exactly the costs (benefits) to self and costs (benefits) to others are. Consider self-sacrifice that is self-abnegating. A person sacrifices his interests for the interest of other persons, but the gain to others is marginal, and the cost to himself is great. Consider Terry, a housewife described in an essay by Jean Hampton, who insists on doing all the child care and house work while undergoing a difficult pregnancy that strains her health. To save her husband and children minor inconvenience she causes serious damage to herself.⁶ Surely the moral quality of the act from the agent's own perspective depends on a clear-eyed assessment of what gains will actually accrue to the welfare of others if one sacrifices and at what welfare cost to oneself. This point holds even if the assessment is more delicate than in Terry's case. Suppose one faces a choice of caring for one's alcoholic ill parent or pursuing one's career at a critical stage and leaving one's parent to far less satisfactory care arrangements. Or suppose one is trying to determine what is a

reasonable balance between contributing to overseas famine relief and using the resources to enhance one's own life in some way. Different moral norms would differ as to what absolute level of sacrifice can be required of one or what ratio of cost-to-self to benefit-to-others triggers strong obligation to needy strangers, but for any sensible such norm, a measure of welfare gains and losses to all parties is needed.

In coming to moral judgments about these ordinary yet perplexing choices, my view is that an objective standard of welfare provides better guidance than either a desire satisfaction model or a quality of experience view. If choosing to care for one's alcoholic parent ruins what would have flowered into an excellent artistic career, this is a great loss that should weigh heavily in the balance pan whether or not the person has a strong subjective desire for this sort of career success. On the other hand, if the choice to sacrifice makes only a marginal long-run difference to what would have been a thoroughly mediocre career in any event, the small size of the subjective loss is again an important consideration in favor of sacrifice even if the person is hyper-fond of incremental gains, however tiny, in career success.

An objective standard of welfare should not deny that enjoyment and desire satisfaction matter objectively as components of welfare. A life with no enjoyment and no desire satisfaction can hardly be a life that achieves a high level of well-being. But these subjective considerations are components of limited importance. It is possible that when those I love prosper, my desire that they prosper to some extent fuses my welfare and theirs, so that if they are better off, I am a bit better off. But this does not rule out the possibility of immoral self-abnegation—a sacrifice of the agent's well-being for what are by comparison excessively small gains to others.

Scanlon is correct to hold that in many contexts the important question for an agent deciding how to live is which plan of life she could follow would be most choiceworthy. Which life has the strongest weight of reasons behind it is the relevant question to ponder, not which life maximizes her own well-being. But it does not follow from this that well-being drops out as unimportant if, as I believe, which plan of life is most choiceworthy ultimately hinges on the expected well-being gains to self and others of each of the plans one might choose would attain.

Nor does the fact (if it be a fact) that well-being is an inclusive good tend to show that well-being has no important role to play in the choices of an individual. Each of the components of well-being, one's own and that of others, can be seen to be valuable in itself, not merely as contributing to well-being. But when one has to choose between different life plans one wants to know which plan gets more well-being for oneself and others. One needs to add up expected well-being gains to decide which life plan is more choiceworthy. For this one needs an account of well-being that permits such measurement. To be sure, in this domain one will surely at best find partial commensurability. Since one cannot attach precise numbers to candidate life plans corresponding to the level of expected well-being each one offers, one will find that many cannot be ranked: Plan A is neither nor better nor worse in its welfare prospects than plan B, nor are they tied. The appropriate response to the fact of partial commensurability on the part of a consequentialist is that since it exists, one must learn to live with it.

Scanlon is struck by the thought that the idea of welfare is a transparent container for aims that are choiceworthy in their own terms and are not valuable because their

successful pursuit enhances the welfare of the agent. If saving Venetian art is worthwhile and one adopts this as one's goal, fulfilling this goal makes one's life better, but in understanding the importance of this goal the idea of welfare is an idle wheel. Not only from a first-person perspective, but even from a third-person perspective, the idea of welfare is not a master value. Someone charged with the role of being my benefactor may well have reason to assist me in fulfilling my rational aims, such as saving Venetian art, rather than to assist me in advancing my own welfare per se.

