

The Demandingness of Scanlon's Contractualism*

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INTRODUCTION

Utilitarianism has long faced the objection that it is unreasonably demanding. One of the reasons why Kantian contractualism has been seen as an appealing alternative is that it seems to be able to avoid utilitarianism's extreme demandingness, while retaining a fully impartial moral point of view.¹ I will argue that contractualist moral obligations to help others when their basic interests are at stake are just as demanding as utilitarian obligations. My discussion will focus on Thomas Scanlon's formulation of contractualism,² since I take it to be the most fully developed and powerful version of contractualism as an account of individual moral obligations.

There are two main contexts in which such obligations arise. The first context is that of emergency situations; two central features of emergencies are that persons' basic interests are at stake, and an agent is in a position to give help. The term 'emergency' is also generally used to refer to short-term and rare episodes. The steady state of chronic malnutrition that kills millions each year does not count as an emer-

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1. I am using the term 'impartial' in a substantive sense, to denote the claim that each person's interests have equal moral weight. I will focus on Kantian contractualism rather than Gauthier's alternative version of contractualism because, as Brian Barry has forcefully argued, in *Justice as Impartiality* (New York: Oxford University Press, 1995), Gauthier's version does not incorporate impartiality in this substantive sense.

2. Thomas Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1999). All page numbers refer to this book unless otherwise specified.

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gency, on this usage.³ The second main context in which the obligation to promote others' basic interests arises is that of giving aid to those who are in serious need as a result of extreme poverty. The demandingness of utilitarian obligations toward the world's poor has been the primary focus of debate over the demandingness of utilitarianism and has been widely held to cast serious doubt on the viability of the theory.⁴

I should emphasize that my argument that contractualist obligations to promote others' basic interests are just as demanding as utilitarian ones is not intended as a criticism of Scanlon's theory. Any plausible moral theory must hold that there are some situations in which agents face extreme moral demands—for example, a situation in which the only way of stopping billions of people suffering an agonizing death was by hacking off your left leg with a fairly blunt machete. So the fact that a moral theory is sometimes extremely demanding is not in itself a forceful objection to it. The important question is whether a moral theory has a plausible account of when and why moral obligations are extremely demanding. And there are, in fact, strong grounds for thinking that in the context of emergency situations, and of our current obligations to help those in need, any impartial moral theory is liable to be extremely demanding.

The reason that emergencies tend to be so demanding is that the most morally salient feature of an emergency is that persons' basic interests are at stake, which means that whatever an agent who is in a position to help does or fails to do has a drastic and irrevocable impact on others' interests. And this feature of emergency situations is also a constant feature of the current state of the world: persons' basic interests are constantly at stake for easily preventable reasons, such as malnutrition, and, given modern communications, the relatively well-off are constantly in a position to help them. This accounts in turn for the extreme demandingness of our current moral obligations to help those in need.

I will therefore be suggesting that although utilitarian obligations to help those in need run counter to deeply held intuitions about what it is reasonable to expect of agents, in the current state of the world it may not be possible to defend less demanding obligations to those in need within an impartial moral framework. The failure of Scanlon's contractualism to offer such a defense, when it had a particularly strong

3. I have argued elsewhere that we have reason to view the current state of the world as a constant emergency situation (Elizabeth Ashford, "Utilitarianism, Integrity and Partiality," *Journal of Philosophy* 97 [2000]: 421–39). In this article, in order to avoid confusion, I will conform to the standard use of the term 'emergency' as denoting a situation which is rare and short-lived.

4. Peter Singer's article, "Famine, Affluence and Morality" (*Philosophy & Public Affairs* 1 [1973]: 229–43), e.g., generated a huge amount of discussion about the viability of a broadly utilitarian account of the demandingness of our obligations to those in need.

prospect of doing so, suggests that such a defense cannot be given. This implies that if we take seriously the central tenet of enlightenment moral theory that each person has equal moral status, we may have to accept that our current moral obligations to those in need are drastically more demanding than our commonsense moral thinking tells us.

I will be arguing, then, that utilitarianism and contractualism cannot be faulted for holding that our obligations toward those in extreme need are extreme. There are, however, contexts in which utilitarianism might implausibly require that persons should not be helped, even though their basic interests are at stake, because those interests are outweighed by the aggregate sum total of relatively unimportant benefits to a large number of people. Scanlon gives the example of an electrical worker, Jones, who is trapped by some fallen electrical equipment during the transmission of a World Cup match watched by millions and is receiving extremely painful electrical shocks. The only way of stopping the shocks is to temporarily shut down the transmission of the game. Utilitarianism might imply that the aggregate pleasure to the millions from watching the match would outweigh the one person's serious pain.

Scanlon tries to avoid this unacceptable implication of utilitarianism by precluding any interpersonal aggregation of benefits and burdens. At the core of his view is his stipulation that burdens have to be acceptable to each person, considered one by one, from that person's own point of view.

In the final section of this article, however, I will discuss a paradox that follows from this stipulation, as Scanlon characterizes it, which means that acceptable principles will remain exceedingly demanding in any practically realizable state of the world. And while the demandingness of our current contractualist obligations to help those in need appropriately reflects morally salient features of the current state of the world, the extreme demandingness of contractualism in any practically realizable state of the world is, I will argue, highly implausible. By contrast, a credible version of utilitarianism would be considerably less demanding if the state of the world were relevantly different. I will therefore claim that insofar as the demandingness objection is forceful, it is in one important respect a deeper problem for contractualism than for utilitarianism, and that banning any kind of interpersonal aggregation of benefits and burdens is not a viable response to the unacceptable kind of aggregation which the Jones case illustrates.

I will begin by examining Scanlon's account of contractualist moral principles and will then argue, in the second and third sections, that contractualism ought to accept principles governing emergencies and helping those in need that are just as demanding as utilitarian obligations. Finally, in Section IV, I will argue that contractualist moral prin-

principles remain exceedingly demanding in any practically realizable state of the world.

I. A SUMMARY OF SCANLON'S CONTRACTUALISM

According to contractualism, unlike utilitarianism, there is no obligation for an agent to maximize overall well-being or minimize overall suffering with each action.⁵ Rather, her behavior is morally acceptable if and only if it is not prohibited by a set of moral principles for the general regulation of social behavior that no one could reasonably reject.

There are two central features of what counts as reasonable rejection. First, the only reasons for and against a principle that are eligible for judging whether or not it can be reasonably rejected are "various individuals' reasons for objecting to that principle and alternatives to it" (p. 229). Individuals must be objecting on their own behalf, and not on behalf of a group. This restriction to single individuals' reasons therefore bars interpersonal aggregation of complaints. If an individual has a reason to object to a principle, this objection will not be outweighed by a less strong objection held by more than one other person. This feature of reasonable rejection is one of the key ways in which Scanlon's contractualism is distinguished from utilitarianism.

Second, what counts as reasonable rejection depends on the comparative strength of the individual's reasons for and against the principle. Whether a principle is rejectable depends on whether any other individual has a better reason to reject alternative principles. The essentially comparative nature of reasonable rejection, combined with the restriction to individuals' reasons, together entail that any individual can reasonably reject a principle when she can propose an alternative principle to which no other single individual has an equally strong objection.

A primary ground for an individual to object to a principle is the effect the implementation of a principle would have on his or her well-being. Scanlon emphasizes that this is not the only ground for objection. The way in which the cost to the person's well-being is imposed may also be a ground for reasonable rejection, if the cost would be imposed unfairly, for example. Often, though, the gain or loss in well-being will be the most salient consideration: "In many cases, gains and losses in well-being (relief from suffering, for example) are clearly the most rel-

5. It is worth noting that several passages in Mill suggest that he allowed that actions could fail to be optimific without being wrong. Several passages also suggest that he generally reserved the concept of an obligation (which he connected with the concept of blameworthiness) to actions that affect only central aspects of persons' well-being. In both respects I think that Mill's formulation is more plausible than many modern formulations of utilitarianism.

evant factors in determining whether a principle could or could not be reasonably rejected" (p. 215).

