

MAXIM AND PRINCIPLE CONTRACTUALISM

Aaron Salomon

CONTRACTUALISM determines which actions I must perform by seeing whether they accord with principles for the general regulation of behavior that no one can reasonably reject.¹ Part of what makes contractualism such an attractive moral theory is its faithfulness to our concept of morality. It is part of our very idea of morality that it is *to be realized* by social institutions in that moral principles and rules are to be internalized by communities and regulate the activity of their members.² Contractualism's focus on evaluating principles for the general regulation of behavior allows it to vindicate our view that morality must be the kind of thing that can play a particular role in regulating the social order. Living together on the basis of principle contractualism's nonrejectable principles would be pretty good indeed. But this otherwise attractive feature of contractualism gives rise to the ideal world problem. Sometimes, contractualism recommends acting in accordance with a principle that would be great if it were generally accepted but a nightmare to follow in situations where it is not.

- 1 This paper's title is a play on Sheinman's "Act and Principle Contractualism." In that paper, Sheinman also argues that contractualists should no longer determine which actions I must perform by seeing whether they accord with certain principles for the general regulation of behavior. But there are two points of difference between my paper and his. First, Sheinman argues that contractualists ought to evaluate my acts *directly* for their rejectability or lack thereof in order to determine whether I am required to perform them. I, however, think that contractualists ought to assess any maxim that might be reflected in my actions for rejectability in order to determine whether I am required to perform them. Second, I argue that contractualists should drop their commitment to evaluating principles for the general regulation of behavior in order to solve the ideal world problem. In doing this, I follow Murphy, "Nonlegislative Justification." But Sheinman argues that contractualists should drop this commitment of theirs in order to allow their view to remain consistent with what he calls "foundational contractualism," the view that what matters ultimately in action is unrejectability. More on Sheinman's view later.
- 2 I owe my formulation of this plausible conceptual claim about morality to Walden, "Mores and Morals," 419. Walden traces this conceptual claim back to Hegel, Marx and Engels, and Nietzsche.

Suppose that if the principle “give to poverty relief if you are not impoverished yourself” were generally accepted, then global poverty would be alleviated. Suppose further that this principle is not generally accepted, and as a result, poorly funded charities do more harm than good with the money that is given to them. This is because those who run these poorly funded charities have responded, and will continue to respond, quite vindictively to the fact that it is not customary for the financially comfortable to give to poverty relief. Call this possible world “Vindictive World.”³

Even from the perspective of Vindictive World, the principle “give to poverty relief if you are not impoverished yourself” is nonrejectable. That is because, by hypothesis, if such a principle were generally accepted, then global poverty would be alleviated. So, according to contractualism, those who are financially comfortable in Vindictive World are required to give to poverty relief. But this is the wrong result! Surely, a financially comfortable person in Vindictive World should not give to poverty relief if doing so will do more harm than good (by contributing money to a malevolent organization). So, contractualism is not true in at least one possible world. If contractualism is true, then it is necessarily true (i.e., true in all possible worlds). So, it is not true. This is the *ideal world problem*.

In order to solve the ideal world problem while remaining faithful to our concept of morality, contractualists should no longer determine which actions I must perform by seeing whether they accord with certain principles for the general regulation of behavior. Instead, contractualists should determine whether it is right or wrong for me to perform an action by evaluating any *maxim* that might be reflected by my action. Often, when we act intentionally we have a maxim.⁴ Maxims are reflected in our actions, and they are the principles according to which we see ourselves as acting. A maxim expresses a person’s policy, or in cases where one has no settled policy, the principle underlying the particular intention or decision on which one acts.⁵ From here on out, I will refer to contractualism in its classical form as “principle contractualism” and my amended version as “maxim contractualism.” According to maxim contractualism, an agent’s action is morally required under the circumstances just

3 This is a version of the “utility landmine” case in Podgorski, “Wouldn’t It Be Nice?” The general form of Podgorski’s case is this: some great good can be brought about if x percent or more of us do A . But if less than x percent of us do A , A -ing would be counterproductive, or it would in some way produce bad results.

4 I say “often when” instead of “anytime” to leave room for weak-willed actions that, though intentional, are paradigm examples of actions we do in spite of the policies we have adopted. For discussion of this feature of weak-willed actions, see Gressis, “Recent Work on Kantian Maxims 1,” 223.

5 O’Neill, “A Simplified Account of Kant’s Ethics.”

in case any maxim that he might adopt that involves not performing that action under the circumstances is one that someone could reasonably reject.

Maxim contractualism does not require financially comfortable residents of Vindictive World to give to malevolent charities. If I, a well-off resident of Vindictive World, adopted, as a settled policy, the maxim of giving to poverty relief if I am not impoverished myself, then the money I donate will do more harm than good. And that is enough to make my maxim rejectable. This is the main idea. Refinements will follow.

Here is the plan. In section I, I present principle contractualism and highlight one of its central advantages—namely, its ability to “defend the moral moderate,” as Rahul Kumar would put it, about beneficence, or charity.⁶ In section II, I show how the very feature of principle contractualism that allows it to “defend the moral moderate” also makes it succumb to the ideal world problem. In section III, I present and reject one way that a contractualist might go in order to solve her ideal world problem while retaining the spirit of her view—namely, the adoption of act contractualism. Although act contractualists are right to drop the principle contractualist commitment to evaluating principles for the general regulation of behavior, their view fails. For, it cannot account for the fact that, sometimes, what would happen if I performed an action over time is relevant to whether I am permitted to perform that action right here, right now. Instead, as I argue in section IV, contractualists should determine whether it is right or wrong for me to perform an action by evaluating any maxim that might be reflected by my action. Section V compares maxim contractualism to a distinct version of contractualist moral reasoning, which has recently been defended by Liam Murphy in order to illustrate the importance of *ending*, rather than *beginning*, one’s moral reasoning with the evaluation of general principles. In section VI, I anticipate some objections to maxim contractualism and respond to them. The resulting picture is that maxim contractualism is uniquely positioned to both solve the ideal world problem and vindicate the moral force of the question, “What if I did that over time?”

I

Principle contractualism is the view that an action is morally required just in case any principle for the general regulation of behavior that permitted people not to perform that action is one that someone could reasonably reject.⁷ Principles for the general regulation of behavior say of *everyone* that they are

6 For Kumar’s use of this phrase, see “Defending the Moral Moderate.”

7 Scanlon, *What We Owe to Each Other*, 4.

permitted, required, or forbidden to perform certain actions. Consider, for example, Principle *F*—the principle, according to T. M. Scanlon, that explains promissory obligation:

If (1) *A* voluntarily and intentionally leads *B* to expect that *A* will do *x* (unless *B* consents to *A*'s not doing *x*); (2) *A* knows that *B* wants to be assured of this; (3) *A* acts with the aim of providing this assurance, and has good reason to believe that he or she has done so; (4) *B* knows that *A* has the beliefs and intentions just described; (5) *A* intends for *B* to know this, and knows that *B* does know it; and (6) *B* knows that *A* has this knowledge and intent, then, in the absence of some special justification, *A* must do *x* unless *B* consents to *x*'s not being done.⁸

In front of Principle *F*, there are two implicit universal quantifiers that bind variables *A* and *B* and range over agents.