This discussion needs the distinction between a worthy aim and oneself contributing to or achieving a worthy aim. If I desire that Venetian art be saved, and a group of Parisians brings this about, my well-being is not enhanced, but if my aim is that I contribute to this goal, this latter aim is (not ignoble but) self-interested; its satisfaction enhances my well-being. Someone who aims to be my benefactor, I would say, has reason to do what increases my well-being, and helping me to satisfy my aim that I contribute to the saving of Venetian art does increase my well-being.

The remaining significant point that Scanlon makes to buttress the thought that a theory of welfare, even if we had it, would not have a significant role to play in choice of reasonable actions and policies, is that in the theory of distributive justice, where some account of benefits and losses to individuals is needed to decide what we owe one another, the plausible accounts of individual advantage such as Rawls's primary social goods and Amartya Sen's capabilities are not inclusive accounts of well-being but are explicitly accounts that count only a limited range of the considerations bearing on welfare as relevant to justice.⁷ I agree that if Rawls or Sen or some other theorist who downgrades the role of welfare in distributive justice is correct, then welfare to that

extent becomes less important or ceases to be relevant for the issue of what we owe one another. But I deny that Rawls or Sen is correct on this point.

One can be misled here by focussing on what sorts of political policies make sense. Laws and public policies are unlikely effectively to advance our concern for welfare if they explicitly aim at the advancement of human welfare, because this goal is not operationalizable. Instead a sensible policy will pursue administratable proxies for the values we really care about. The values we care about guide the choice of proxy values to be promoted by choice of policy.

CONTRACTUALISM

According to Scanlon, “an act is wrong if and only if it could not be justified to others on grounds that they could not reasonably reject” (p. 4). In an alternate formulation: “an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement” (p. 153). This is offered as an explication of the concept of moral wrongness; that an act is reasonably rejectable in this sense is the same thing as its being wrong. It also at is supposed to point us toward a conception of moral wrongness, a set of substantive judgments about the normative content of morality, that contrasts with consequentialist and contractarian (rule-egoist) and other approaches. A qualification is that Scanlon holds that his contractualism characterizes morality in the narrow sense, what we strictly owe each other. There is also a broader idea of morality that encompasses ideals that are

not strictly required and also appropriate behavior toward nonrational animals and perhaps toward the natural world.

The bare statement of contractualism seems to me unobjectionable as a substantive judgment, whatever its merits as an analysis of the idea of what it is to be morally wrong. It is unobjectionable because purely formal and so far lacking in content. What is not reasonably rejectable, I would say, is whatever there is most reason to accept. The principles that determine what is right and wrong are those supported by the best reasons that bear on this topic. To this no one should object.

Scanlon immediately adds to this bare formulation a substantive and controversial gloss that might seem to rule out consequentialism from the outset, but is also somewhat vague and indeterminate as stated. The gloss is that the objections to a proposed principle that make it reasonably rejectable do not aggregate the losses or foregone gains that individuals would suffer if this principle rather than some other was adopted and followed. The objections that count are those made from the perspective of any individual who might be affected by its operation or better off if some other were adopted.

Before examining this antiaggregation proviso, let us note further features of reasonable rejectability as Scanlon construes it. What it is to be morally wrong is to be prohibited by principles that all reasonable people would accept. A kind of action is wrong because reasonably rejectable in this way, not reasonably rejectable because it is wrong. Whether a principle is reasonably rejectable or not depends on the alternatives there are to it. The judgment is comparative. The individuals whose perspective determines what is reasonably rejectable have full (available) information about their

situation. They are assumed to be motivated to live according to principles that none with this same motivation could reasonably reject.

According to Scanlon, we are to assess proposed principles from standpoints that the principle itself in some way makes salient. Here it would be a mistake to focus just on the impact of the choices one might make on particular persons. It makes a difference to people's lives that a principle is accepted as binding whether or not they are ever required to sacrifice or owed benefits under its terms. For example, knowing that people are required to give Good Samaritan aid in certain circumstances may affect their calculations about how to live even if they are never cast in the role of recipient or giver of Good Samaritan aid. Also, the acceptance of a principle may secure or weaken "one's standing as an independent person who can enter into relations with others as an equal" (p. 205).

