

Contractualism and Justification¹

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I first began thinking of contractualism as a moral theory 38 years ago, in May of 1979. The idea was not entirely original. I was of course familiar with Rawls' theory of justice, and influenced by it. A more direct source for the idea of justifiability to others as the basis of *morality* lay in remarks of Tom Nagel's in *Moral Questions*. Rawls and Nagel had, perhaps, the wisdom not to try to try to work out a general moral theory based on this idea. But I naively rushed ahead, and even more naively thought that I could write a book developing such a theory over the course of the 1979-80 academic year, when I would be on leave and a visiting fellow at All Souls College, courtesy of Derek Parfit. All I managed to do, of course, was write one paper, "Contractualism and Utilitarianism." When I showed an early draft to Parfit, his first response was, "Tim, this is not a moral theory. It is just an expression of your personality."

Judging from what Parfit said later, in *On What Matters*, his opinion of the project went up over the years, perhaps excessively, even though he still had criticisms. Partly as a result of these criticisms, my own opinion has become more qualified. I am still strongly attracted to the idea, but aware of faults in my original formulation and of serious difficulties facing any view of this general kind. In this paper I will examine some of these faults and difficulties, and consider how I might respond to them. The responses I survey will in many cases be only provisional.

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Contractualism makes the rightness of an action or policy depend on whether it would be permitted by justifiable principles. And it makes the justifiability of principles depend on the reasons of certain kinds that individuals have to accept or reject them. I was drawn to this view because I saw it as a way of providing a general account of (at least a central portion of) non-consequentialist morality—an account of the moral limits on the ways that individuals can be treated for the sake of benefits to others. The need for such an account seemed to me to be obvious, as illustrated by my Transmitter Room example among many others.

Here is another example. In a famous paper about the justification of punishment, Jeffrie Murphy argued that deterrence-based justifications of punishment were unacceptable.² Leaving aside the familiar problem that deterrence arguments might justify punishing innocent people, he said, even deterrence based justifications for punishing the guilty involved “treating them as mere means” in a way that was morally unacceptable. Only a desert-based retributive justification, he argued, can avoid this problem. He might have added that only a desert-based view can explain the limits on criminal penalties. If extremely severe punishment for some minor offense, such as overtime parking, would sufficiently reduce the occurrence of such crimes, then the relevant cost-benefit analysis might support it, especially since such penalties would rarely need to be enacted.

Contractualism provides an alternate way of explaining the limits of punishment and its justifiability. Justifiable criminal penalties are limited by the fact that there is a limit to what can be imposed on one person in order to reduce the likelihood of some

² Jeffrie G. Murphy, “Marxism and Retribution,” *Philosophy & Public Affairs* 2 (1973), pp. 217-243.

relatively trivial harm to others. And punishment is limited to those who have chosen to violate (a justifiable) law, because individuals have strong reason to reject being subject to penalties that they have no opportunity to avoid through choices that do not involve giving up any alternatives they are entitled to have.

What such examples show, first and foremost, is just that there are moral limits to the ways that individuals may be treated for the sake of benefits to others. Any view according to which there are such limits captures the element of truth in the idea that individuals should not be treated “as mere means.” A mere means is something any treatment of which can be justified by the fact that it promotes some good.³ Something is not a *mere* means if it is not like this: there are limits on how it can be treated for the sake of such goods. This does not rule out the possibility that the good effects of treating people in a certain way, such as the deterrent effects of a system of punishment, can be are sufficient justification for doing so. It just limits when this can be the case.

The idea of “treating someone as a means” tells us nothing yet about what these limits are. So, although many actions that are wrong involve “treating someone as a mere means,” to say that these actions are wrong because they involve treating someone as a mere means is at best elliptical. It is like saying that these acts are wrong because they involve treating people as if there were no limits on how they may be treated for the sake of other goods, without saying what those limits are, or why there are such limits.

Contractualism provides an alternate explanation of these limits. In the case of punishment, it holds that justifiable criminal penalties are limited because there is a limit to what can be imposed on one person in order to reduce slightly the likelihood of some

³ I discuss ideas in this paragraph more fully in Chapter 3 of my book, *Moral Dimensions: Permissibility, Meaning, Blame*.

harm to others. And punishment is limited to those who have chosen to violate (a justifiable) law, because individuals have strong reason to reject being subject to penalties that they have no opportunity to avoid through choices that do not involve giving up any alternatives they are entitled to have.