An important question in understanding Scanlon's account of reasonable rejection is whether, on those occasions when the cost to well-being is the most salient consideration, the assessment of principles primarily involves comparing the gains and losses in well-being to the various individuals involved.⁶ On this interpretation, the weighing of different persons' interests will, as with utilitarianism, play a central role in the assessment of candidate principles, the two main differences between the theories being, first, that contractualism denies that gains and losses in well-being are the only morally relevant considerations and, second, that it denies that they should ever be interpersonally aggregated.

It might be thought that Scanlon avoids such direct weighing of different individuals' burdens; this reading might be thought to be suggested by his stipulation that in assessing principles, we do not consider the complaints of specific fully situated individuals, but have to appeal to more abstract, generic standpoints. However, in appealing to generic standpoints, Scanlon is not most plausibly interpreted as denying that what matter in the assessment of candidate principles are the complaints raised by particular individuals. Such a denial would be in tension with the core of his contractualism, which is that acceptable principles must be justifiable to each individual affected by them.

There are two main reasons for the introduction of generic reasons. The first reason is to rule out appeals to interests that ought not to be taken into account. Scanlon argues that the "intuitive" notion of well-being, denoting the "quality of life for the person who lives it" (p. 112), is not to be straightforwardly identified with the notion that is legitimately employed in moral argument. Scanlon says little about the legitimate appeal to well-being, but his most specific suggestion is that it "can appeal to more specific forms of opportunity, assistance, and forbearance that we all have reason to want" (p. 140). The introduction of generic reasons, which are not based on individuals' particular preferences but on what people have reason to want "in virtue of their situation, characterised in general terms" (p. 204), ensures that complaints that are based on costs to well-being appeal only to interests that everyone has reason to be concerned with.

In the context of evaluating principles of aid, the gains and losses in well-being at stake for the individuals involved are very serious and

6. Scanlon holds that an agent's complaint against a principle depends both on the burden the principle would impose on her (i.e., the amount by which she would be worse off under acceptance of that principle than under acceptance of some alternative) and on her absolute level of well-being.

are clearly ones that everyone has reason to want or avoid, respectively. Those burdened by the principles (those giving the aid) will be appealing to important costs to well-being which anyone in the position of agent has reason to avoid. And the potential beneficiaries of the principles of aid will undoubtedly be appealing to “specific forms of assistance . . . we all have reason to want” (p. 140), since the burden of not being helped will be something that is of universal human significance, such as the loss of life or limb, or the preventable death of one’s child. Therefore, any differences between the notion of well-being that utilitarianism applies and the notion to which Scanlon is appealing are not relevant in comparing utilitarian and contractualist accounts of obligations to assist others’ basic interests.⁷

The other main rationale behind the appeal to generic reasons and standpoints is that in assessing principles for the general regulation of behavior, the costs that need to be taken into consideration go beyond the consequences of the particular action(s) we might be concerned with. First, “widespread performance of acts of a given kind can have very different effects from isolated individual instances” (p. 203). Second, principles may impose constraints on the kinds of reasons that agents may or must take into consideration. This will have an impact on their freedom to plan and organize their lives. It may also impinge on their personal relationships. Constraints on acceptable reasons may also have important benefits for other individuals, since they enable mutual expectations to be established; Scanlon gives the example of privacy, which requires assurance that other people will not intrude in various ways, in addition to their refraining from actually doing so.

When we assess these broader costs and benefits in evaluating a principle, we cannot know in advance which particular individuals will be affected in various ways. We therefore have to appeal to reasons that we can reasonably expect whoever it is that turns out to be affected by the principle in a certain way to invoke. These reasons are called “generic” because they are based not on the unique interests and char-

7. In addition, in some cases the move to generic reasons is made because of disagreement about the standard of value to be used in making complaints about proposed principles. For example, one party may want to reject a principle because it hinders the practice of her particular religion, while another party does not recognize the truth of that religion and consequently discounts the burden. The two parties are at an impasse in considering the principle. Here, the move to generic reasons is justified by the general imperative for reasonable agreement. The two parties must abstract to a higher level to a category of burden they can agree on. They may agree on something like the general category of “religion,” or even “questions of cosmic importance.” (I am grateful to Leif Wenar for pointing this out to me.) Again, though, in the context of evaluating principles of aid, the burdens both parties invoke in their objections to alternative principles are uncontroversial.

acteristics of particular individuals but on “commonly available information about what people have reason to want” (p. 204). These generic reasons still represent the reasons that particular individuals affected in various ways by the proposed principles will appeal to. The reason they are not based on those individuals’ personal tastes and other characteristics unique to themselves is because of the epistemic consideration that we do not know in advance who those individuals will be. We therefore need to look at reasons that we think those individuals who do actually end up being affected in the various ways, whoever they turn out to be, will appeal to.

Generic reasons are, therefore, invoked in order to compare the strength of different individuals’ objections to proposed principles, first, because certain kinds of costs and benefits are ones that everyone has reason to avoid or want and, second, because we cannot always know the specific ways in which various individuals will be affected. When the generic reasons are primarily grounded in appeals to costs to well-being that are clearly of universal human importance, the assessment of the comparative strength of individuals’ objections to various proposed principles will centrally involve comparing the immediate and long-term gains and losses to their well-being.

It is particularly important to emphasize that Scanlon rejects the idea that there is a threshold level of cost, “such that it is reasonable to reject any principle that would lead to one’s suffering a cost that great” (p. 196). This follows from the essentially comparative nature of reasonable rejection. However great is the cost to an agent of her compliance with a principle, she cannot reasonably reject the principle on the basis of appealing to this cost alone, given that all the alternative principles may impose an even greater cost on other individuals.

Scanlon’s contractualism differs in this respect from Thomas Nagel’s version of contractualism. When Nagel discusses the demandingness of a principle governing giving aid to those in need, he says that when the principles reach a certain level of demandingness, those giving the aid can reasonably reject the demanding principle, even though those in need can also reasonably reject a less demanding principle.⁸ (It should be emphasized, however, that although Nagel is denying that it is unreasonable for those giving aid to reject the hugely demanding principle, he is also denying that their behavior conforms to the contractualist goal of acting in a way that is justifiable to each person. Nagel holds that in this situation it may not be possible to find an acceptable principle of aid, since, within a certain range of demandingness, any candidate principle can be “reasonably rejected either from the point

8. Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991), pp. 48–51.

of view of the needy, as insufficiently generous, or from the point of view of the well-off, as too demanding.”)⁹

According to Scanlon, by contrast, what counts as reasonable is determined solely by the goal of finding principles that no one can reasonably reject. This means that if other individuals have better reason to reject all the alternative principles, we cannot reasonably reject a principle purely because of the burden it imposes on us. We converge on a principle that no one can reasonably reject when the individually strongest objection to it is as small as possible. I will now turn to the question of the demandingness of contractualist principles governing emergencies and helping those in need.

II. THE DEMANDINGNESS OF CONTRACTUALISM IN EMERGENCY SITUATIONS

One important difference between Scanlon’s contractualism and utilitarianism is that, since Scanlon does not allow the interpersonal aggregation of complaints in assessing the magnitude of the strongest objection to a principle, the demandingness of an agent’s moral obligations is not contingent on the number of people whose interests are threatened. Unlike utilitarianism, therefore, contractualism will not hold that the agent is, for example, *ceteris paribus* required to sacrifice her own life in order to save the lives of several others. Nevertheless, as I will now argue, contractualism holds that the agent is not permitted to give special weight even to her own central interests in an emergency and that she is likely to be required to sacrifice them.