Scanlon holds that candidate principles are to be assessed in terms of the reasons that individuals have, from the diverse standpoints defined by the principle, to accept or reject it. These reasons cannot be identified with the particular benefits and losses that will accrue to particular individuals. We cannot know these. Instead we must be concerned with generic reasons, the reasons that on the basis of our general understanding of human life we can impute to an individual in the situation picked out by the pertinent standpoint. Since one does not know exactly who will be affected by a principle that is chosen, one must balance reasons for and against by "relying on commonly available information about what people have reason to want" (p. 214). How coarse-grained or fine-grained moral principles should be depends on the generic costs imposed on people by making them more or less sensitive to variations in circumstances.

Although there might be good reason to formulate laws enforced by the state, social norms, and social policies in a simple and rigid way that ignores particular effects in particular cases, I do not see that fundamental moral principles should share this feature. If one must choose between violating a greater, generically more important right and violating a lesser, generically less important right, but in the particular case the consequences of violating the big right will be far better than the consequences of violating the little right, why ignore the specifics of the case? In this regard Scanlon's contractualism leads to the affirmation of principles that are subject to objections parallel to standard objections raised against rule utilitarianism.

In theory the generic reasons for accepting a principle might be strong even though in every particular case to which the principle would apply, once one goes beyond generic considerations to consider all of the actual particular considerations that bear on the individuals affected by the principle, one sees that the particular considerations that reasonable agents would find salient would always lead them to find the principle in this application unacceptable. If we do not know the particular effects the operation of a principle would have on the people affected by it, it is reasonable to assess the principle according to considerations we impute to these affected individuals on the basis of our general knowledge of human affairs. But this sort of assessment would seem always to be provisional and liable to be overturned by the balance of particular considerations in particular circumstances of choice.

AGGREGATION

Promiscuous aggregation is thought to be the bane of consequentialism. As Joseph Raz observes, a hedonistic utilitarian is committed to the claim that an extra lick of ice cream supplied to a sufficiently large number of people outweighs the lost pleasure from killing an innocent person, so if one can only get the licks at the cost of the death, and there is no better option to choose, one ought to choose the option that kills for lots of trivial pleasure.⁸ Any consequentialism that does not countenance strict lexical priority relations across distinct categories of goods will deliver a similar verdict.

Scanlon takes it to be a merit of contractualism that it does not countenance aggregation across persons. In deciding whether a proposed principle is reasonably rejectable, one considers the generic reasons for rejecting this principle that any individual affected by its operation would have, compared to the generic reasons that any individual would have for rejecting alternative principles. Scanlon explicitly notes that these individual objections need not take the form assumed in what he calls the Complaint Model. On this view, an individual's complaint against a proposed principle is the extent to which she would suffer loss or foregone gain if the principle is adopted, compared to what she would get under some alternative principle. According to the Complaint Model, a principle is reasonably rejectable only if the person whose complaint against this principle is greatest has a greater complaint than anyone would have if an alternative principle were adopted. Scanlon rejects the Complaint Model partly on the ground that an individual may have an objection of unfairness against a proposed principle that does not amount to a complaint as that notion has been characterized. According to Scanlon's idea of contractualist rejectability, one can have an objection against a proposed principle even if one has no complaint in the sense that one's well-

being will suffer under it. Also, the Complaint Model tells us to abstract from all entitlements and rights in deciding whether a proposed principle is rejectable, but Scanlon favors a holistic assessment according to which one can hold in place accepted rights and entitlements and consider the reasons for accepting and rejecting a principle with some moral matters being taken for granted.

Scanlon worries that contractualism might be (seen to be) excessively hostile to aggregation. Suppose that one is leading a rescue team in the wilderness, and must choose whether to save one or another group of people, the only relevant difference between the two groups being that one contains more people. Considering only individual objections to proposed principles taken one at a time, and refusing to aggregate objections, contractualism as stated seems unable to reject a principle that holds the rescue party should be free to choose one or the other of the groups. Presumably the same would be said if a pilot had to choose between crashing her plane where it would kill a greater or a smaller number of people. Here the constraint against aggregation binds too tightly.