These limits might be specified in other ways, however. They might, for example, be specified by a system of individual rights, or other non-consequentialist principles, taken as foundational elements of the morality of right and wrong. But this does not seem satisfactory to me. Any system of this kind needs itself to be justified somehow. An adequate moral theory should provide some systematic way of thinking about what these rights or principles are and why they are the ones that set the limits to how individuals may be treated. Contractualism aims to provide a way of answering these questions⁴, although as we will see there are questions about how “systematic” its answers can be made.

Let me take a moment to expand on the word “why” in the previous sentence. In Chapter 4 of Book I of the *Nicomachean Ethics* Aristotle stresses the importance of distinguishing between two directions of argument. We must be clear, he says, about whether we are trying to discover first principles or arguing from such principles. In doing the former, he says, we must start with what is already known to us—what would today be called, using a word I do not find particularly helpful, moral intuitions. That is to say, we discover first principles by employing the method of reflective equilibrium. Engaging in this kind of investigation is one way of “thinking about what the moral limits

⁴ This is emphasized by Samuel Scheffler, in “Rawls and Utilitarianism” in Samuel Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003) pp. 426-459.

are on the ways individuals can be treated.” The fact that certain principles emerge from this process, when it is carried out well, can be a reason for thinking that they are correct. But the fact that they result from this process does not tell us *why* these principles are correct. Rather, the principles themselves are supposed to tell us why the judgments that follow from them are correct. This is Aristotle’s second direction of argument. When I said that we needed a way of thinking about the limits to the ways that individuals can be treated and *why* these are the limits, I was saying that we need something like first principles in Aristotle’s sense: a way of thinking about what these limits are that is grounded in an understanding of why these are the limits.

In developing my contractualist view, I was following Aristotle’s model. I was using the method of reflective equilibrium to identify the contractualist procedure of justification, which I thought gave the best account of (at least a portion of) morality, and then taking this procedure to be a way of reasoning “*from* first principles” about what the content of this morality is and why. A more purely intuitive method for investigating non-consequentialist morality could follow this same path: it would employ the method of reflective equilibrium to identify a set of independent principles that seem to provide the best account of the moral limits on how individuals may be treated, and would then take those principles as explaining why forms of treatment that violate these limits are morally wrong. What this method would not provide would be a more general account of why these principles are correct, and a method of arriving at them. This is what contractualism and consequentialism seek to provide.⁵ But perhaps this is too ambitious.

⁵ This is emphasized by Samuel Scheffler, in “Rawls and Utilitarianism” in Samuel Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003) pp. 426-459.

Any explanation has to end somewhere, and perhaps it has to end in some set of deontological principles.

In 1975, before I had thought of formulating contractualism as a general moral theory, I offered a different answer to the question of how rights should be understood and defended in a paper called “Rights, Goals and Fairness.” I wrote there that rights are restrictions on individuals’ discretion to act or not act that are justified by the fact that they are needed to protect important interests and do so at a tolerable cost. I thought of this at the time as a form of modified consequentialism. When I showed this paper to Rawls, he said, with characteristic modesty and gentleness, “What you say seems generally right to me, Tim. But I don’t think you should call it a form of consequentialism.”

Rawls was quite correct, although it took me another four years to figure this out. The account of rights that I put forward in “Rights, Goals and Fairness” shares a structure with the contractualist moral theory that I later adopted. It explained rights by appeal to the interests that rights are needed to protect (that is the interests that are grounds for objecting to principles that would permit actions or policies of the kinds that these rights rule out.) But it also required that the costs of these rights, in terms of other interests, should not be too great (that is to say, it required that insisting on these rights should be reasonable.)

But my later contractualist view differs from a consequentialist reading of “Rights, Goals and Fairness” by interpreting these interests in a different way. The reasons for rejecting principles permitting rights violations, for example, is not that the effects of the actions they rule out would be objectively bad things to have happen, but

rather than individuals have, personally, good reason to object to being affected in these ways. I suspect that this is close to what Rawls had in mind when he said that I should not call my earlier view consequentialist.