A primary ground an individual may have for objecting to a proposed principle governing emergencies is the cost the principle would impose on her well-being. Scanlon, as we have seen, argues that in many cases, gains and losses in well-being are the most morally salient consideration, and these cases will most obviously include those in which persons’ basic interests are at stake. In such cases, what the agent does on this one occasion will have a drastic and irrevocable impact on others’ well-being. It may determine whether there will be any future at all for certain individuals, if their lives are at stake, or whether the rest of their lives will be marred by their child’s death, and so on. This means that the complaints raised by other individuals regarding the consequences that an agent’s actions under a principle could have for them are potentially very strong. Moreover, agents are unlikely to encounter more than a few emergency situations in their lifetime where a plausible principle governing emergencies would require them to act, which means that such a principle is unlikely to impose a long-term cumulative cost on an agent over her life as a whole. This suggests that the comparison

9. *Ibid.*, p. 50.

of various individuals' objections to proposed principles governing emergency situations will principally involve comparing the costs and benefits to each individual imposed by the particular actions that an agent may be required to perform by those principles.

This interpretation fits Scanlon's discussion of the case involving two swimmers struggling for the one remaining life jacket (pp. 195–96). In his assessment of the relevant principle, Scanlon focuses on the immediate costs to the interests of each of the swimmers imposed by the things each agent might do. This is presumably because what the agents do on this one occasion determines whether one of them will stay alive. In this context, any wider ramifications of the principle's long-term cost over the agents' lifetimes are not morally salient.

Given the comparative nature of reasonable rejection, there is no limit to the extent of the sacrifice a justified principle may require of an agent provided that a single other individual has an equally strong or stronger objection to all the alternative principles, and in an emergency, the agent's complaint over even the loss of her vital interests is likely to be balanced or outweighed by an equally great or greater cost to another individual. Scanlon stipulates that neither swimmer in the life jacket example can legitimately give more weight to the cost to himself of his own death than the cost to the other swimmer of dying. Like utilitarianism, therefore, contractualism does not give the agent dispensation to give special weight to his own vital interests, even when the other individuals involved are complete strangers.

Unlike utilitarianism, however, contractualism holds that the future expected cost to the various individuals involved is not the only morally relevant consideration. In the life jacket example, Scanlon mentions that it may make a difference if one of the swimmers has struggled hard to find the life jacket. But notice that this additional consideration does not ground an agent-relative principle permitting an agent to give special weight to his own interests. Rather, it gives the swimmer who worked hard to find the life jacket an additional ground for complaint against any principle that would not give him priority in claiming the life jacket. It actually makes it impermissible for the agent who did not originally find the life jacket to struggle now to take it away from the other swimmer, which means that the only permissible course of action open to him will lead to his certain death.

In a situation in which the two swimmers' objections are evenly balanced, such as when "they arrive at the life jacket at the same moment," the nonrejectable principle is one that is capable of "recognizing the symmetry of their claims and the need for some decisive solution" (p. 196). This will be the principle that, of those available, comes closest to giving each of the two swimmers an equal chance of survival. The ideal principle, if it were feasible, would be to draw lots.

Like utilitarianism, therefore, contractualism may require agents to sacrifice their own vital interests for the sake of a stranger in emergency situations. It can be argued, however, that Scanlon's theory, unlike utilitarianism, might draw a sharp distinction between the obligation to save another person's vital interests and the obligation not to harm another's vital interests and hold that the former is considerably less stringent. The reason the obligation not to grab the life jacket is so demanding might be, therefore, that it should be seen as an obligation not to harm another's vital interests.

Indeed, a fully impartial principle might be universally agreed to in advance according to which it is supererogatory rather than obligatory for an agent to make a very serious personal sacrifice in order to save another person's vital interests, even though general compliance with this principle might impose on some individuals the burden of preventable death. If individuals were solely concerned to maximize their chances of survival, they might have no reason to accept such a principle rather than a principle requiring help. However, there might be other considerations that each individual could reasonably hold to outweigh the concern to maximize the chances of survival.

Individuals arguably would have reason, for example, to give special weight to the extreme demandingness of a requirement to sacrifice central interests in order to help a stranger, given how psychologically difficult it would be to do so. (By contrast, a stringent obligation not to harm a stranger's vital interests to save one's own central interests could be viewed as less demanding, given that harming generally has a much greater psychological impact on agents than failing to help.) Each individual might judge the demandingness of a requirement to make a great personal sacrifice, were they to be in the position of the agent, to outweigh the cost of certain death, were they to be in the position of the person whose vital interests are threatened, and so they might each favor a principle of supererogation. Another consideration might be that such a requirement would seriously impinge on the control agents have over the course of their lives, to a much greater extent than the obligation not to harm others' vital interests.¹⁰

Given these kinds of considerations, each individual might agree to a principle according to which it is supererogatory rather than obligatory to make a very serious personal sacrifice in order to give help in emergency cases. It should be emphasized, however, that the contexts in which each person might agree to such a principle are limited to those in which each person assesses principles for emergency situations in advance of actually being in an emergency and, moreover, in which

10. See Rahul Kumar, "Defending the Moral Moderate: Contractualism and Common Sense," *Philosophy & Public Affairs* 28 (1999): 275-309, p. 300.

each person has a random chance of ending up either as the party whose vital interests are at stake or as the agent in a position to help them at a very serious personal cost. In such contexts, each person is just as likely to be benefited as burdened by the principle. In addition, the likelihood of being burdened by it, by being allowed to die, for example, is fairly remote, which is why each person's concern to maximize his or her chances of survival may be outweighed by other considerations. Each person might therefore agree to bearing the remote potential burden of being allowed to die, in order to avoid the burdens imposed on agents by a more demanding principle.

By contrast, in contexts in which it is known in advance that individuals who belong to a particular identifiable group are certain to die (or are at a particularly great risk of death) unless they are helped, these individuals would be severely burdened by general acceptance of the principle of supererogation rather than a principle requiring help, since this would impose on them the burden of probable death. In this context, individuals are not all in a relevantly similar position when they consider candidate principles of aid. For those individuals who are almost certain to die unless they are helped, the concern to improve their chances of survival is likely to be paramount. They have an extremely strong objection to the principle of supererogation, which outweighs other individuals' objections to any stronger principle that required what the principle of supererogation merely says to be praiseworthy. In such contexts, the principle of supererogation can reasonably be rejected by the parties who are at risk.

This can be illustrated by considering the example of the sinking Titanic. Notoriously, a hugely disproportionate number of survivors were first-class passengers. Let us assume that possession of a first-class ticket granted the passenger access to one of the lifeboats. These passengers would then be in a position to help some of the third-class passengers by choosing to offer up their place on board a lifeboat or by trying to get more passengers on board the lifeboats at an increased risk of capsizing. A principle according to which it would be supererogatory for them to give the help could have been reasonably rejected by the third-class passengers, since acceptance of it would lead to their almost certain deaths.

This means that a principle according to which it is supererogatory to make a very serious sacrifice to help those whose vital interests are threatened will not be relevant to the context to which I will now turn, concerning the obligation for relatively affluent agents to give aid to those whose vital interests are threatened by chronic poverty. In this context we know that those whose vital interests are threatened, like the third-class passengers on the Titanic, had no chance of avoiding

the threat. Unless they are helped, they face likely death from the outset.¹¹

III. THE DEMANDINGNESS OF CONTRACTUALIST OBLIGATIONS TO HELP THOSE IN NEED

The first question to consider in assessing the demandingness of contractualist obligations to help those in need is whether the evaluation of principles takes into account circumstances of minimal compliance. Scanlon does not address this question. He describes contractualist principles as being “for the general regulation of behavior” (p. 153) and presumably has situations of widespread compliance primarily in mind. However, general regulation does not entail general compliance. Principles for the general regulation of behavior are, strictly, principles that apply to everyone, even if there is no guarantee that everyone conforms to them. So a principle that requires each agent to help others when their basic interests are at stake and, in deciding how many people to help, to take into consideration how much help other agents are giving, could be a principle for the general regulation of behavior—even if most agents give no help at all.