Scanlon seeks an interpretation of his doctrine that delivers the verdict that the rescue team must save more rather than fewer lives but does not countenance aggregation across the board. He gives an example like Raz's that illustrates the latter danger: A television transmission of a World Cup soccer match must be interrupted for an hour in order promptly to rescue a technician who has been injured and "is receiving extremely painful electrical shocks" (p. 235). The example poses a choice of (1) small pleasures for many at the cost of torture for one or (2) the loss of the pleasures coupled with the elimination of the torture. In this sort of case Scanlon urges that the numbers do not

matter and that the rescue should commence immediately no how many millions or billions of soccer fans are inconvenienced.

To complicate the picture, Scanlon introduces another type of case in which aggregation of benefits and losses across persons might, to the naïve, seem relevant to getting the right answer about what should be done. These are cases in which an activity is carried on in order to provide small or modest benefits for a great number of people but carrying on the activity involves imposing a risk of severe harm or death either on persons who are willingly participating in the activity or on nonparticipants. These cases are extremely common.

Scanlon appeals to the distinctions between doing and allowing and between intended and merely foreseen effects of what is done or allowed. This appeal allows him to hold that it is reasonable to allow construction projects to go forward and other economic activities to be carried out even though they will predictably cause accidents that will injure some people and kill others even though it would not be reasonable to allow activities with similar benefits and costs but which involve deliberately intending to impose harm on some people by doing or allowing. In the case of activities that impose risks on others the question is what level of precaution should be required for those engaging in the activity.

For this last question Scanlon supposes that we can make do with a form of intrapersonal aggregation that does not involve the unacceptable interpersonal aggregation characteristic of consequentialism. In deciding the level of due care that is required of individuals whose activities impose risk of harm to others, what one is doing

is “summing up all the ways in which a principle demanding a certain level of care would constrain” that individual’s life (p. 237).

I do not see how one can determine the level of due care that must be sustained by an individual engaged in an activity that imposes risk of harm on others without taking into account the value of the activity that imposes the risks. Suppose we cannot carry on activity X except at a cost of two accidental deaths per year. Should we allow the activity to proceed? Surely this depends on how many people benefit from the activity and how much they benefit. In every such case we need to carry out a cost/benefit analysis with costs and benefits measured by the morally appropriate scale. What Scanlon deems acceptable intrapersonal comparison is not distinguishable in a principled way from straight interpersonal aggregation that he disparages. I shall return to this issue.

Setting to the side Scanlon's countenancing of intrapersonal but not interpersonal aggregation, one is left with several objections against consequentialist aggregation that are hard to assess.

For one thing, act-consequentialism holds that what one morally ought to do is always to do an act whose outcome is no worse than the outcome of any other act one could choose. The action one morally ought to do is the right action, and anything else one might do is morally wrong. But in this theory moral rightness and wrongness are thin notions. They do not directly correspond to moral rightness and wrongness in Scanlon’s contractualist sense. Scanlon approvingly cites Mill’s observation that we do not call anything wrong unless we believe the perpetrator ought to be punished in some way for doing it.⁹ But the act-consequentialist notion does not connect to being fit for punishment in this way. What is wrong is anything other than what one morally ought to

do, period. Nothing is asserted here about punishment, and to say that an act is fit for punishment is to say that punishing it would produce a better outcome than any other alternative response.

So it is fully consistent for an act-consequentialist to hold that if a friend can produce a best outcome by violating a duty of friendship, that is what she morally ought to do, even though disposing herself to be specially devoted to her friend in ways that predictably would lead her sometimes to perform wrong acts as in this case would have been productive of better outcomes on the whole than any alternative character-forming act. If duties or obligations imply that noncompliance merits punishment, a consequentialist account of obligation/duty may have it that the friend in the example is duty-bound to help her friend and should be punished in some way (by peer pressure or guilt feelings, say) if she does not.

Keeping in mind the discrepancy between the meaning of “morally wrong” in the mouth of the Scanlonian contractualist and in the mouth of the act-consequentialist, I find Scanlon’s position of aggregation to be unsatisfactory or unstable for several reasons.