Someone can reasonably reject a principle for the general regulation of behavior just in case that principle is not acceptable, or justifiable, to every individual. A principle is not acceptable, or justifiable, to every individual just in case either

- (i) the reason that some individual has for objecting to the principle on the basis of its implications is stronger than the reasons that all other individuals have for wanting the kinds of normative powers, benefits, or protections secured by the principle, or
- (ii) there is some alternative principle that answers to a sufficient degree the reasons that the relevant individual has for favoring the original principle but whose implications do not justify objections to it from any individual that are as serious as those justified by the original principle's implications.⁹

What does it mean, however, to speak of a principle's "implications?" Whether or not one of these principles for the general regulation of behavior is one that someone could reasonably reject is determined by considering, from a variety of points of view, the effects of that principle's general acceptance. As Scanlon writes,

When we think of those to whom justification is owed, we naturally think first of the specific individuals who are affected by specific actions. But when we are deciding whether a given principle is one that could reasonably be rejected, we must take a broader and more

8 Scanlon, *What We Owe to Each Other*, 304.

9 Scanlon, *What We Owe to Each Other*, 95.

abstract perspective. This perspective is broader because, when we are considering the acceptability or rejectability of a principle, we must take into account not only the consequences of particular actions, but also the consequences of general performance or nonperformance of such actions and of the other implications (for both agents and others) of having agents be licensed and directed to think in the way that that principle requires. . . . [An] assessment of the rejectability of a principle must take into account the consequences of its *acceptance in general*, not merely in a particular case that we may be concerned with (emphasis mine).¹⁰

So, when we want to know whether a principle is one that someone could reasonably reject, we need to imagine what would happen if people generally governed their practical reasoning in terms of that principle. In other words, when we are interested in the rejectability of a principle, we need to turn our attention to the effects of its *internalization*.

Principle contractualism's focus on the effects of a principle's general acceptance provides it with the materials to vindicate a moderate position about when beneficence is required. Suppose I have an extra twenty dollars lying around. I can either spend that money at a movie theater or I can donate it to a local charity that is certain to feed someone with it who is down on their luck. Intuitively, so long as I am beneficent on occasion, I am permitted, in this instance, to spend my twenty bucks at the movies.¹¹ But how can this be accounted for if my enjoying a movie is less important than someone receiving help? Principle contractualism can get the right result in this case by pointing to the problems faced by those agents who govern their practical reasoning in terms of a principle that requires them to always do what is necessary to prevent another from incurring a significant loss, provided that they can do so at a cost to themselves that is less significant. If people reasoned about what to do in terms of such a principle, they would not have the kind of control over the course of their lives sufficient for making and executing plans. Nor would they have enough of the course of their lives dictated by the choices that they made.¹² Principle contractualism, precisely because it evaluates principles on

10 Scanlon, *What We Owe to Each Other*, 202–4.

11 In other words, although I may have what some have called an “imperfect duty” of beneficence, or charity, I am permitted in some instances to keep my extra money for myself. Of course, some philosophers would deny this. On their view, our obligations to the poor are much more demanding than commonsense morality would have them be. In this connection, see, for example, Kagan, *The Limits of Morality*, ch. 1.

12 This is how Kumar argues against a principle for the general regulation of behavior that requires one to always do what is necessary to prevent another from incurring a significant

the basis of the effects of their general acceptance, can avoid being as *demanding* as some of its consequentialist competitors.

II

The very feature of principle contractualism, however, that allows it to defend the moral moderate—namely, its focus on the effects of a principle’s general acceptance—gives rise to extensional problems of its own. As we saw above, principle contractualism requires financially comfortable residents of Vindictive World to give to malevolent, charitable organizations *precisely because* it determines whether a well-off resident of Vindictive World should do so by looking at the implications of the principle “give to poverty relief if you are not impoverished yourself” being generally accepted. The implications would be good indeed.

Now that the machinery of principle contractualist moral reasoning is more clearly in view, let us rehearse this argument against principle contractualists: any principle that permitted someone who is financially comfortable not to give to poverty relief is one that someone could reasonably reject. From the perspective of Vindictive World, there is *really* strong reason not to want general acceptance for any principle that permitted everyone who is financially comfortable not to give to poverty relief. If any such principle is generally accepted, then poverty would *not* be alleviated. But there is no similarly strong reason to want any principle to be generally accepted that permitted someone who is financially comfortable not to give to poverty relief. Not wanting to have to give a little bit of money to poverty relief when one is financially comfortable

loss, provided that they can do so at a cost to themselves that is less significant. For his discussion, see “Defending the Moral Moderate,” 296–303. Kumar also points out that principle contractualism is able to reject such a principle precisely because it determines whether we must do *A* by imagining what would happen if a principle that required us to do *A* had the status of *custom*. It is worth noting here, however, that some have dissented from the idea that principle contractualism can recognize the rejectability of the principle that requires one to always do what is necessary to prevent another from incurring a significant loss, provided that they can do so at a cost to themselves that is less significant. In this connection, see Ashford, “The Demandingness of Scanlon’s Contractualism”; Hills, “Utilitarianism, Contractualism, and Demandingness.” But these arguments target the relative importance of the interest in control that purportedly grounds the rejectability of the principle in question, not whether looking at worlds where a principle is generally accepted allows principle contractualists to identify such an interest. These arguments, in other words, do *not* target the idea that principle contractualism’s focus on the effects of the general acceptance of principles puts it in a better position to “defend the moral moderate” than theories that focus only on the effects of particular actions. As such, they are offstage dialectically for me.

pales in comparison to the kind of lives people would live were global poverty to be alleviated. As discussed earlier, this is a most unintuitive result. That is because a financially comfortable person in Vindictive World should not give to poverty relief if doing so will do more harm than good.

Now, it may be wondered why the following principle is rejectable: give to poverty relief if you are not impoverished yourself, *unless it is not customary to give to poverty relief, in which case do not*. This principle includes the circumstances in which the simpler principle—"give to poverty relief if you are not impoverished yourself"—is not generally accepted *in its own formulation*. For ease of exposition, let us call this principle the "complicated poverty principle," and let us call "give to poverty relief if you are not impoverished yourself" the "simple poverty principle." If the complicated poverty principle were nonrejectable, then principle contractualists would not face the ideal world problem as I have characterized it. For, if the complicated poverty principle were nonrejectable, then not only would a financially comfortable resident of Vindictive World not be required to give to poverty relief, they would be required *not* to do so. But is the complicated poverty principle nonrejectable?

No. Who stands to *gain* the most from the complicated poverty principle governing charitable giving in Vindictive World? The affluent do, since if they govern their practical reasoning in terms of the complicated poverty principle, then they will not be required to do more harm than good with their money. Who, moreover, stands to *lose* the most from the complicated poverty principle governing charitable giving in Vindictive World? Those who are impoverished do. They could easily say: the complicated poverty principle is worse than the simple poverty principle because, if the simpler principle were generally accepted, then global poverty would be alleviated! Surely, not being impoverished is more morally important than efficiently using one's extra money. This makes the complicated poverty principle rejectable.

So, principle contractualism cannot get the right result in Vindictive World by including circumstances in which the principles are not generally accepted *in the statement of a principle*.¹³ How might a contractualist alter her view in

13 Parfit, too, rejects this principle contractualist move, but he does so on very different grounds. His grounds for rejecting this move are different in part because his target is *not* a principle contractualism that evaluates principles for the general regulation of behavior in terms of the effects of their general acceptance. Instead, his target is a principle contractualism—namely "Kantian contractualism"—that evaluates principles in terms of the effects of their *universal compliance*. For his discussion, see *On What Matters*, 1:312–20.

Neither, in order to get the correct result about Vindictive World, can principle contractualists appeal to an alternative principle, such as "do not harm others" or "avoid disaster at all costs," that they may also take to be operative in Vindictive World and outweigh the poverty principle. And this is for similar reasons: it is false that "avoid disaster at all

order to avoid the ideal world problem? And how can she do so while retaining her ability to defend a moderate view about when beneficence is required?

III

Abelard Podgorski has helpfully observed that the ideal world objection “faces any view which determines what we individuals ought to do in this world by evaluating worlds that differ from the actual world in more than what is up to us.”¹⁴ Principle contractualism certainly evaluates possible worlds that differ from the actual world in more than what is up to us. For, it is not up to me whether a candidate moral principle is generally accepted. So, perhaps we should alter contractualism such that it evaluates worlds that differ from the actual world *in only what is up to us*.