The most important implication of the idea that the principles in question are “for the general regulation of behavior” is that in assessing candidate principles, we need to consider the overall effect that their acceptance would have on the general character of the social world. In evaluating principles, therefore, we are asked to consider any objections that could arise in the social world in which the principle is adopted, rather than limiting ourselves to considering only objections to particular actions the principle permits or requires, considered in isolation. This leaves open, however, whether or not we are supposed to make realistic assumptions about the extent to which a principle would actually be complied with. One option is that we should imagine an idealized, fictional world, in which compliance with candidate principles is more widespread than it is likely to be in reality, and examine the various objections to principles that would arise in that hypothetical world. Another option, however, is that the characterization of the social world should include the extent of actual or likely conformity with principles.¹² The objections to principles raised in realistic and idealized

11. While there are, of course, significant differences between the Titanic case and the case of obligations of relatively affluent agents toward the chronically poor, one parallel between them is that money can, like a first-class ticket, purchase the means of survival, while, conversely, lack of money can, like possessing a third-class ticket, mean that someone is unable to secure access to these means. In addition, the chronically poor have no less moral entitlement to the means of survival than did the third-class passengers.

12. See Thomas Pogge, “What We Can Reasonably Reject,” *Noûs/Philosophical Issues* 11 (2001): 118–47, p. 132.

social worlds may vary considerably. As I will now argue, it is only if candidate principles are tempered to the actual world in which we live, and assessed under realistic assumptions about the extent to which they actually are or would be complied with, that all the complaints arising from the way in which individuals would actually be affected by various principles can be adequately addressed.

Since Scanlon does not explicitly discuss situations of minimal compliance, I will examine what I take it that he ought to say about such situations, given his account of reasonable rejection. It is likely that there is a principle of aid that, if it were generally followed, would ensure that those in need could expect to be helped, without imposing huge demands on agents.¹³ Let me speak of the "Principle of Aid." It is plausible that such a principle could not reasonably be rejected, given the assumption of general compliance. However, even if an agent does her fair share under the Principle of Aid, if she acts in circumstances, such as actually obtain, in which most relatively affluent agents give no aid at all, there will be many individuals in desperate need whom she could have helped but fails to help. It is clear on Scanlon's view that, in order for the agent to be able to justify her behavior to these individuals, she must be able to say that her failure to help them is permitted by some principle that they could not reasonably reject. The question, then, is whether these individuals whom the agent fails to help can reasonably object to the Principle of Aid on the ground that it does not require enough of agents who are willing to help, given that most people are not willing to help.

At the core of Scanlon's contractualism is the view that acceptable moral principles must be justifiable to each individual who is burdened by them from that individual's own standpoint. One of Scanlon's main claims is that we cannot invoke a veil of ignorance. When our act would impose a great burden on someone, we must be able to argue that our act is permitted by some principle that this person could not reasonably reject, even given full knowledge of the burden that she would have to bear. The problem with acting on a principle that might be justified on the fictional assumption of general compliance when we are actually in circumstances of minimal compliance is that this fails to address the

13. Given the enormity of the current disparity in wealth, a very small redistribution of wealth from the relatively affluent to the poorest quarter of the world's population would enable the chronic poverty that currently threatens persons' basic interests to be removed. The international poverty line, below which "a minimum, nutritionally adequate diet plus essential non-food requirements are not affordable" (*United Nations Development Program: Human Development Report, 1996* [New York: Oxford University Press, 1996], p. 222) and below which 1.5 billion fall, is currently specified at an annual per capita income of \$394 at purchasing power parity 1993.

actual case at hand and to acknowledge the burden that particular individuals actually face.

This can be illustrated by considering an example in which there are ten children drowning in a pond and five agents on the scene who could rescue them. Let us suppose that the water is very cold, and that the agent's burden of rescuing the children therefore increases as the number of children she rescues increases, since it becomes increasingly unpleasant to remain in the water. The relevant general principle that could not reasonably be rejected, assuming general compliance, is that in such circumstances the burden of rescue should be evenly distributed among the agents on the scene. However, if the other bystanders left the scene, and the agent were to walk off after rescuing only two children, on the ground that this complies with the principle that if everyone else also complied with it, could not reasonably be rejected, it is hard to see how this could be justified to those left to drown.

There are several differences between the pond case and the case of obligations to help those whose interests are threatened by chronic poverty, but one important parallel is that, in both, minimal compliance with a principle of aid that would otherwise be justified under Scanlon's theory leads to some individuals' vital interests being threatened. The complaint such burdens give rise to can be acknowledged only if the extent to which the principle is actually complied with is taken into consideration.

Individuals in need can therefore point out that principles can reasonably be rejected if they do not cover—in a way that cannot reasonably be rejected—cases in which there is minimal compliance with them. They can reasonably reject principles on grounds of complaints they would have in such situations, since that is the situation they are actually in, one in which, because other potential rescuers are not acting as they should, they are about to bear a great burden.

As I will later argue, the circumstance of minimal compliance also gives rise to a complaint on the part of those giving help against very demanding principles of aid, namely, that it is unfair for them to have to pick up the tab for others' failure to give any help at all. But this very complaint is likewise premised on taking the situation of minimal compliance into consideration, in deciding what principles can reasonably be rejected, rather than simply defining the general principles in terms of reasonable acceptance under the assumption of general compliance.

Scanlon's own discussion of the "Rescue Principle" (p. 224) is relevant here. This principle claims that if we can prevent something very bad from happening to someone by making a slight or even a moderate sacrifice, it would be wrong not to do so. This principle clearly applies to all cases in which someone is in desperate need and could be helped

at only a moderate cost. It would still apply even if the rescuer and the person in need were the only two people in the world who took morality seriously.¹⁴ It should moreover be stressed that the principle is just as applicable to the obligation to help the chronically poor as to the obligation to respond to short-term emergencies such as in the pond case, since in both cases the individuals who need help are in dire straits.

When Scanlon suggests restrictions on this principle, they are entirely about whether the rescuer would be required to help at too great a cost to herself. This is the issue to which I will now turn. I will argue that there is, in fact, a principle of aid that cannot be reasonably rejected which is far more demanding than the Rescue Principle and comparable with the demandingness of utilitarian obligations toward those in need. (It should be noted that Scanlon leaves open the possibility that the Rescue Principle “may not exhaust our duty to aid others when we can” [p. 224].)

This brings us to the question of the demandingness of contractualist principles governing the obligation faced by relatively affluent agents to give aid to those in need in circumstances, such as the present, in which most of those who are relatively affluent give no aid at all. On Scanlon's account of reasonable rejection of principles, whether or not candidate principles of aid are rejectable will depend on the comparative strength of the agent's objection to a demanding principle of aid and any other individual's objection to a less demanding principle. I will focus first on the relatively affluent agent's objection to a very demanding principle. One such principle would require her to give most of her income to aid agencies and to spend a lot of her spare time on campaigning and fund-raising. Let me call this the “Stringent Principle.”

Her most obvious objection to the principle will be based on the cost it would impose on her. An important difference between this principle and the one governing the pond example and emergency situations in general is that the threat to persons' vital interests resulting from malnutrition and preventable disease is a constant problem. In considering the general costs of the Stringent Principle across the agent's lifetime, therefore, we need to take into consideration the long-term cumulative burden of repeated actions of giving help. This will include the severe constraints the principle imposes on the amount of time and money she is permitted to spend on her personal projects and commitments. For example, the required political campaigning and fund-raising would cut down on the amount of time she could spend with her friends and family, and on her hobbies.

These are the kinds of costs to which the agent can appeal in

14. I owe this point to Derek Parfit. My discussion of minimal compliance is particularly indebted to him and to David Copp.

objecting to the Stringent Principle. Whether these costs justify the agent's rejecting the Stringent Principle depends on whether any other individual has a greater complaint against a less demanding principle, such as the Rescue Principle. In the current state of the world, there are constantly individuals in need whom a relatively affluent agent is in a position to help. Therefore, if the agent complies with all but the most demanding principle, there will be individuals in need whom she fails to help and whom she could help if she made a more substantial sacrifice. These individuals can object to the Rescue Principle and propose a much more demanding alternative principle.