Although the consequentialist position per se does not rule out lexical priority rankings among goods and harms, I doubt such priority rankings can be sustained, so I doubt that Scanlon’s position is rendered more acceptable by his embrace of them. The problem is one of continuity, illustrated by the Chain Argument posed by Alastair Norcross.¹⁰ Suppose we say that no amount of minor harm suffered by any number of people can outweigh a far more serious harm suffered by one individual. But one can describe a series of cases that challenge this claim. For one death, there will be some number of extremely severe harms just a bit less bad than death such that this number of

extremely bad harms is overall morally worse than a single death. One then notices that there will be some number of very severe harms just a bit less bad than the extremely severe harm such that the number of very severe harms is overall worse than a single instance of extremely severe harm, and so on down to minor harm or slight inconvenience. But then one can zip back from the end of the chain of comparisons to the beginning. If a single death can be counterbalanced by some large number of slightly less severe harms, and these in turn can be counterbalanced by some very large number of lesser harms, and so on, then there is no plausible way that Scanlon can claim that the lesser harms suffered by TV viewers whose viewing would be interrupted cannot in principle morally outweigh the very severe harm of an hour's torture suffered by the worker in the TV station whose rescue now would interrupt the TV transmission. It all depends on the numbers after all.

This denial of Scanlonian antiaggregation is a mild claim. The denier might hold that in cases like the TV rescue case one ought morally to act immediately to relieve the pain of the suffering repairmen unless the utility he loses by delay of rescue is offset by a gain of M times that amount of utility that will accrue to others in total if rescue is delayed, with M being an extremely large number.

Scanlon has an interesting response to this line of objection.¹¹ He suggests that aggregation should perhaps stop short at the boundary of *relevant harms*. What he means is that a severe injury is comparable to the greater injury of a sudden death, so that one person's suffering sudden death might appropriately be counterbalanced by prevention of many persons suffering a lesser but comparable and hence relevant severe injury in a determination of what principles are reasonably rejectable on contractualist grounds. But

slight convenience or enjoyment is such a slight benefit by comparison with suffering sudden death that the former is not even relevant to the determination of what qualifies as a reasonable principle that countenances the latter. In other words, whereas a reasonable principle might trade off death for severe head trauma, it would never countenance a trade of death for episodes of mere amusement or mild headache. *Mutatis mutandis*, the same goes for benefits.

This proposal is arithmetically puzzling. Scanlon might be saying that one sudden death can be offset by many incidents of onset of blindness (a relevant harm) but not by any number of episodes of mild headache (an irrelevant harm). But by parity of reasoning one incident of onset of blindness can be offset by many incidents of just-lesser harms, and so on, down through episodes of (say) mild headache. These will all be relevant harms. But then we reach the lower limit of relevance for onsets of blindness, so no number of episodes of extremely mild headache can offset a given number of episodes of mild headache. If we begin by focusing on the harm of sudden death, comparison gives out at one point, and if we begin by focusing on some lesser harm, comparison gives out at a different point. We end us saying in one breath that no number of mild headaches can offset a single instance of severe migraine and in another breath that some number of mild headaches can offset a single severe migraine. This won't do.

Another possibility Scanlon might have in mind is that there is some single boundary, such that harms above the boundary are comparable with each other and harms below the boundary are comparable with each other but no comparison and aggregation of harms across the boundary are possible. That is to say, a single instance of any above-the-line harm outweighs any magnitude or aggregate of below-the line harms. But I

cannot conceive of any remotely plausible location for this aggregation-limiting boundary. The plain and simple fact is that there is a continuum between the most horrendous harms and the mildest discomfort. For any harm one can conceive, one can conceive ever so slightly better and worse variants of the harm, and ever so slightly better and worse variants of those variants, and so on. The prospect that moral judgment can sensibly impose discontinuity on this smooth range of possibilities is bleak.

Still another possibility is that for any kind of harm, the total disvalue of any number of episodes in which this harm is suffered is bounded. If one death has a disvalue of -100 , and the total disvalue of any number of incidents of arthritis cramp of a given magnitude is -99 , then of course it will not be acceptable to countenance a single avoidable death in order bring about the prevention of any number of such arthritis cramps. But the idea that the disvalue of a given pain can vary depending on how many similar such episodes of pain exist somewhere in the universe is bizarre, and surely more implausible than implication of the straight aggregation that Scanlon seeks to reject.