One way of doing this would be to make contractualism’s primary evaluative focal points *actions* rather than principles for the general regulation of behavior.¹⁵ To do this would be to adopt act contractualism, according to which an agent’s action is morally required just in case someone could reasonably reject that agent’s not performing that action.¹⁶ Someone can reasonably reject another’s not performing an action just in case that other person’s omission is not acceptable, or justifiable, to every individual. An agent’s omission is not acceptable, or justifiable, to every individual just in case the reason that some individual has for objecting to the omission on the basis of its implications is stronger than the reason that the agent (or a third party) has for wanting the benefits she (or a third party) would get from the omission.¹⁷ Act contractual-

costs” applies to our protagonist in Vindictive World. That is because, from the perspective of Vindictive World, “avoid disaster at all costs, unless you are causing disaster by giving to poverty relief” is rejectable. Imagine a world that is just like Vindictive World except that people start governing their practical reasoning in terms of “avoid disaster at all costs, unless you are causing disaster by giving to poverty relief.” In such a world, the charities would solve poverty relief. Why? Well, because, in that world, generally, people accept a principle that involves giving to those malevolent charities. And malevolent charities respond by eradicating poverty relief. For an argument with a similar conclusion concerning which moves are open to the rule consequentialist to solve its ideal world problem, see Podgorski, “Wouldn’t It Be Nice?,” 286.

- 14 Podgorski, “Wouldn’t It Be Nice?,” 279. Of course, such a diagnosis of what makes a normative ethical theory face the ideal world problem is *defeasible*, in the sense that it is very plausible but may prove to be too quick in light of forthcoming principle contractualist (or rule consequentialist) attempts to get the right result about charity in Vindictive World.
- 15 I borrow the phrase “evaluative focal point” and its cognates from Kagan, “Evaluative Focal Points.”
- 16 Sheinman, “Act and Principle Contractualism,” 295.
- 17 Sheinman, “Act and Principle Contractualism,” 296.

ism, then, evaluates worlds that differ from the actual world in only what is up to us since it only evaluates worlds in which we do not perform some action.

This feature of act contractualism allows it to get the right result in Vindictive World. Act contractualism tells me, a financially comfortable inhabitant of Vindictive World, *not* to give to poverty relief for someone could reasonably reject my giving to poverty relief. From the perspective of Vindictive World, there is *really* strong reason to not want me to give to poverty relief. If I did give to poverty relief, those who run the poorly funded charities would use the money that I gave them to do more harm than good. But I do not have similarly strong reason to want to give to poverty relief. If the whole point of giving to charity was to do good, then what is the point of giving to charity when doing so will do more harm than good?

Act contractualism, of course, has a structure similar to a much more familiar view called “act consequentialism,” according to which an agent’s action is morally required just in case it would result in more well-being overall than any of the other actions available to the agent.¹⁸ However, there are a few key differences between these two normative ethical theories. For one, act contractualism is better placed than act consequentialism is to account for our intuition about Scanlon’s Transmitter Room case. Suppose that Jones has suffered an accident in a TV broadcasting station and is receiving extremely painful electrical shocks. If we turn off the power to save him, billions of viewers will miss the last half hour of the World Cup final. Intuitively, it would be wrong not to save Jones from his agony, regardless of how many people are watching the game. The benefit of watching a soccer match is trivial compared to the agony of suffering strong electrical shocks. No matter how large the sum of these benefits, it would seem wrong to keep the power on. Act consequentialism has trouble vindicating this intuition since it allows for the interpersonal aggregation of well-being. It seems like the act consequentialist is forced to agree that, at some point, the combined benefits to the viewers must become large enough to morally outweigh Jones’s agony.¹⁹

On the other hand, act contractualism is able to get the right result in this case since it retains two of the restrictions that principle contractualism places on the reasons that can be pressed for and against candidate moral principles in contractualist moral reasoning. First, act contractualism retains the *impersonalist restriction*, according to which one cannot appeal to claims about the impersonal goodness or badness of outcomes when one is rejecting or favoring

18 Kagan, “Evaluative Focal Points,” 134.

19 Scanlon, *What We Owe to Each Other*, 235.

some candidate moral principle.²⁰ For the act contractualist, of course, this restriction looks a bit different since its primary evaluative focal points are *actions* rather than principles for the general regulation of behavior. The act contractualist impersonalist restriction, then, says that one cannot appeal to claims about the impersonal goodness or badness of outcomes when one is rejecting or favoring some action. So, the sum of benefits that those who are watching the World Cup final will enjoy if we keep the power on will not even enter into act contractualist moral reasoning. To point out such a sum when arguing that it is nonrejectable or unrejectable to keep the power on would be to appeal to a claim about the impersonal goodness of an outcome.

Second, act contractualism retains the *individualist restriction*, according to which, when one is rejecting or favoring some candidate moral principle, one must only appeal to that principle's implications for ourselves and for other particular people.²¹ For the same reasons noted above, the act contractualist version of this restriction will look a bit different: when one is rejecting or favoring some action, one must only appeal to that action's implications for ourselves and for other particular people. So, the act contractualist will compare the reasons that Jones has to avoid terrible suffering with the reasons a *particular* World Cup final watcher will have to want to enjoy the game, finding the reasons Jones has to be much stronger. Act contractualism, roughly speaking, is act consequentialism *plus the individualist and impersonalist restrictions*.

Despite its focus on acts rather than principles, act contractualists may even be able to vindicate our concept of morality as a social institution by generating *rules of thumb*. It is not always easy to correctly determine whether or not the performance of a particular action in a particular circumstance is unrejectable. But we also need to deliberate about what to do in terms of facts about whether an action is unrejectable. After all, moral considerations carry great weight in the practical deliberations of a virtuous agent. And act contractualism, in its capacity as a moral theory, seeks to establish these very sorts of considerations. The solution is to establish rules such as "one may do *A* in *C*" if, in most circumstances, performing some action is unrejectable.²² Adopting such rules of thumb allows agents to be guided by the realization of unrejectability in their practical reasoning without needing to assess in every circumstance which one of the actions available to them is unrejectable. If these rules of thumb become internalized by communities and regulate the activity of their members, then

20 Parfit, *On What Matters*, 2:214; Scanlon, *What We Owe to Each Other*, 222.

21 Parfit, *On What Matters*, 2:193; Scanlon, *What We Owe to Each Other*, 229.

22 For analogous comments concerning act consequentialism, see Rawls, "Two Concepts of Rules," 18–29.

those communities will be marked by a particularly high level of unrejectability. This will lead to a sort of social harmony in those places since their members will mostly live together in ways that they can justify to each other.²³

Act contractualism, however, is too demanding. Recall a case from section 1: suppose I have an extra twenty dollars lying around. I can either spend that money at a movie theater, or I can donate it to a local charity that is certain to feed someone with it who is down on their luck. According to act contractualism, it is not permissible for me to go to the movies since the down-on-their-luck person has stronger reason to want me to give the money to the charity than I have reason to want to go to the movies. The benefit of watching a movie and eating some popcorn is trivial compared to the suffering involved in starvation. Intuitively, however, (as mentioned in section 1) it *does* seem permissible for me to go to the movies (since it seems permissible for me to either go to the movies or give to the charity). So, act contractualism cannot account for what is common sense—that sometimes I am permitted not to bring about unrejectability. What ground act contractualism seems to gain over principle contractualism by solving the ideal world problem, it loses by being unable to defend a moderate position about the conditions under which charity is required.

What is more, this problem with act contractualism goes *deeper* than its demandingness. What is preventing act contractualism from being able to account for the permissibility of my spending my twenty dollars at the movies? It is the fact that act contractualism is built not to recognize that the cumulative intrapersonal burdens of my acting in a certain way over time can make acting in that way merely permissible rather than required. Act contractualism only considers my reason to want to act in some way on a particular occasion. But what seems to make going to the movies permissible is that, if I had to always give any extra money I had to charity, then I would not have sufficient control over the course of my life that I am able to make and execute plans and to some extent have the course of my life dictated by the choices I make.