Scanlon describes those in need as "in dire straits: their lives are immediately threatened, for example, or they are starving, or in great pain, or living in conditions of bare subsistence" (p. 224). Clearly, the sacrifice imposed on an agent by a principle of aid to those in need will have to be extreme before it balances the cost faced by individuals in dire straits who are not helped and otherwise would have been. Therefore, the cost to an agent imposed by all but exceedingly demanding principles of aid will be outweighed by the cost to individuals in need imposed by less demanding principles of aid. Consideration of the comparative strengths of the burdens faced by various individuals, then, will lead to nonrejectable principles of aid that will impose demands on the agent which could be and are likely to be just as extensive as those imposed by utilitarianism.

The agent may also object to a highly onerous principle not only on the basis of the cost to herself but in addition on the basis of its impact on her special obligations to particular individuals, such as her children. The Stringent Principle may preclude her from being able to give her children as good a start in life as she would like. Giving away a lot of her income to help those in need might, for example, mean that she could not afford to live in an area with good state schools or to send her children to private schools.

She might argue that her complaint appeals to a generic objection that everyone in the position of agent has, namely, an objection to being prevented from giving one's own children a good start in life. She might then argue that each person therefore has reason to reject a principle that prevents her from giving her children a good start in life. And since each person has reason to reject such a principle, it can be reasonably rejected. This rejection is fully impartial, since "what is appealed to is . . . the generic reasons that everyone in the position of an agent has for not wanting to be bound, in general, by such a strict requirement" (p. 225).

However, it cannot be inferred from the rejection of a principle that prevents parents from giving their children a good start in life that the agent can reasonably reject a hugely demanding principle of aid

such as the Stringent Principle. Many of those in desperate straits whom she could be helping are very unsure about whether their children will survive into adulthood at all. They are unable to help their children to the point of being powerless to prevent their deaths by malnutrition or disease. They are therefore appealing to a generic reason of the very same kind, to give their children a good start in life, but which has a far greater urgency. Although the agent's worry about not being able to give her children as good a start in life as she would like is a very strong one, she cannot legitimately give it more weight than the complaint of other parents that they are unable to secure their children's survival. To do so would involve a failure "to recognise the force of similar objections by others" (p. 171).

Another objection that a relatively affluent agent can propose to a principle more stringent than the Rescue Principle, which has considerable initial intuitive force, is the complaint that it is unfair for her to face a huge burden of giving help because of others' failure to give any help at all. One way of understanding the unfairness objection is to see it as arising from a conception of benevolence as a collective enterprise.¹⁵ On this picture, meeting the requirement to help others is a collective project, and each individual is required to do only her fair share of discharging the collective requirement. Scanlon, however, offers a compelling account of the foundation of agents' obligations to those in need according to which the primary principle of benevolence is not a cooperative but an individual one.

Scanlon emphasizes that the part of morality with which his theory is concerned is not limited to "those . . . with whom it is advantageous for us to enter into a system of mutual restraint and cooperation" (p. 179). Its scope is therefore not restricted to a set of reciprocal principles governing the conduct of members of an association or community. The relation that is important to morality is not mutual advantage but that of being able to justify one's actions to others on grounds they could not reasonably reject. Its scope will therefore "include those beings to whom we have good reason to want our actions to be justifiable" (p. 179). In the case of obligations to those in need, the relevant principle of beneficence is, as Scanlon forcefully argues, most plausibly taken to be grounded purely in the fact that failing to give any help when others' basic interests are threatened cannot be justified to those individuals (regardless of whether or not the agent has entered into reciprocal relations with them).

If the basis of the principle is that the agent's failing to help others'

15. This conception is described by Liam Murphy in "The Demands of Beneficence," *Philosophy & Public Affairs* 22 (1993): 267–92, and in his *Moral Demands in Nonideal Theory* (New York: Oxford University Press, 2000).

basic interests cannot be justified to those individuals, then their interests provide the agent directly with reasons for giving help. This contrasts with the cooperative principle of beneficence, according to which the agent is not required to respond to the others' interests directly. The contrast can be brought out by returning to the case in which there are ten children drowning in a pond and five agents able to rescue them, four of whom walk off without rescuing any of the children. If the cooperative principle is applied to this case, the agent who remains on the scene is required to rescue only two of the children. The interests of the other eight children belong to a pool of interests, which the agent addresses only as a member of a group of potential beneficiaries. The extent of the agent's obligation depends solely on what would be the fair division of the burden of giving help among those beneficiaries. If, on the other hand, the children's interests provide the agent directly with reasons for acting, then she has an obligation toward the other eight children, which is not removed by the fact that the cause of their being in dire straits is others' failure to give any help at all.¹⁶

Nevertheless, although on Scanlon's view the primary obligation of benevolence is an individual one, it does plausibly give rise to a secondary cooperative principle of benevolence.¹⁷ One reason for this is that a scheme of cooperation will be the most efficient way for agents to succeed at helping the severely needy; agents will therefore agree to a secondary cooperative principle of benevolence as being the best way for them to succeed in implementing their individual obligations to those in need. But an additional reason for the cooperative scheme is that it is the fairest way of distributing the burden of giving help among those in a position to do so. Those relatively affluent agents who fail to give any help are not doing their fair share (I will call them the "slackers").

However, since the primary and underlying principle of benevo-

16. Advocates of the cooperative principle of beneficence may argue for a distinction between the pond case and the case of obligations to those in need, and hold that a direct principle of rescue applies to the former, while the cooperative principle applies to the latter. They may argue that emergency situations such as the pond case are too rare to be thought of as a matter of collective action, and that for this reason, the burden of rescue is one that an individual agent has to bear by herself, but that by contrast, since the claims of the global poor will be a standing fact throughout our lives, the burden of alleviating their plight is most plausibly viewed as a problem to be tackled collectively. As we have seen, however, the purview of Scanlon's Rescue Principle is not confined to short-term emergency episodes, because it is grounded simply on the importance of the interests at stake and the unjustifiability of failing to help them. The reason it is wrong not to save the remaining eight drowning children is because they are in dire straits, and those whose vital interests are threatened by chronic poverty are in equally dire straits.

17. For a full discussion of this point, see Garrett Cullity, *The Moral Demands of Affluence* (Oxford: Clarendon Press, in press).

lence is an individual one, the agent's complaint that the slackers are acting unfairly is unlikely to be relevant to the demandingness of her obligations to those in need. The conscientious agent's complaint at being faced with an obligation to make extreme sacrifices to help those in need as a result of others' failure to give any help at all has considerable force when it is directed at the slackers. It may well legitimate her exerting pressure on the slackers to perform their fair share of the burden of giving help, when she is in a position to do so. This indicates that a principle that compels compliance with an equitable distribution of the burden of giving aid, through a system of state taxation to fund aid to poor countries, cannot be reasonably rejected.¹⁸ Until such a system of taxation is in place, however, individual agents have to address the question of how much aid they should give, given others' failure to give any aid at all. In this context, if the agent refused to give more than her fair share of aid, this would be unlikely to ensure that the burden of giving aid was fairly shared. Rather, it is highly likely that the agent's refusal to give more than her fair share of help would have no impact on the slackers and would have a drastic impact on certain individuals in desperate straits who would not be helped and otherwise would have been. Those in need are clearly not the ones who are acting unfairly, but it is they who would suffer if she let her complaint against the slackers determine the amount of aid she gave.

There is also, I suggest, another respect in which the slackers can be held to be acting unfairly. This can be seen as deriving from the basic intuition that fairness requires that no one lacks an equal opportunity for a decent life because of morally arbitrary factors. The slackers have had considerable opportunities largely through pure good luck and are failing to do anything to remedy the situation in which other individuals have no chance of a decent life simply because of where they were born. The slackers can therefore be accused of taking unfair advantage of their morally arbitrary good luck and giving inordinate priority to their own interests.