Of course the defender of Scanlon's stance against aggregation can make further moves. One might reject transitivity here, and hold that A can be all things considered morally better than B, B better than C, and C better than A.¹² One might urge that the Chain Argument is best interpreted as a Sorites Paradox, and hence is amenable to one or another solution to such paradoxes. On this view, just as the fact that one hair more or less does not make the difference between hairiness and baldness should not compel us to assert that a series of small transitions in which one hair is removed can never produce baldness, in the same way the fact that for any harm of any magnitude there is some harm close to it and fungible with it should not compel us to assert that a series of transitions

between harms of decreasing magnitude cannot bring us to a harm that is not fungible with the severe harm at the beginning of the chain of comparisons.

These are desperate expedients. Giving up the idea that *morally better than* is a transitive relation is more counterintuitive than agreeing that a large enough number of small harms can morally outweigh a single severe harm. The Sorites Paradox cases have their source in the vagueness of terms like “heap” and “bald” and this vagueness does not seem to attach to the idea of “morally better than.” At any rate, the ideas that a structural feature of contractualism rules out aggregation altogether and that this feature of contractualism is morally attractive bump against the considerations I have been urging.

The implausibility of Scanlon’s stand against interpersonal aggregation becomes evident when we reflect that a plausible deontology will countenance interpersonal aggregation just as consequentialism does. A deontological doctrine might either assert absolute or nonabsolute constraints. An absolute constraint asserts that acts that fall under certain descriptions must never be done whatever the consequences. A nonabsolute constraint asserts we have a duty to refrain from the acts that violate deontological rules, but this duty may be overridden if the consequences of conforming to it in a given case are excessively bad.

A deontology of absolute constraints will only be coherent if the duties we are constrained always to fulfill can never conflict and yield contradictory imperatives. But even if a deontology of absolute constraints should prove to be coherent, it is hard to accept. As we imagine the consequences of conforming to some deontological constraint becoming more and more horrendous, at some point surely there is a threshold of badness

such that any proposed deontological rule, however sacred, should be violated if this threshold of unacceptable consequences reached.

In gauging the threshold at which any particular deontological constraint is deemed to give way, any and all consequences that matter morally should be counted. These will include benefits and losses to human persons and other animals. Since different sets of evils could all equally meet the threshold, we need a way of attaching weights to bads of different sorts so that they can be summed. By the Norcross argument we have already endorsed, benefits and harms should be aggregated across persons. If X number of painful and prolonged deaths of persons crosses the threshold, then some large number of any lesser harms suffered by many different persons will also cross the threshold.

Scanlon is quite correct to note that any form of consequentialism will have jarring and unsettling implications when harms are aggregated across persons. If a barely discernible slightly uncomfortable feeling experienced when one sits on a chair counts as a very small harm, then a large enough number of such harms outweighs a death. Hence according to consequentialism, other things being equal, one morally ought to bring about the death in order to avoid the many incidents of chair-sitting discomfort if one must accept one or the other of these bad outcomes.

The trick is to elaborate a position on aggregation that makes sense and continues to appear plausible when it is applied to a wide range of possible cases and when one attempts to fit it into a general view that withstands critical scrutiny. Scanlon's rejection of interpersonal aggregation across the board does not pass this test. The proposed cure is worse than the disease.

Scanlon uses “aggregation” with a narrower sense than I have been employing so far. According to Scanlon, an aggregative principle holds that “the *sum* of a certain sort of value is to be maximized” (p. 232). A nonabsolute deontology is obviously not aggregative in this sense. Nor for that matter are forms of consequentialism that assert that we ought to maximize some function of value other than straight summation. For example, a consequentialist principle might instruct us to maximize a function that favors equality in the distribution of value across persons as well as a greater aggregate sum of value. Another family of possibilities is given by prioritarian consequentialism, which assigns greater moral value to bringing about a benefit for an individual, the more badly off the person would be absent this benefit. In a footnote Scanlon indicates he finds these versions of consequentialism to be unacceptable, but he does not explore the issue in his text.

One can reject additive aggregation--the sum of a certain sort of value is to be maximized--and still be a consequentialist. Scanlon as we have seen also rejects aggregation in a broader sense. Broad aggregation holds that any single harm to an individual of any finite magnitude can be morally offset by some (perhaps very large) number of harms to individuals of any lesser magnitude, so that it is morally acceptable to impose the single big harm in order to prevent the great number of small harms. Of course, as noted, one could reject broad aggregation and still be a consequentialist. So even if Scanlon's attack on broad aggregation were successful, it would not advance our understanding of contractualism versus consequentialism.