Despite this difference, my contractualist view shares with my earlier view of rights, and with many consequentialist views, what might be called a *normatively reductive* character. These views do not seek to reduce normative ideas to something non-normative. But they do seek to explain conclusions about moral right and wrong in terms of other normative ideas. In the case of my contractualism, these are ideas about the reasons that particular individuals have to want certain opportunities and to want not to be affected in certain ways. In the case of consequentialism they are ideas about the goodness or badness of certain states of affairs, including, but not necessarily limited to, effects on particular individuals.

It is worth pausing to consider, for future reference, why this reductive strategy should be appealing—why it should seem to have explanatory virtues. Any explanation of right and wrong has to start somewhere, and no starting point can be entirely uncontroversial. But the reductive strategy seems to have two advantages. First the rights, or moral norms that are to be explained are complex: they have conditions of application and admit of various exceptions, which often can be only incompletely specified. The considerations that a reductive strategy appeals to, on the other hand, are comparatively simple. In my view, they are just reasons that individuals in certain circumstances have to object to being affected in certain ways. Second, the moral considerations that are to be explained are explicitly deontic—they are claims about what may or may not be done. The factors that the reductive strategy appeals to, by contrast are not *in themselves*

deontic. The structure within which they play a role (a process of contractualist, or rule consequentialist justification) assigns them what might be called minimally deontic status: they are considerations that are relevant for the justification of deontic principles.

A reductive strategy seeks to explain the deontic status of rights and other moral norms by the fact that this they are required in order to respond properly to these more basic considerations (e.g., in order to avoid being reasonably rejectable on the basis of these reasons.) But the main appeal of the method is not just that it explains this deontic status, but that it provides a way of thinking about the content of these deontic ideas, and a way of explaining and interpreting incompletely specified exceptions.

In my view, for example, the right of freedom of expression consists of a set of restrictions on the powers that governments can have to regulate expression. It is held that these restrictions are necessary in order to protect important interests that we have in being able to express our views, having access to the views of others, and having the broader social benefits of free discussion, and that they provide this protection at a tolerable cost to other interests. In order to decide whether a kind of regulation is compatible with freedom of expression, we need to think about how that power is likely to be used, and how these interests are likely to be affected. Similarly, the right to privacy is a set of norms that provide individuals with forms of control over the ability of others to observe them and acquire information about them. In order to decide whether a given power is part of the right to privacy we need to consider whether it is needed to provide this protection and whether it does so at tolerable cost in other terms.

This seems to me a more plausible and helpful a way of understanding our thinking about these rights than the idea that this simply involves thinking about them

“intuitively” as basic deontic notions. This is not because I am suspicious of “intuitive” normative thinking. Quite the contrary, I believe that it is inescapable. The question is what kind of such thinking is most plausible and informative. In this case it seems to me to be “intuitive” thinking about reasons and “normatively reductive” thinking about rights and moral norms. The latter provides, among other things, a plausible way of understanding what may appear to be conflicts between different rights and norms, and of understanding why and how the content of rights and norms can change as circumstances change.

I find this reductive strategy very appealing. I have just completed a book on equality, and in the course of the seminar in which I discussed the chapters of this book last year, I recognized as a general theme of that book a strategy of “looking beneath” important moral concepts such as rights, but also liberty, equality, and coercion, in order to uncover the reasons of that individuals have to want or to object to certain forms of treatment. It is these reasons that make these concepts important, and determine their content.

It might be said that even if this is the best way to understand political or legal rights such as privacy and freedom of expression, it does not apply as well to more personal moral rights, such as the rights a person has over his or her own body.⁶ Perhaps I was misled by the fact that I started off thinking about rights by thinking about freedom of expression. In partial response, I could say that I believe at least some “personal”

⁶ As Nagel suggests in *Equality and Partiality*, p. 141.

moral rights, such as rights arising from promises, are best understood in this normatively reductive way.⁷

There is, however, a serious question about how far this reductive strategy can be carried. One problem is that if the basic elements in this strategy are taken in the simplest form—for example, as reasons of a certain strength for objecting to being affected in a certain way—and if the process of determining normative principles is just a matter of comparing the relative strengths of the reasons that those who would benefit from certain actions have for wanting to be so benefitted and the reasons that those who would be burdened by this requirement have for objecting to it, this would seem to have results that are difficult to accept. Parfit points out, for example, that this idea, which he calls the *Greater Burden Claim*, would be extremely demanding. If, as in his Case One, another person would gain more years of life from having one of my organs than I would lose, the Greater Burden Claim would seem to imply that I must give it to him.⁸