The conscientious agent's complaint at the unfairness of her onerous obligation to give help under the Stringent Principle may involve an objection to the gratuity of her predicament; she is being morally obliged to sacrifice core components of her well-being, as the result of others' lavishing money on trivial items that are completely inessential

18. Another institutional measure that Kantian contractualism would require would, of course, be to end those practices which actively harm the vital interests of unprivileged members of poor countries. Among such practices are the unfair trade laws that result from the greater bargaining power of richer countries and the international borrowing and resource privileges. See Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002).

to their well-being. It is worth emphasizing, though, that the gratuity objection is even stronger in the case of those in dire straits. Many, for example, lack the ten dollars needed for a simple cure for an eye disease that will, if untreated, cause immense pain, blindness, and eventual death. Others have to see their children die through lack of food.

I conclude that the consideration of the comparative strength of the objections to principles governing obligations to help those in need, by those who will benefit and those who will be burdened by such principles, leads to an exceedingly demanding principle of aid that cannot reasonably be rejected. The demands such principles place on agents are comparable to those imposed by utilitarian obligations to help those in need.

The extreme demandingness of both contractualist and utilitarian obligations to those in need is not an objection to either view, I suggest, but an appropriate response to morally salient features of the current state of the world. In our world, we would expect any theory grounded on the claim that each person has equal moral status to hold that agents have extremely demanding obligations to give aid. The extreme demandingness of utilitarian obligations to give aid arises from the vast scale of extreme and easily preventable suffering.¹⁹ The extreme de-

19. This claim about the extreme demandingness of utilitarian obligations to help those in need applies only to direct versions of utilitarianism, such as act utilitarianism. According to rule utilitarianism, by contrast, the right action is the action which conforms to the right rule, where the right rule is defined as the rule the general acceptance of which would promote the most welfare. It follows that according to rule utilitarianism, the right action in circumstances of minimal compliance with the rule is no more demanding than is the right action in circumstances of general compliance. However, just as, I have argued, a version of Kantian contractualism that fails to take into account the circumstance of minimal compliance departs from the core of the theory, in the same way, I suggest, rule utilitarianism departs from the core of utilitarianism, namely, the goal of maximizing overall welfare. This can be illustrated by returning once more to the pond example. Rule utilitarianism prescribes complying with a rule the general acceptance of which would maximize overall welfare, even when the agent knows that complying with the rule will have disastrous consequences for persons' welfare, given the actual circumstance of minimal compliance with the rule. Rule utilitarians may respond to such cases by including a catastrophe clause, according to which the agent ought not to comply with the right rule (defined on the assumption of general compliance) in circumstances in which doing so would have catastrophic consequences. (See, e.g., Brad Hooker, *Ideal Code, Real World* [Oxford: Clarendon, 2000], pp. 98–99 and 164–65. I should note that Hooker is a rule consequentialist rather than a rule utilitarian; but the distinction is not relevant to this argument.) This is a move closer toward act utilitarianism, and as rule utilitarianism is modified in this way, it will correspondingly become increasingly demanding. And the more of these actual consequences of agents' actions with which rule utilitarianism is concerned, the more it will have to take minimal compliance into consideration. Moreover, death by starvation is just as serious as death by drowning. This implies that in the current state of the world, in which there is constant catastrophic death by starvation, there will be little difference between the demandingness of act utilitarianism and rule utilitarianism. Alternatively, if rule utilitarianism does ignore the actual

mandingness of contractualist obligations to give aid arises from the combination of the drastic and irrevocable impact on others of not being helped with the fact that there are constantly so many in this position that the long-term cost of giving help soon becomes extremely high. Thus, whether we understand impartiality along utilitarian or Kantian lines, and take the moral point of view to be founded on equal concern or equal respect, we reach the same conclusion concerning the demandingness of obligations of aid.²⁰ It can plausibly be claimed that both utilitarian and Kantian contractualist obligations to those in need would be considerably less demanding if the state of the world were relevantly different.²¹

I will now, however, in the final section, examine the way in which a central feature of reasonable rejection means that contractualism would remain exceedingly demanding in any practically realizable state of the world. And while its demandingness in the current state of the world is an appropriate response to the current state of the world, its extreme demandingness in any practically realizable state of the world is, I will argue, highly implausible. Moreover, what leads to this extreme demandingness is a central aspect of its wholesale rejection of the interpersonal aggregation of complaints, which is one of the chief ways in which it is differentiated from utilitarianism.

catastrophic consequences resulting from ignoring the circumstance of minimal compliance, this will be in strong conflict with the goal of maximizing overall welfare.

20. It is, of course, possible that there is an alternative conception of impartiality according to which moral obligations to those in need would be less demanding. However, the utilitarian and Kantian conceptions of impartiality both have considerable pull, as responses to the two features of persons that most obviously ground their equal moral status: their capacity for well-being and suffering, and their rational autonomy, respectively.

21. Under a more just social and political system, first, persons' vital interests would, on all but exceptional occasions, be taken care of at the political level, which would mean that individual agents were only rarely in a position where they needed to help others' vital interests. Second, the burden of helping persons' other important needs, including their psychological needs, would generally be evenly distributed among the agents able to give help, which would mean that the burden on any individual agent would be unlikely to be extremely demanding. The version of utilitarianism I have in mind would follow Mill in holding that not all optimistic actions should be construed as morally required, and that moral obligations are generally linked only with important components of well-being. Kantian contractualism, moreover, might, for reasons I have given, ground principles according to which it is supererogatory for agents to make extensive personal sacrifices to save others' vital interests, in circumstances in which individuals had a random chance of ending up in a situation in which their vital interests are at stake (in contrast to the present situation, in which the vital interests of the chronically poor are under threat from the time they are born).

IV. THE DEMANDINGNESS OF CONTRACTUALISM IN ANY
PRACTICALLY REALIZABLE STATE OF THE WORLD

Scanlon stipulates that the unlikelihood that a form of behavior will cause harm does not diminish the complaint of the individuals who actually end up being harmed: "The grounds for rejecting a principle are based simply on the burdens it involves, for those who experience them, without discounting them by the probability that there will be anyone who actually does so" (p. 208). The kind of probability Scanlon mentions in this passage is the probability that there is anyone at all who will suffer a burden. He does not draw a distinction between cases involving this kind of probability and cases in which it is certain that at least one person will be harmed, but, because the harm will be inflicted at random and affect only a small percentage of the population, the probability for each individual that they will be the one who is harmed is very remote; the example with which Scanlon illustrates his stipulation appeals to the second kind of probability. If the low probability of being harmed does not diminish the complaint of the person harmed in cases of the first kind of probability as well as the second, this has even greater ramifications for the demandingness of acceptable moral principles. I will focus on the stipulation as applied only to cases of the second kind and will argue that this alone has extreme implications.

Scanlon's worry is that if the weight given to burdens is discounted by the probability of suffering them, then even a serious burden might be outweighed by relatively minor benefits to others, if the burden were sufficiently unlikely. This would preclude the person who was burdened from reasonably rejecting a principle allowing the risk of the burden and so could lead to unacceptable trade-offs.

The kinds of cases Scanlon has in mind are ones in which those at risk of being harmed by a form of behavior could not have expected to benefit from it. If everyone stands to benefit from a form of behavior that involves certain risks, then the behavior is acceptable to each individual from that individual's personal point of view, and so no one objects to it. This will be the case when the risk of harm is needed to secure a public good, which is shared by everyone. An example of this is a policy of allowing ambulances to break the speed limit, despite the fact that this occasionally results in deaths from crashes that would not otherwise have occurred. The number of people whose lives are saved by the policy, by getting quicker access to lifesaving treatment, greatly outweighs the number of people killed in the very rare car crashes that result from the policy, and the benefit conferred by the policy of getting quicker access to lifesaving treatment, should one need it, is shared by everyone. The risk of harm is not imposed on some people for the sake of benefits to a greater number of others but, rather, is imposed on

everyone equally, because each person is much more likely to be benefited than burdened by a principle that allows the risk. Therefore, each person has reason to see herself as a potential beneficiary of the policy and as one who must bear the remote risk of being harmed by the policy in order to secure that benefit. The policy can therefore be justified even to someone who ends up being harmed by it by dying in a car crash.