But taken by itself, Scanlon's rejection of broad aggregation is dubious. Once one notices the wide variety of moral perspectives that accept broad aggregation, one then

notices that the case against it just consists in the counterintuitiveness of allowing tiny benefits to offset a severe harm as in Scanlon's World Cup transmission example. This counterintuitiveness may just reside in the difficulty we have in thinning clearly about examples that feature very large numbers. The example may also trade on further judgments that do not support Scanlonian antiaggregation.

The example of the interrupted World Cup television transmission invites questions about the contract between the worker and the employing firm. If the contract stipulates that the firm will do all in its power to extricate workers from harm in an emergency, that is what should be done, and if the contract specifies "No rescues during World Cup transmissions," then the rescue should be delayed. The reasons for keeping contracts are the good consequences of doing so, and the appropriate level and character of state regulation of contracts are also fixed by their expectable consequences.

A consequentialist principle might well hold, and I believe should hold, that the moral urgency of performing a rescue, preventing someone from suffering harm, and taking compensatory action to mitigate the loss to an individual to whom harm occurs should depend not merely on the overall magnitude of the well-being gains for people that can be achieved, adjusting for priority to the worse off, but also on the degree of responsibility that an individual bears for her predicament. Hence in examples like Scanlon's World Cup scenario it may properly make a difference to our assessment of what should be done that the person whose predicament can only be alleviated by imposing minor inconvenience on many is (a) an innocent and unknowing bystander, (b) a worker who voluntarily signed onto the job knowing that risk of this sort of harm is one of its costs, or (c) a trespasser who walks past "DEADLY DANGER! ELECTRICAL

HAZARD! DO NOT ENTER!” signs at the television transmission station because he is idly curious about the close-up details of the broadcasting of major sporting events.

The World Cup transmission example does not then generate strong reasons to embrace Scanlonian antiaggregation. Its purported lesson is directly challenged by the Chain Argument, which withstands scrutiny. Moreover, it is evidently difficult to provide a rationale for the rejection of broad aggregation that does not rule out forms of interpersonal aggregation that virtually everyone would want to accept.

Scanlon ingeniously tries to smooth down the sharp edges of his antiaggregation position by observing that contractualism allows intrapersonal aggregation to affect the judgment about what candidate principles may reasonably be rejected. Consider a principle that requires people to aid those in distress if lifesaving aid can be supplied at small cost and risk to the aid-giver, or a principle that requires what the law classifies as ultrahazardous activities to pay all costs of accidents that result from engaging in the activity regardless of whether the accident-generating activity is carried out in a negligent manner or not. Scanlon suggests that in such cases we can imagine the costs and benefits, measured in generic terms, that will accrue to an individual over the course of her life, and balance the gains to security (from knowing that she will get the aid or the compensation if she needs it) versus the loss of freedom (knowing that one must give aid or compensate in specified circumstances). Contractualism encompasses intrapersonal not interpersonal aggregation. The hope then is that this line coincides with the line between morally acceptable and unacceptable aggregation.

This maneuver does not succeed. Any principle that yields the result that in some circumstances some people should be made to suffer losses for the benefit of others can

be represented more abstractly as a principle according to which any individual would gain the benefit if he happened to be in the beneficiary role and would pay the cost if he happened to be in the role of the one from whom sacrifice is exacted. Even a caste principle that says that lords should get cake and peasants should get bread can be represented from the ex ante perspective of a newborn child who could be either a lord or a serf, and would get the payoff of cake in the one case and bread in the other. Hence any principle that countenances interpersonal aggregation to determine what is morally right can be interpreted from some ex ante perspective as a principle that countenances intrapersonal aggregation only. The line that Scanlon wants to draw is not going to divide aggregation he wishes to regard as acceptable from the kind he wishes to reject.