So, it seems like act contractualism is too demanding because it is unable to account for the fact that sometimes what would happen if I performed an action over time is relevant to whether I am permitted to perform that action right here, right now. In other words, it seems like there is a certain *kind* of moral objection that one might make to an action which act contractualist moral reasoning cannot capture. And we can confirm this by looking at more examples.

23 For a familiar defense of the connection between unrejectability and justifiability to another, see Scanlon, *What We Owe to Each Other*.

The demandingness objection to act contractualism concerned a case with the following structure: *X*'s *A*-ing would be morally permissible; the reasons *X* has against *X*'s *A*-ing on multiple occasions over time are stronger than *Y*'s reasons to want *X* to do *A* over time, but the reasons *Y* has to want *X* to do *A* on a particular occasion are stronger than the reasons *X* has against *X*'s doing *A* on that occasion. But there are also cases with this structure: *X*'s *A*-ing would be morally wrong; the reasons a distinct agent *Y* has against *X*'s *A*-ing on multiple occasions over time are stronger than *X*'s reasons to want to *A* over time, but the reasons *X* has to want to do *A* on a particular occasion are stronger than the reasons *Y* has against *X*'s doing *A* on that occasion.

Here is one such case: suppose I stand up my friend for a coffee date in order to go to a talk on normative ethics. This is the only time I have stood him up, so it does not cause him any psychological harm. Nor does my standing him up inconvenience him. He was planning on working at the coffee shop we agreed to meet at after we met, and if we had not had a coffee date scheduled, he would have just come to the coffee shop earlier to work. Nonetheless, it seems that, by standing up my friend for a coffee date, I have done wrong. But act contractualism does not seem to be able to capture this intuition. This is because I have stronger reason to want to stand up my friend than he has reason to want me not to. I would benefit from going to a talk in my field, and my friend would not really be harmed at all by my standing him up.

An act contractualist may reply that, in agreeing to go on a coffee date with my friend, I have promised to meet him at coffee shop *X* on occasion *Y*. So, he may continue, even if I do not cause him any psychological harm when I stand him up on *Y*, I do cross on *Y* whatever interest of his it is that grounds promissory obligation in act contractualist moral reasoning—perhaps his interest in others doing what they assured him they would do.²⁴

But it is not plausible that the wrong I have committed by standing up my friend is the wrong of breaking a promise. Here is a datum about promissory obligation: one cannot fulfill one's duty to keep one's promise to do *A* by warning the promisee before she has undertaken an action based on one's promise that one will not, after all, do *A*. To see that this is true, suppose that I promise to drive you to work if you mow my lawn, and you accept. Then, a day later (but before either of us has begun doing what we promised the other to do), I change my mind and try to back out by warning you that I will not drive you to work even if you do, in fact, mow my lawn. Intuitively, by warning you that I will not drive you to work even if you hold up your end of the bargain, I have

24 Scanlon, *What We Owe to Each Other*, 303–4.

not made it such that I am no longer obligated to drive you to work if you mow my lawn.²⁵

Thus, if my wrong were the same kind of wrong as the wrong of promise-breaking, then I could not have extinguished my duty to meet up with my friend by giving him a timely warning that I will not be able to make it. Intuitively, though, this is false. I do not wrong my friend by not showing up to the coffee shop when I warn him that I will not before he has undertaken any action based on our arrangement (such as, say, turning down another friend's suggestion to meet up).²⁶

What is preventing act contractualism from being able to account for the wrong of my standing up my friend (assuming, that is, that it cannot—there may be some other interest I have not canvassed that grounds the nonrejectability of my harmlessly standing up my friend)? It is the fact that act contractualism is built not to recognize that the cumulative *interpersonal* burdens of my acting in a certain way over time can make acting in that way wrong. Act contractualism only considers objections to my acting on a particular occasion. But the decisive objection to my standing up my friend to go to a talk seems to be that, if I were to stand him up on many occasions over time, I might cause him great psychological harm. He may come to feel like I have no respect for him, like I do not value him at all.

The fact that there are cases with these structures (i.e., the movie and coffee shop cases) suggests that what would happen if I performed an action over time can be relevant to whether I am permitted to perform that action right here, right now. How might we capture this in contractualist moral reasoning without courting the ideal world objection? We need a version of contractualist moral reasoning, then, which both (i) acknowledges that what would happen if I performed an action over time can be relevant to whether I am permitted to perform that action right here, right now, and (ii) evaluates worlds that differ from the actual world in only what is up to us.

IV

In order to generate such a version of contractualist moral reasoning, we should alter contractualism such that its primary evaluative focal point is a *maxim*. The resulting view is maxim contractualism, according to which an agent's action is morally required under the circumstances just in case any maxim that he might

25 I borrow this example from Scanlon, *What We Owe to Each Other*, 301.

26 This problem for the act contractualist response that ties the wrong of my standing up my friend to the wrong of breaking a promise also faces the act contractualist response that ties the wrong of my standing up my friend to the *mere* disappointment of his expectations.

adopt that involves not performing that action under the circumstances is one that someone could reasonably reject.²⁷ Whether or not one of these maxims is one that someone could reasonably reject is determined by considering the implications of the agent being guided in his practical reasoning over time by that maxim from a variety of points of view.²⁸ We will see imminently why maxim contractualism does not invite the ideal world objection. But now we can see why it will be able to acknowledge that what would happen if I performed an action over time can be relevant to whether I am permitted to perform that action right here, right now. For according to maxim contractualism, the fundamental moral question is: “What if I did that over time?”

How exactly does maxim contractualist moral reasoning work? Someone can reasonably reject a person’s maxim just in case that maxim is not acceptable, or justifiable, to every individual. His maxim is not acceptable, or justifiable, to every individual just in case either

- (i) the reason that some individual has for objecting to the maxim on the basis of the implications of the agent being guided in his practical reasoning over time by that maxim is stronger than the reasons that the agent has for wanting the kinds of benefits he gets from being guided in his practical reasoning over time by that maxim, or

27 The fact that maxim contractualism’s objects of moral assessment are all the maxims that my action *might* be in accordance with allows it to be squared with a central commitment of Scanlon’s—the *Irrelevance-of-Intention-to-Permissibility Thesis* (Scanlon, *Moral Dimensions*). According to this thesis, it is irrelevant to the question of whether *X* may do ϕ what intention *X* would ϕ with if he or she did it (Thomson, “Self-Defense,” 294). Maxim contractualism is consistent with the *Irrelevance-of-Intention-to-Permissibility Thesis* because its moral reasoning does not involve evaluating the *actual* intention with which an agent performed some action. Rather, the moral reasoning distinctive of maxim contractualism involves evaluating any intention with which the agent *might* have performed the action in question. This provides one source of contrast between maxim contractualism and another normative ethical theory that assesses maxims: universal law Kantianism. For, universal law Kantianism asks us, when evaluating an agent’s action, whether the actual intention that the action is in accordance with could be willed by the agent to be a universal law.

28 In other words, whether or not one of these maxims is one that someone could reasonably reject is determined by considering the implications of him *in fact* adopting that maxim as a settled policy from a variety of points of view. I emphasize “in fact” because one’s adopting a maxim does not necessarily involve sticking with it on multiple occasions. I may make a lying promise on the basis of the following maxim: “When I believe myself to be in need of money I shall borrow money and promise to repay it, even though I know that this will never happen.” (Kant, *Groundwork of the Metaphysics of Morals*, 4:422.)

Then, after reading Kant’s *Groundwork*, I may come to agree with him that no one could will that such a maxim become a universal law and no longer govern my practical reasoning in terms of that maxim.

- (ii) there is some alternative maxim the agent's adoption of which over time answers to a sufficient degree the reasons that the agent has for favoring his adoption of the original maxim over time but whose implications do not justify objections to it from any individual that are as serious as those justified by the original maxim's implications.