The morally problematic cases are ones in which those burdened by the risk of being severely harmed by a policy are excluded from being potential beneficiaries of the policy. The risk of severe harm is imposed on them not for the sake of a public good they themselves had reason to recognize as important from their own standpoint but for the sake of individually less important but more likely benefits to others.

The example Scanlon focuses on is of a "principle licensing us to impose very severe hardships on a tiny minority of people, chosen at random (by making them involuntary subjects of painful and dangerous medical experiments, for example), in order to benefit a much larger majority" (p. 208). This example is one in which those who end up being harmed by acceptance of the principle could not have expected to have been benefited by it. Scanlon emphasizes that the subjects are involuntary and that the experiments are performed for the sake of the majority. (We can contrast this with an alternative scenario, in which a group of individuals suffers from a very serious disease, and all volunteer to sign up for a scheme in which some of them will be selected for experiments to test a drug for the disease. Signing up for the scheme might increase the life expectancy of each of them. On this scheme, even those who are selected could have expected to be benefited by the scheme.)

Given that only a small fraction of the population would suffer the harm, and that they would be randomly selected, the probability for any one individual of being selected is very remote. Scanlon is concerned to allow that a principle permitting the experiments "could reasonably be rejected because of the severe burdens it involves" (pp. 208–9). However, he says, "this would be effectively ruled out" if "the weight given to these burdens, as grounds for rejecting the principle," were to be "sharply discounted" because of the low probability of suffering the burden (p. 209).

A contractualist rule utilitarian such as John Harsanyi might argue that the medical experiments Scanlon describes are justifiable to each person, even though those selected for the experiments are severely burdened and could not have benefited from the experiments. Harsanyi's argument would appeal to the fact that when individuals make a rational self-interested choice from behind a veil of ignorance of what position in society they will occupy, they will each choose the policies

that will maximize their expected utility.²² The experiments can be justified to those who turn out to be burdened by them on the ground that if they had not known whether or not they would suffer from the disease, and whether or not they would be the ones selected for the experiments, it would have been in their own rational self-interest to have chosen the experiments. The reason this would have been a rational self-interested choice is because of the much greater probability that they would have been benefited by the experiments, given that the experiments impose a burden only on a few individuals and are for the sake of a much larger majority.

Harsanyi shares the contractualist view that the fundamental justification of moral principles is that the principles are acceptable to each person. Nevertheless, in claiming that the justifiability of principles that impose a certain burden is based on the probabilities of the burdens and benefits together with their magnitude, he introduces the interpersonal aggregation of burdens and benefits, and justifies interpersonal trade-offs for the sake of maximizing expected utility.

Scanlon, however, rejects this kind of reasoning, on the ground that it distorts the nature of justification to individuals. He draws a sharp distinction between “the question of what *everyone* could reasonably agree to or what no one could reasonably reject” and “the question, what would maximise the expectations of a single self-interested person choosing in ignorance of his true position”; the latter, he says, “is a quite different question.”²³ On Scanlon’s view, a principle that everyone could reasonably agree to or no one could reasonably reject is one that is relevantly acceptable to each individual from that individual’s own standpoint. Most important, a principle that imposes a burden on certain individuals must be acceptable to those individuals who actually end up suffering the burden. The worry with the contractualist rule utilitarian account of justification is that it might maximize someone’s expected utility to choose a policy which imposed a severe burden on a few individuals and benefited a much larger number—if the probability of ending up as one of the people burdened by the policy were sufficiently low and the probability of ending up as someone benefited by it were sufficiently high—even if actually suffering the burden would not be acceptable to that individual from his or her own standpoint.

In Scanlon’s medical experiments example, from the standpoint of those who actually end up being selected, their burden is not diminished

22. See, e.g., John Harsanyi, “Morality and the Theory of Rational Behavior,” in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (New York: Cambridge University Press, 1982), pp. 39–62.

23. Scanlon, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, ed. Sen and Williams, pp. 103–28, p. 122.

by the fact that they were unlikely to have been chosen. And since they were excluded from being potential beneficiaries of the policy, they had no reason, from their own standpoint, to have accepted that they might potentially bear such a burden. These individuals therefore have a very strong objection to the policy, based on the actual burden it imposes on them. (The reason it might have maximized their expected utility to choose the policy from behind the veil of ignorance was because of the greater likelihood that they would have ended up in the much larger group of individuals who stood to benefit from the policy.)

Thus, the stipulation that the low probability of being burdened by a principle does not diminish the complaint of the person who ends up suffering that burden, in cases in which that person could not have expected to benefit from the principle, is central to ensuring that a principle is relevantly acceptable from each individual's standpoint. It is not enough to show that it would have maximized each individual's expected utility to choose the risk of the burden; we have to ask directly whether the burden is acceptable from the standpoint of the person who actually suffers it. As Scanlon puts it, justification to others "gives us a direct reason to be concerned with other people's points of view: not because we might, for all we know, actually be them, or because we might occupy their position in some other possible world, but in order to find principles that they, as well as we, have reason to accept" (p. 191).²⁴

The issue can be brought out by considering Sophia Reibetanz's discussion of a case in which one hundred peasants are tilling a field which contains an unexploded mine.²⁵ If the mine is not removed, one of them will certainly suffer the loss of a limb. There is only one person able to operate a device that could remove the mine, and, given the weather conditions, if he does remove the mine, he will certainly catch pneumonia. Since each peasant has only a one in a hundred chance of hitting the mine, the expected disutility for each of them, if the mine is not removed, is plausibly outweighed by the certain harm of catching pneumonia. However, as Reibetanz argues, if our central concern is to

24. Rawls too is concerned to avoid allowing that the low probability of ending up being burdened could play a role in justifying the burden. He stipulates that from behind the veil of ignorance individuals will avoid engaging in such probability calculations but will instead use a play-safe strategy, according to which they will avoid any risk of ending up in a position they find unacceptable by ensuring that the position of even the worst-off member of society is acceptable to that individual from his or her own standpoint. Scanlon, however, rejects the whole model of self-interested choice from behind a veil of ignorance as failing to capture the core of contractualist justification of principles, which consists in showing that the burdens are justifiable to the individuals who suffer them from those individuals' own standpoints.

25. Sophia Reibetanz, "Contractualism and Aggregation," *Ethics* 108 (1998): 296–311.

justify the relevant principle to each person burdened by it, the important factor is that we know that someone will suffer the considerable burden of the loss of a limb. The appeal to each peasant's expected utility fails to justify the loss of limb to the particular individual who ends up suffering that burden, whoever that individual turns out to be.

There is, however, a serious problem with Scanlon's stipulation that the remoteness of the probability of being burdened does not diminish the complaint of the person who actually suffers the burden, in cases in which those burdened by the principle were not also potential beneficiaries of it. The problem is that this stipulation has some drastic implications. As Scanlon points out, it seems to imply that behavior that involves a very remote risk of harm is just as objectionable as behavior that is certain to cause harm, since the burden of actually suffering the harm is the same in each case; as Scanlon says, "the harm is just as bad when suffered 'by accident' as when it is inflicted" (p. 209).