In this section I have argued against Scanlon's account of contractualism's principled resistance to aggregation of harms and benefits to determine morally right action. I have claimed that Scanlon definitely goes wrong in seeking to defend a kind of moral absolutism, according to which some impositions of severe harms on individuals cannot be justified by small benefits to others no matter how numerous these others. I have also urged that Scanlon's various attempts to soften the hard edge of contractualist antiaggregation by allowing aggregation when that seems intuitively plausible reveal themselves to be unprincipled and arbitrary under examination.

CONCLUSION

My emphasis on Scanlon's views on aggregation might seem misplaced in view of the fact that I am defending welfarist consequentialism and this position is not necessarily opposed to Scanlon's antiaggregation doctrine. Moreover, the contractualist

framework seems to be doing no work in leading Scanlon to the particular position on aggregation he accepts. He could cheerfully give up his antiaggregation doctrine while remaining a contractualist.

The moral I tentatively draw is that the contractualism versus consequentialism discussion in which Scanlon sometimes appears to be engaged diverts attention from his book's actual contributions. The fact that contractualism is an idle wheel in the derivation of his antiaggregation doctrine despite his insistence that contractualism nicely delivers this result is an indication that contractualist metaethics per se does not have normative implications. Scanlon's view is a way of thinking about morality not a set of moral claims and hence is not a theoretical source of opposition to welfarist consequentialism or for that matter to any other ethical position.

¹ . T.M. Scanlon, What We Owe to Each Other (Cambridge: Harvard University Press, 1998). Further page references to this book are given in parentheses in the text.

² . For helpful discussion and written comments I am indebted to David Brink, Thomas Hurka, Luke Robinson, and Peter Vallentyne. I have profited from seeing drafts of a review essay on Scanlon by Philip Pettit.

³ . Elizabeth Anderson, Value in Ethics and Economics (Cambridge: Harvard University Press, 1993), chapters 1-3.

⁴ . This argument for teleology might be thought too glib. Suppose that the norms of friendship as ordinarily understood include deontological constraints: a good friend does not behave paternalistically toward her friend, does not form adverse judgment on her friend in the absence of decisive evidence for it and does not seek out such evidence unless moral considerations decisively compel the seeking, avoids lying to her friend and inclines toward candor, and so on. The good friend has reason to abide by these constraints, but the reason does not involve any goal to be achieved by her action. Moreover, in abiding by the constraint the good friend is motivated by loyalty to the friend, not by the thought of some further state of affairs to be promoted. So goes the objection against teleology based on the idea of friendship. My response is that teleology can go indirect. If friendship including its quasideontological norms is valuable, one has reason to develop friendship and be a good friend according to those norms and to be appropriately motivated in action by them. The good state of affairs thereby achieved is instantiation of good friendship. I should also note the possibility that the consequentialist might not seek to accommodate the ordinary ideal of friendship but might propose a revisionary model of friendship to facilitate a smoother mesh of friendship norms and consequentialist moral requirements.

⁵ T. M. Scanlon, "Utilitarianism and Contractualism," in Utilitarianism and Beyond, Amartya Sen and Bernard Williams, eds. (Cambridge: Cambridge University Press, 1982), pp.

⁶ . Jean Hampton, "Selflessness and the Loss of Self," Social Philosophy and Policy 10 (1993):135-165.

⁷ . For Rawls's view, see John Rawls, "Social Unity and Primary Goods," in John Rawls: Collected Papers, ed. by Samuel Freeman (Cambridge: Harvard University Press, 2000); for Sen's views, see Amartya Sen, Inequality Reexamined (Cambridge: Harvard University Press, 1992), pp.73-86.

⁸ . Joseph Raz, The Morality of Freedom (Oxford: Oxford University Press, 1986), chap.

⁹ . Scanlon, p., citing J. S. Mill, Utilitarianism, chap. 5.

¹⁰ . Alastair Norcross, "Comparing Harms: Headaches and Human Lives," Philosophy and Public Affairs26 (1997): 134-167.

¹¹ . Scanlon credits Frances Kamm with this idea. See Frances Kamm, Morality, Mortality, vol. 1 (Oxford: Oxford University Press, 1993), pp. 116-117. Scanlon comments favorably on the suggestion but remains noncommittal regarding it.

¹² . Larry S. Temkin argues for this position in "A Continuum Argument for Intransitivity," Philosophy and Public Affairs 25 (1996): 175-210.