As should be evident, maxim contractualist moral reasoning is roughly the same as principle contractualist moral reasoning. The main difference is that maxim contractualism evaluates worlds that differ from the actual world in only what is up to the agent since it only evaluates worlds in which the agent regulates her behavior over time in terms of a particular maxim that she is able to adopt.²⁹ And this makes all the difference for solving the ideal world problem.³⁰

Like act contractualism, maxim contractualism allows us to get the right result in Vindictive World. Remember what is going on in Vindictive World:

If the principle "give to poverty relief if you are not impoverished yourself" were generally accepted, then global poverty would be alleviated. But this principle is not generally accepted. And as a result, poorly funded charities do more harm than good with the money that is given to them. This is because those who run these poorly funded charities have and will continue to respond quite vindictively to the fact that it is not customary for the financially comfortable to give to poverty relief!

- 29 This brings out the importance of refraining from reading "might" as indicating metaphysical possibility in my formulation of maxim contractualism: an agent's action is morally required under the circumstances just in case any maxim that he might adopt that involves not performing that action under the circumstances is one that someone could reasonably reject. This is because if "any maxim he might adopt" were read as any maxim that it is metaphysically possible for him to adopt, then maxim contractualism would *not* evaluate worlds that differ from the actual world in only what is up to the agent. For there may be some maxims that an agent is not *able* to adopt as a settled policy even though it is metaphysically possible for him to adopt them as a settled policy. But maxim contractualism must retain its commitment to only evaluating worlds that differ from the actual world in only what is up to the agent. As we are about to see, that is the commitment that allows maxim contractualism to avoid the ideal world objection.
- 30 Another version of contractualism that might go by the name of "maxim contractualism" says that an agent's adoption of a maxim is morally required just in case any principle that permitted her not to adopt that maxim is one that someone could reasonably reject. Contractualists should not adopt this kind of maxim contractualism, however, since it will not help them solve their ideal world problem. That is because, like principle contractualism, the version of maxim contractualism under discussion in this footnote determines what I ought to do (or at least which maxims I ought to adopt) by evaluating worlds that differ from the actual world in more ways than are up to me.

Maxim contractualism does not require me, a financially comfortable denizen of Vindictive World, to give to poverty relief. Roughly speaking, maxims take the following form: in circumstances *C*, I shall do *A*.³¹ On my usage of “maxim,” then, maxims are something like principles for the regulation of *my* behavior. So, one maxim that involves doing what the principle “give to poverty relief if you are not impoverished yourself” requires in the circumstances in which that principle requires it is: “If I am financially comfortable, then I shall give to poverty relief.” If I adopt this maxim as a policy over time, then I will do more harm than good with my money. And I do not have any reason to give to poverty relief other than to do net good with my money. So, one of the maxims that involves doing what the principle “give to poverty relief if you are not impoverished yourself” requires is rejectable. So, I, a financially comfortable resident of Vindictive World, am not required to give my money to malevolent organizations.

Moreover, also like act contractualism, maxim contractualism tells me, a financially comfortable denizen of Vindictive World, *not* to give to poverty relief. For, any maxim that I may adopt over time that involves giving to poverty relief is one that someone could reasonably reject. From the perspective of Vindictive World, there is *really* strong reason to not want me to adopt any maxim over time that involves me giving to poverty relief. If I adopted such a maxim over time, those who run the poorly funded charities would gain a

31 I say “roughly speaking” because, strictly speaking, maxims take the following form: when in circumstances *C*, I shall perform act *A* *in order to achieve end E* (Korsgaard, “Acting for a Reason,” 219). This more precise description of the form that maxims take allows us to see why it is plausible to think that, often when we act intentionally, we have a maxim. It is plausible that most intentional action is *purposive*, in the sense that intentional action is not mere behavior. Intentional action is not just some string of observable events in the external world. Rather, it involves an agent willing that some end or purpose be achieved (Korsgaard, “Morality as Freedom,” 162–67). So, often when we act intentionally, it is plausible that behind our action lies a maxim specifying the end that we are trying to realize in so acting. (Again, I say “often when we act intentionally” rather than “anytime we act intentionally” to leave room for weak-willed actions.) Nonetheless, I will stick with my looser characterization of maxims since the more precise form that a maxim takes is not relevant to my arguments in this essay.

As mentioned in the paragraph above, my rough characterization of the form that maxims take follows Korsgaard’s influential reading of what Kant has in mind when he uses the word “maxim.” But I do not intend my characterization to be a *reading* of Kant. Perhaps by “maxim” Kant had in mind something else. Perhaps he had in mind a kind of principle so broad that it cannot accommodate the specification of circumstances. That would be fine. All I need, for my purposes, is that the primary evaluative focal point of contractualist moral reasoning be a principle that regulates an individual’s activity over time *and only that individual’s activity*. What Korsgaard calls a “maxim” is precisely that. I could have called it a “principle for the regulation of *my* behavior” instead.

decent amount of money from me, with which they would do quite a bit more harm than good. But I do not have similarly strong reason to want to adopt a maxim over time that involves me giving to poverty relief. If the whole point of regularly giving to charity was to regularly do good, then what is the point of regularly giving to charity when doing so often will do much more harm than good?

Unlike act contractualism, however, maxim contractualism is able to capture the fact that, sometimes, what would happen if I performed an action over time is relevant to whether I am permitted to perform that action right here, right now. First, maxim contractualism can recognize the fact that I am permitted to spend my twenty dollars at the movies. Maxim contractualism determines whether I am permitted to spend my twenty dollars at the movies (in part) by assessing the significance of my adoption of a principle bearing on whether I do so. Suppose I adopted the following principle of mutual aid as my maxim:

Mutual Aid: I will always do what is necessary to prevent another from incurring a significant loss, provided that I can do so at a cost to myself that is less significant.³²

The intrapersonal burdens of governing my practical reasoning in terms of this maxim are much weightier than the burden of not being able to go to the movies on a single occasion. I have strong reason to want to have sufficient control over the course of my life that I am able to make and execute plans and, to some extent, have the course of my life dictated by the choices I make. My governing my deliberations in terms of Mutual Aid would prevent me from having the relevant kind of control. Moreover, it is plausible that such an intrapersonal burden is weighty enough to make Mutual Aid rejectable in comparison to a maxim that involves me only giving my fair share.

As I argued in section I, this stretch of moral reasoning, with some tweaks, could easily be adopted by a principle contractualist. Like maxim contractualism, principle contractualism could determine whether I am permitted to spend my twenty dollars at the movies (in part) by assessing the significance of my adoption of a principle bearing on whether I do so. What distinguishes principle contractualism from maxim contractualism in this regard is only that the kind of principle that principle contractualism imagines me adopting is a principle for the general regulation of behavior rather than a maxim. It is a virtue of maxim contractualism that it is able to retain principle contractualism's ability

32. This is the maxim version of a principle (for the general regulation of behavior) of mutual aid that Kumar considers and rejects, with principle contractualist moral reasoning, in "Defending the Moral Moderate," 296–303.

to “defend the moral moderate” without succumbing to principle contractualism’s ideal world problem. And, as we saw above, act contractualism is only able to do the latter of those things.

Second, maxim contractualism is able to recognize the fact that it is wrong for me to stand up my friend (even harmlessly). Suppose I adopted the following maxim:

Stand Up: I will stand people up when it is convenient for me to do so, provided that my standing them up does not harm them.

The *interpersonal* burdens that my friend would experience as a result of me governing my practical reasoning over time in terms of *Stand Up* are much weightier than the burden my friend would experience as a result of being stood up on the occasion in question. If I were to stand him up over time, he would eventually feel like I did not care about him, like he mattered not at all to me. And my friend has a very weighty interest in avoiding being thought of in such a way by his friends. Moreover, it is plausible that such an interpersonal burden is weighty enough to make *Stand Up* rejectable in comparison to a maxim that involves me never standing up others (even harmlessly).