Avoiding all behavior that involved any risk of harm, however remote, to those who did not stand to be benefited by the form of behavior would be extremely burdensome. For example, as Scanlon mentions, personal air travel would seem to be prohibited, because of the remote risk that some people are killed by falling planes. When considering the acceptability of general principles, we need to consider their long-term effects, over persons' lifetimes. Although, if we consider any one plane journey in isolation, it is exceedingly unlikely that anyone on the ground will be killed, we know that the activity of plane travel will every so many years result in the death of one or more persons on the ground. Moreover, we can assume that, unlike those who were on board the plane, some of those killed from falling planes could not have expected to benefit from the activity of personal air travel because, for example, they were too poor to travel by plane. We can therefore assume that at least one person in each generation somewhere in the world will die from the activity of personal air travel who could not have expected to have been benefited by it. If these individuals' complaints are not diminished by the low probability of suffering the harm, then they must be based on the actual cost of death, in just the same way as if the activity had been certain to kill them.

Scanlon wants to avoid the highly counterintuitive implication that air travel is impermissible, along with many other activities that involve the remote risk of harm. He thinks he can show that air travel is allowed without conceding that the low probability of being harmed diminishes the complaint of the person harmed. That is because this low probability is relevant as a factor that affects the burden of avoiding causing the harm: "The probability that a form of conduct will cause harm can be relevant not as a factor diminishing the 'complaint' of the affected parties (discounting the harm by the likelihood of their suffering it)

but rather as an indicator of the care that the agent has to take to avoid causing harm" (p. 209).

However, this solution to the problem does not give Scanlon sufficient grounds to justify the judgments he wants to make. He claims that a principle that required that every possible precaution against the risk of harm be taken would be so burdensome on those taking the precautions that such a principle could be reasonably rejected: it would, he argues, "be too confining, and could reasonably be rejected on that ground" (p. 209). He says that a ban on air travel could, for example, reasonably be rejected, despite the risk that some people are killed by falling planes, because of the severe restriction such a principle would impose.

But if the remoteness of the risk of being killed does not reduce the complaint of the person unlucky enough to end up being killed, then in deciding whether a principle permitting air travel can reasonably be rejected, we need to compare the burden of not being allowed to travel by air with the burden of actually being killed. And the burden of being killed outweighs the burden of forgoing air travel. This can be seen by considering a hypothetical example in which we knew that if we continued traveling by air we would be certain to die prematurely in an air crash. Under these circumstances, however confining we found giving up air travel, we would be very unlikely to choose to continue air travel, since we would most probably judge the burden of actual premature death to be greater than the burden of severely restricting our travel.

On Scanlon's account of reasonable rejection, therefore, the remote risk of death to one individual outweighs the burden to any other single individual of forgoing air travel. It follows that if we make a one-by-one comparison between the individual most burdened by the activity and the individual most burdened by a ban on it, the first person's complaint is stronger. And given that there is no interpersonal aggregation of complaints, the number of persons who would have to forgo air travel does not strengthen the complaint over a ban on air travel. This means that the complaint at the exceedingly remote risk of death outweighs the complaint over a ban on air travel. A principle imposing such a ban therefore cannot be reasonably rejected.

The comparative strength of the complaints involved in the air travel case, when it is stipulated that the probability of the harm does not diminish the complaint of the person harmed, can be generalized. A great many of our activities involve a remote risk of causing death. For many of them it can be plausibly assumed that each person can expect to benefit from them. However, for many other activities, not all of those who face the remote risk of being killed by the activity could have expected to benefit from it.

Forgoing all activities of the second kind could significantly impoverish agents' lives. However, as long as their lives would still be well worth living, then the cost to each of them of the extensive burden of avoiding the risk would be less than the cost to another individual of actually being killed by the activity. Therefore, measures which reduced the extremely remote risk of death to a few individuals would be justified even if they severely impoverished the lives of millions. (Moreover, as Scanlon originally formulates his stipulation about probability, the implications are even more extreme: even in cases in which it is uncertain whether anyone at all will suffer the harm, the complaint over the risk of harm is not diminished by the low probability of suffering it.)

Scanlon takes it to be an advantage of his contractualism that it can accommodate our intuitions about cases such as that of the medical experiments and preclude the kinds of trade-offs that utilitarianism would permit. One important aspect of his precluding such trade-offs and, hence, distinguishing his view from Harsanyi's veil-of-ignorance rule utilitarianism, is his stipulation that the low probability of suffering a burden does not diminish the complaint of the person who suffers it. However, given the highly counterintuitive implications of Scanlon's stipulation, I suggest that Scanlon is wrong to claim that what leads utilitarianism to impose unacceptable burdens is that it allows interpersonal aggregation of benefits and burdens *per se*. Rather, what is wrong with the versions of utilitarianism he criticizes in his book is the kind of aggregation they allow.

One serious objection to the version of utilitarianism that allows the problematic trade-off of Jones's being given extremely painful electrical shocks so as not to interrupt the transmission of the football match watched by millions is that it is committed to cardinal measurements of benefits and burdens. These measurements are totted up to arrive at the net sum total. On this cardinal model of utility measurement, any burden, however serious, could be outweighed by a relatively trivial benefit to a sufficiently large number of others.

As James Griffin argues, however, on a plausible account of interpersonal (and intrapersonal) welfare aggregation there are many cases in which there is discontinuity in value between different persons' benefits and burdens, such that the disvalue of one person's suffering a certain serious burden (such as severe and prolonged physical pain, or being precluded from living a good life) will outweigh any amount of a certain kind of trivial benefit or burden.²⁶ The Jones case would be an instance of such discontinuity in value, so that no number of persons experiencing the pleasure of watching the football match could outweigh the burden of Jones's extreme pain. In cases in which there is

26. James Griffin, *Well-Being* (Oxford: Clarendon, 1986), pp. 85–89.

this discontinuity of value, only ordinal measurements are possible. However, as Griffin argues, ordinal rankings are sufficient to enable welfare maximization. Furthermore, many utilitarians, including Mill, have embraced ordinal rankings in cases in which the benefits and burdens can be claimed to be different in kind.

There may, however, be a further problem with certain trade-offs, which no version of utilitarianism is in a position to accommodate, whatever its conception of welfare aggregation and maximization. Even when the burdens faced by all the parties are comparably serious, certain trade-offs may be unacceptable purely because they are disrespectful. The reason the medical experiments case seems particularly troubling, I suggest, is because of the erosion of the barriers of respect that would be involved in the state's deliberately choosing to inflict a serious harm on people against their will. This is a worry that Scanlon's contractualism, founded as it is in the importance of a relationship of mutual recognition, is in a particularly strong position to capture.

However, in contexts in which no one is being deliberately selected for a certain fate, and all the burdens are comparably serious, we do tend to think that the number of people who would be benefited and burdened is morally relevant. We do, for example, tend to think that an activity can be morally acceptable even if a few persons are randomly killed by it, who could not have expected to benefit from it, provided there are significant, even though smaller, benefits to a huge number of others. The reason we think that air travel, for example, is permissible, I suggest, is because the number of those killed by it who did not stand to benefit from it is so small, and a ban on it would impose a significant (though smaller) burden on a huge number.

The contractualist moral point of view, which is strictly confined to considering individuals' viewpoints one by one, can allow no aggregation of any kind. As a result, for the reasons I have discussed, it will remain extremely demanding in any practically realizable state of the world.

V. CONCLUSION

In conclusion, I suggest that the assumption that contractualism provides a less demanding alternative to utilitarianism should be reconsidered. Utilitarianism imposes extremely demanding obligations to help those in need, and this has often been taken to be a stumbling block for it. However, I have shown that utilitarianism's main impartial rival, Kantian contractualism, also imposes extremely demanding obligations to help those in need, obligations that are not substantially less demanding than those imposed by utilitarianism. This suggests that it may not be possible to ground any significantly less demanding obligations without giving up impartiality, which I take it that no acceptable account of morality can afford to do.

In short, I do not think that a theory can be faulted for implying that our obligations to help those in need in the current state of the world are extremely demanding. However, Scanlon's contractualism is also demanding in a way that is much less defensible because of the fact that it rejects all interpersonal trade-offs. This rejection commits Scanlon's theory to extremely demanding principles for any situation in which any one person may be harmed by activities which involve any small risk, and that is the situation in any practically realizable state of the world.