However, we, of course, want our moral theory to be able to tell us not only that *I* am permitted or required (not) to perform some action (such as spending my twenty dollars at the movies or standing up my friend), but also whether *everyone* is. If it is part of our concept of morality that moral principles and rules are to be internalized by communities and regulate the activity of their members, then this desire makes sense. If our moral theory did not vindicate principles that are bound at a high enough level of generality, *we* could not live together on the basis of them, though maybe we could all hold someone (or a few people) accountable for certain actions on the basis of them. So, we want our moral theory to be able to make true sentences like, “Promises must be kept.” It is natural to think that the way to do this, for the maxim contractualist, is to take each person and ask whether there is a nonrejectable maxim they might adopt over time, according to which they shall keep their promises under the relevant circumstances. And that may seem very unattractive. It would take a great deal of time indeed to establish this!

But maxim contractualists need not do this. If Principle *F* were my maxim, it would say:

If (1) I voluntarily and intentionally lead *B* to expect that I will do *x* (unless *B* consents to my not doing *x*); (2) I know that *B* wants to be assured of this; (3) I act with the aim of providing this assurance, and have good reason to believe that I have done so; (4) *B* knows that I have

the beliefs and intentions just described; (5) I intend for *B* to know this, and know that *B* does know it; and (6) *B* knows that I have this knowledge and intent, then, in the absence of some special justification, I shall do *x* unless *B* consents to *x*'s not being done.

If such a maxim were nonrejectable, then we would know that the following moral principle (for the regulation of *my* behavior) would be true:

If (1) I voluntarily and intentionally lead *B* to expect that I will do *x* (unless *B* consents to my not doing *x*); (2) I know that *B* wants to be assured of this; (3) I act with the aim of providing this assurance, and have good reason to believe that I have done so; (4) *B* knows that I have the beliefs and intentions just described; (5) I intend for *B* to know this, and know that *B* does know it; and (6) *B* knows that I have this knowledge and intent, then, in the absence of some special justification, I must do *x* unless *B* consents to *x*'s not being done.

Now, a *nonsubstantive universalizability thesis* is a universalizability thesis that does not entail alone, or together with other nonmoral premises, any moral conclusions of the sort that something (some action, person, state of affairs) has a certain moral property.³³ Here is a very plausible example of one:

If an action is right (or wrong) for one agent in a certain circumstance, then it is right (or wrong) for any similar agent in similar circumstances.³⁴

This nonsubstantive universalizability thesis gives expression to the more general thought that "moral properties of things (persons, actions, states of affairs, situations) are essentially independent of their purely 'individual' or 'numerical' aspects."³⁵

It follows from the truth of our nonsubstantive universalizability thesis and the truth of Principle *F* (understood as a principle for the regulation of my behavior) that Principle *F* (formulated with the generality that principle contractualists formulate it) is true. For, the relevant circumstances are those picked out in the antecedent of Principle *F* (understood as a principle for the regulation of my behavior): being such that you voluntarily and intentionally led another to expect that you will do *x* (unless that other consents to your not doing *x*), etc. Anyone who finds themselves in these circumstances must do what they assured another they would do. Maxim contractualism, then, can

33 Potter and Timmons, "Introduction," xii.

34 Potter and Timmons, "Introduction," xv.

35 Rabinowicz, *Universalizability*, 11.

vindicate our concept of morality as a social institution just as well as principle contractualism can.

V

We can see the importance of not attempting to universalize to general principles until the *end* of contractualist moral reasoning by reflecting on Liam Murphy's recent attempt to save contractualism from its ideal world problem. In "Nonlegislative Justification," Murphy defends a version of contractualism that is like principle contractualism in that it determines which actions I must perform by seeing whether they accord with principles that no one can reasonably reject. Where Murphy's view differs from principle contractualism is in the *kind* of principles that are to be assessed for reasonable rejection. As discussed, principle contractualists take principles for the general regulation of behavior to be the sorts of principles assessed for reasonable rejection during moral reasoning. According to Murphy, however, the kind of principles that are relevant are "general principles for cases like this in circumstances like these."³⁶ Take, for example, Murphy's Principle *R*, which he takes to be a paradigm example of a general principle for cases like this in circumstances like these:

If one person invites another to rely on their stated intentions, and the other person does rely, then the first person must do what they can to prevent that reliance from coming at a loss.³⁷

Murphy claims that *R* is a general principle for cases like this in circumstances like these rather than a principle for the general regulation of behavior because, unlike principles for the general regulation of behavior, *R* is not to be assessed for reasonable rejectability by imagining what would happen if it were generally accepted. As a general principle for cases like this in circumstances like these, *R* is to be assessed for (as we will see at least provisional) reasonable rejectability as follows: suppose I am considering whether I am required to prevent your invited reliance on me from coming at a cost to you. You might propose *R* and note the interest you have in my being required by *R* to do what will prevent your relying on me from being costly. Then, I might note my interest in not being required by *R* to prevent your relying on me from being costly. Then, we might come to see that your interest is stronger and so that *R* is (provisionally)

³⁶ Murphy, "Nonlegislative Justification," 252.

³⁷ Murphy, "Nonlegislative Justification," 255.

nonrejectable—making it (provisionally) the case that I am required to do what will prevent your relying on me from being costly.³⁸

So, Murphy thinks that his view differs from principle contractualism in that whether a general principle is (provisionally) nonrejectable depends on the outcome of a conversation between two people in which they ask for and give each other reasons, rather than on what would happen if that principle were generally accepted. But, as Murphy correctly notes, once we decide that, e.g., *R* is nonrejectable, we have set a *precedent*. We have made a decision about how I ought to act whenever I have invited others to rely on my doing something. Murphy writes: “It is therefore appropriate, when offering reasons for and against a principle, to consider the possible cumulative ‘intrapersonal’ burdens it would entail.”³⁹ (This is why the outcome of a conversation between two people in which they ask for and give each other reasons can only be that a general principle is *provisionally* nonrejectable.)

Murphy’s claim seems right to me. If we are to set a precedent for me, we had better consider the effects of my deferring to that precedent going forward. However, when we decide that *R* is nonrejectable, we have not just set a precedent for me. We have set a precedent for *everyone*. *R* is a general principle for cases like this in circumstances like these, so *R* is a general principle that binds everyone. So, it is also appropriate, when offering reasons for and against *R*, to consider the possible cumulative intrapersonal burdens everyone’s adoption of *R* would entail. But this would just be to consider the effects of the general acceptance of *R* while determining *R*’s rejectability, making Murphy’s view determine what I ought to do (in part) by evaluating worlds that differ from the actual world in more than what is up to me and, thus, vulnerable to the ideal world objection.

Consider, by way of illustration, one of Gideon Rosen’s examples: imagine a possible world—call it “Gremlin World”—that is just like ours except that it “contains a thing—a demon, or perhaps an inanimate device or natural force—that will wreak havoc if we attain moral unanimity. This gremlin is sensitive to our moral beliefs and abhors consensus. If we were to agree about some moral principle, it would cause universal misery, or destroy the world.”⁴⁰ Now, it seems like, even in Gremlin World, when I have invited another to rely on my stated intentions, and the other person does rely, then I must do what I can to prevent that reliance from coming at a loss. As Rosen writes (though about a different sort of action):

38 Murphy, “Nonlegislative Justification,” 255.

39 Murphy, “Nonlegislative Justification,” 254.

40 Rosen, “Might Kantian Contractualism Be the Supreme Principle of Morality?,” 84.

One way to bring this out is to note that our world may, for all we know, contain a force that would wreak havoc if moral unanimity were attained. And yet the existence or non-existence of such a force is totally irrelevant to the moral assessment of ordinary human action in our world. An ordinary act of kindness is still right, even if somewhere in some cave some malignant thing is poised to spoil the universe if moral consensus is achieved.⁴¹

But we cannot vindicate this judgment using Murphy's preferred contractualist moral reasoning. *R* binds everyone, so Murphy thinks we need to imagine what would happen were everyone in Gremlin World to reason about what to do in terms of *R*. But if everyone in Gremlin World does *that*, the demon will destroy the world, making *R* rejectable.⁴² It is precisely because Murphy's view determines what I ought to do (in part) by evaluating worlds that differ from the actual world in more than what is up to me that he cannot vindicate our moral judgment about Gremlin World. And it is precisely because he thinks contractualist moral reasoning ought to begin by assessing general principles (even ones not for the general regulation of behavior) that his view determines what I ought to do (in part) by evaluating worlds that differ from the actual world in more than what is up to me.

Maxim contractualism, on the other hand, can vindicate our judgment that, even in Gremlin World, it is wrong to not prevent your relying on me from being costly. My adoption of a maxim over time that involves preventing your relying on me from being costly would not result in the destruction of the world because the Gremlin only wreaks havoc when we attain moral unanimity. My practical consistency does not amount to our unanimity. Once again, the fact that maxim contractualism holds fixed everything that is outside my control when determining what my obligations are makes all the difference. And maxim contractualism is able to do this because it does not commence moral reasoning by considering general principles of any kind. The source of

41 Rosen, "Might Kantian Contractualism Be the Supreme Principle of Morality?," 84.

42 One might wonder why Murphy cannot reply that, from the perspective of Gremlin World, *R* (along with every other possible principle) is nonrejectable. He might argue that this is because, in Gremlin World, all possible principles are *tied* for having the weakest, strongest complaint against them—though it is a strong one indeed: that the world will be destroyed! I do not see how this reply can succeed, though. Unlike principle contractualism, Murphy's preferred version of contractualist moral reasoning begins its assessment of a general principle with a conversation between two people in which they ask for and give each other reasons. And it is certainly false that all possible principles, even in Gremlin World, are on a par with respect to *that* conversation. Plausibly, the reasons in favor of *R* are stronger than the reasons for a principle that permits what *R* forbids.

Murphy's problem, then, is that he "universalizes" too early, so to speak. As I have argued, it is better to first arrive at principles for the regulation of *my* behavior and then universalize to general principles. And maxim contractualism does just that.

VI

But now let us consider three objections to maxim contractualism. First, one may object that, by recommending that contractualists not commence their moral reasoning with the consideration of general moral principles, I am imploring contractualists to distance themselves from what, historically, has seemed like a deep insight—that morality is the product of an agreement among those whom it governs. How, this objection runs, can maxim contractualism model this insight since it requires no explicit appeal to a group of people deliberating but rather involves the consideration of a series of interactions between an agent and possible objectors?

This would be a problem for maxim contractualism because it would make it hard to see how regulating one's behavior in terms of the requirements derived in maxim contractualist moral reasoning demonstrates *respect* toward others—how complying with them would be part and parcel of treating others as *free and equal*. Contractualism, in its classical form, envisions morality not *merely* as the product of an agreement among those whom it governs but also as the product of an agreement among those whom it governs when they see each other as having a particular kind of standing. Pamela Hieronymi helpfully puts the point as follows:

The principles of morality, as Scanlon understands it, are the principles that we would agree to in this contractualist situation. They are thus the terms of self-governance adopted by those who recognize each other as having a symmetric standing to determine the terms of their mutual self-governance. They are, we might say, the principles that would be agreed to in a Kingdom of Equals, each of whom is committed to living in a kind of harmony with the rest and so accords to each one a symmetric standing in determining the terms of his or her own self-governance.⁴³

It is precisely because the principles of morality are those principles that people with equal standing would agree to that complying with them amounts to recognizing the equal standing of others (and violating them amounts to a failure of recognition).

43 Hieronymi, "Of Metaethics and Motivation," 106.

Despite appearances, I think this objection is mistaken. For, maxim contractualism *does* see morality as being the product of an agreement among those whom it governs. It is just that it takes the objects of agreement to be *personal* rather than general principles. Promisees, for example, could not agree to a principle that permitted *me* to break those promises I have made to them. Moreover, maxim contractualism understands the agreement about personal principles, which it models to be one had between those with equal standing. To stick with the previous example, *we* could not agree to a principle permitting me to break promises I have made, even if I could not gain from cooperation with the promisees in question. So, compliance with requirements derived in maxim contractualist moral reasoning does show respect to others. For the same reason, violation of them shows *disrespect*.

Second, it may be thought that principle contractualism is better placed to justify prohibitions against free-riding than maxim contractualism is and that this spells trouble for maxim contractualism. Here is how my objector may argue that principle contractualism is better placed than maxim contractualism is to justify prohibitions against free-riding: suppose you reside in a community in which it is customary not to litter. As a result of this convention, you and everyone else in the community benefit from there being clean streets. It seems like you are obligated not to litter yourself. To do so would be to free-ride on the effort of those people whose attitudes toward littering are necessary for the existence of the no-littering convention in your community. Were you about to litter, we could ask you: What if everyone did that? If everyone did that, the streets would not be clean in your community anymore. This is a weighty moral objection.

Principle contractualism can capture the moral force of the “what if everyone did that” question quite well. This is because it determines what you are morally required to do by assessing the implications of everyone complying with principles that permit you to do something. If everyone complied with a principle that permitted one to free-ride on the efforts of others, then the no-littering convention would no longer be in force in your community. And if the no-littering convention were no longer in force in your community, then there would not be clean streets in your community. And someone could put forward an objection in contractualist moral reasoning to that effect which is stronger than your reason to want to throw trash wherever.

Maxim contractualism, however, does not seem to be able to recognize such a complaint. In determining what you are morally required to do, maxim contractualism holds fixed what everyone else does. Maxim contractualist moral reasoning, after all, involves imagining what would happen if you adopted over time a maxim that might be behind your action *while holding fixed what everyone*

else does. So, maxim contractualist moral reasoning cannot appeal to what would happen in a scenario where everyone else starts littering. And, if you adopted a maxim over time that involved free-riding on socially beneficial conventions, the streets would not necessarily become unclean. Your acceptance of a norm that forbids people from littering is not necessary for the streets to be clean, so long as enough others accept that norm (and, by hypothesis, they do).

Such an objection to maxim contractualism, however, mischaracterizes the decisive complaint in contractualist moral reasoning to a maxim which involves free-riding on socially beneficial conventions. The complaint is not that the streets will be unclean as a result of the no-littering convention falling apart. It is rather that the adoption, over time, of a maxim that involves free-riding would result in treating unfairly those whose attitudes toward littering are necessary for the existence of the no-littering convention. From the perspective of those who are making the sacrifices necessary to maintain the no-littering convention, it would not be fair for people to get all the goods without doing any of the hard work necessary to get them.⁴⁴ And being treated unfairly is something that those people have strong reason to avoid.⁴⁵ Maxim contractualism, then, is just as able to justify prohibitions on free-riding as principle contractualism is.

At this juncture, one might have the following concern: When assessing a maxim in contractualist moral reasoning, how can one appeal to an interest in being treated fairly? One's strong reason to want to be treated fairly is a moral reason. But is not contractualism supposed to reduce the moral to the nonmoral? Such a concern, however, is unfounded. Scanlon explicitly allows moral considerations of certain kinds—fairness being one example—to enter

44 Murphy, in "Nonlegislative Justification," seems to agree: "If your child wants to throw the paper out the car window onto generally uncluttered streets, the question 'What if everyone did that' is meant to get them to consider the *unfairness* of free-riding on others' beneficial compliance with the no-littering principle" (263, emphasis added). It is important to note, though, that Murphy's discussion is not aimed at showing how a "nonlegislative" version of contractualism might justify prohibitions against free-riding. Rather, Murphy is arguing that "what if everyone did that?" questions are best asked in free-riding contexts as opposed to all contexts in which actions are evaluated for moral permissibility, as rule consequentialists, principle contractualists, and other "legislative" moral theorists think.

45 Many have argued that consequentialists should be rule consequentialists rather than act consequentialists precisely in order to capture prohibitions on free-riding. But, given that the decisive complaint to free-riding in contractualist moral reasoning centers around the unfair treatment of those whose attitudes toward littering are necessary for the existence of the no-littering convention, act, maxim, and principle contractualism are all equally well-placed to justify prohibitions on free-riding. For a nice discussion of the consequentialist dialectic concerning prohibitions on free-riding, see Greene and Levinstein, "Act Consequentialism without Free Rides," 88–116.

into contractualist moral reasoning. Although my imagined objector is correct that Scanlon's project is reductionist, she is wrong to insist that what Scanlon means to reduce are moral facts. Rather, what Scanlon means to reduce is the deontic to the nondeontic.⁴⁶

The third objection claims that maxim contractualism is subject to an ideal world problem of its own—one where one's future times slices play the same role that other people play in the ideal world problem for principle contractualism. To see how the second objection may arise, consider the following case.

Headache: On Monday, Patient has an excruciating headache. Though it will go away on its own in five hours, drug *D* will cure it immediately. However, as *D* is a very potent drug, if it is administered on Monday, drug *E* must be administered on Tuesday in order to counter its side effects; otherwise, Patient will die. Doctor can administer *D* on Monday, but she knows that if she does so, even though she will be able to administer *E* on Tuesday, because of her own laziness then, she will not. Doctor has two options on Monday: administer *D* to Patient or do not.⁴⁷

Intuitively, my objector may push, Doctor is not morally obligated to administer *D* to Patient. In fact, she may continue, Doctor is morally obligated to *not* administer *D* to Patient. She may argue that this is because, given Doctor's laziness, Doctor's administering *D* to Patient on Monday would have disastrous consequences. Patient will die on Tuesday if Doctor administers *D* to Patient on Monday. But—and here is her punch line—maxim contractualism entails that Doctor *is* morally obligated to administer *D* to Patient. So, my objector concludes, maxim contractualism is false.

Here is how my objector may argue that maxim contractualism entails that Doctor is morally obligated to administer *D* to Patient: according to maxim contractualism, Doctor is required to administer *D* to Patient just in case someone could reasonably reject any maxim that involved Doctor's not administering *D* to Patient. So, let us look at Doctor's maxim: "When in circumstances like Headache, I will not administer *D* to Patient." This maxim is rejectable. For,

46 For Scanlon's discussion, see *What We Owe to Each Other*, 212. I do not, then, find what is known in the literature as the "explanatory circularity objection" to be successful against Scanlonian contractualism. According to the explanatory circularity objection, Scanlonian contractualism implicitly relies on our pre-theoretical moral convictions when assessing candidate moral principles. On my view, this is no objection to Scanlonian contractualism if those convictions do not have *deontic content*—i.e., if those moral convictions do not express the claim that some action is right or wrong. (For the canonical presentation of the explanatory circularity objection, see Hooker, "Contractualism, Spare Wheel, Aggregation," 58.)

47 I borrow this case from Graham, "An Argument for Objective Possibilism," 220.

there is an alternative maxim that answers to a sufficient degree the reasons that Doctor has for favoring Doctor's adoption of the original maxim over time but whose implications do not justify objections to it from Patient that are as serious as those justified by the original maxim's implications. That maxim is: "In circumstances *C* like Headache, I will give *D* and *E*." If Doctor adopts this maxim, Patient will neither die nor continue to endure the headache. So, my objector infers, any maxim that involved Doctor's not administering *D* to Patient is rejectable. So, my objector concludes, according to maxim contractualism, Doctor is morally obligated to administer *D* to Patient—a most unintuitive result.

Whether or not Doctor is morally obligated to administer *D* to Patient is hotly contested in the literature by possibilists and actualists.⁴⁸ The actualist's argument that Doctor is not morally obligated to administer *D* (and, moreover, is obligated not to administer *D*) is that Doctor's administering *D* to Patient on Monday would have disastrous consequences—namely, that Patient will die on Tuesday if Doctor administers *D* on Monday. On the other hand, the possibilist argues that Doctor is morally obligated to administer *D* to Patient because Doctor is morally obligated to do the best she can for Patient, and there is something Doctor can do—namely, administer *D* on Monday and then administer *E* on Tuesday—that would cure Patient of her headache without killing her.⁴⁹ My objector, then, to borrow the terminology just introduced, wields actualist intuitions against maxim contractualism. Where my objector goes wrong is in her view that maxim contractualist moral reasoning is inherently possibilistic. It is not, and it is not precisely because it is possible to fail to act in accordance with a maxim one has adopted (and for a maxim contractualist to recognize this in her moral reasoning). I will turn now to showing how maxim contractualism can be adopted in either an actualist or a possibilist guise.

Actualists think that whether Doctor will administer *E* to Patient partly determines Doctor's obligations in Headache. And this is why actualists think that Doctor must not give *D* to Patient. Possibilists, on the other hand, think that whether Doctor will administer *E* to Patient is irrelevant to the determination of Doctor's obligations in Headache. In maxim contractualist moral reasoning, this contrast can be expressed in a choice-point as to whether Doctor's weakness of will with respect to a maxim is relevant to that maxim's rejectability or not. Here is how this would work: remember that, in order to determine whether someone is morally required to do something, maxim contractualists look at worlds in which that person adopts a maxim that involves not doing

48 For a helpful overview of the debate, see Timmerman and Cohen, "Moral Obligations."

49 Graham, "An Argument for Objective Possibilism," 221.

that thing. Possibilist maxim contractualists, when imagining such a world, do not take into account any weakness of will that that person has with respect to acting from that maxim. When determining whether Doctor ought to administer *D*, then, possibilist maxim contractualists only look at worlds in which Doctor *always* acts on the following maxim over time: “In circumstances *C* like Headache, I will give *D* and *E*.” This feature of possibilist maxim contractualism is responsible for their agreement with my objector that any maxim that involved Doctor’s not administering *D* to Patient is rejectable. If Doctor were to adopt the maxim “In circumstances *C* like Headache, I will give *D* and *E*” and *always* administer both *D* and *E*, then Patient (and other patients) would have their headaches cured and be at no risk of death. Of course, however, if you are a possibilist maxim contractualist, that your view entails that Doctor must administer *D* to Patient will not seem like an *objection* at all. You would just think it is an expression of the fact that morality does not let individuals off the hook for their contingent, avoidable limitations.

Actualist maxim contractualists, on the other hand, will take such a result of the possibilist version of their view to be a serious problem, indeed. This is why, in order to avoid the conclusion that Doctor must administer *D* to Patient, they hold fixed the contingent limitations of Doctor when imagining what would happen if Doctor adopted the maxim “In circumstances *C* like Headache, I will give *D* and *E*” over time. Given Doctor’s weakness of will, his adoption of this maxim would result in him giving *D* but not also administering *E*, resulting in Patient’s (and other patients’) death. Rather than delivering the wrong result about Headache as my objector presses, maxim contractualism provides a framework within which possibilists and actualists can debate about what Doctor’s obligations are.⁵⁰

VII

Contractualists, then, need to alter their moral reasoning. When determining whether or not I must perform some action, they should not imagine what would happen if everyone did what I am considering doing. Instead, they

50 Much like with justifying prohibitions on free-riding, act, maxim, and principle contractualism are all equally well-placed to provide a framework within which possibilists and actualists can debate about what Doctor’s obligations are. If you are a possibilist principle contractualist, then you will take Doctor’s weakness of will with respect to a principle for the general regulation of behavior to be relevant to that principle’s rejectability. If you are an actualist principle contractualist, then you will not. Similarly, if you are a possibilist act contractualist, then you will take Doctor’s weakness of will with respect to administering *E* to Patient to be relevant to the rejectability of Doctor’s administering *D* to Patient. And, if you are an actualist act contractualist, you will not.

should imagine what would happen if I adopted over time any maxim that might be behind my action while holding fixed what everyone else does. Such an alteration would allow contractualists to solve their ideal world problem while still providing them with the materials to vindicate our concept of morality as a social institution.⁵¹

Lingnan University
aaronosalomon@ln.edu.hk

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