Parfit poses this as a problem for my contractualism, taking the Greater Burden Claim as a thesis about when a principle is reasonably rejectable. But the problem would seem to arise for the reductive strategy more generally, whether this strategy is carried out as a form of contractualism or not. This would suggest that the over demandingness that gives rise to some objections to consequentialism may be a feature of its reductive character, independent of any problems specific to consequentialism or having to do with aggregation.

One conclusion might be that the reductive strategy cannot be fully carried out, and that any defensible theory will have to presuppose rights or other deontological limits

⁷ As I argue in *What We Owe to Each Other*, Chapter 7.

⁸ *On What Matters*, Volume Two, pp. 192ff.

on what can be demanded of individuals. This would leave the problem of explaining how these rights or norms are themselves to be interpreted and justified. Another conclusion would be that either the considerations that are the basic elements of a reductive strategy, or the way in which these are taken to interact in the process of justification that that strategy describes, need to be more complex than in the simplest version described by the *Greater Burden Claim*. I will return to this question.

First, I need to consider the relation between the reductive strategy and the contractualist idea that actions are morally permissible if principles that allow them can be justified to those who would be affected. As I said earlier, I still find this idea appealing. But it needs to be made clearer what role, if any, the idea of justifiability plays in this account.

A moral theory needs to answer two questions. One is the question of *content*: a theory should provide a characterization of the subject matter of (at least a part of) morality, and a method for thinking about its content. Second, a theory should provide, or at least fit with, some answer to the question of *acceptance*—an explanation of why people should care about morality as the theory has characterized it. Why should they regard the conclusions reached through the reasoning that the theory describes as normally settling the question of what to do? The idea that what morality (or at least a certain central part of morality) requires is that our actions should be justifiable to others seemed to me promising because it could play a role in answering both of these questions: we have reason to care about morality because we have reason to care about the justifiability of our actions to others, and the idea of justifiability to others can guide us in finding an answer to the question of content.

I will begin with the answer that contractualism gives to the question of content and then return to the question of acceptance, and the relation between the two. Like other versions of the reductive strategy, contractualism seeks to explain the content of rights and moral norms in terms of the considerations that count in favor of having these norms and the costs that must be taken into account in defending them. What is distinctive about contractualism lies in the way it characterizes these basic elements and the account it offers of the way they are combined to yield deontic conclusions.

According to contractualism, the basic elements are reasons that individuals have, such as reasons to want certain opportunities and reasons to object to being treated in certain ways. More specifically, these elements are reasons people have for objecting to principles because of the ways their lives would be affected by having to act in accord with these principles and having others feel free to act in the ways that these principles would allow. This formulation, in terms of reasons for accepting or objecting to principles, is the relevant way to state the view, because the general patterns of action that principles allow for and require have both benefits and burdens that go beyond the values and disvalues of individual actions that they involve. Individuals have strong reasons not only to object to specific instances of interference but also to want reasonable assurance that they will not be interfered with in these ways. And it is one thing to be required to provide aid of some kind on a particular occasion, and something else to be required to stand ready to do so on any occasion, should the need arise.

So we have the contractualist formula: an action is wrong if any principle that permitted it would be one that some affected person could reasonably reject. I have said something about role of principles in this formula, and said something preliminary about

the possible bases for rejecting principles, namely the reasons that individuals have to want not to be affected in certain ways. These are what I called “personal” reasons, and I will say more about such reasons later. First I need to say something the idea of reasonableness that is used to characterize the process through which these reasons are to be combined. Claims about reasonableness are claims about what someone has sufficient reason to do given a certain circumscribed set of considerations. So the claim that a principle could reasonable be rejected is a claim that the way that certain parties would be affected by that principle constitute sufficient reason for them to reject it, taking into account the relevant range of other considerations. These considerations include, I wrote, “the aim of finding principles that others also could not reasonably reject.” Rather than “aim” I probably should have said “the reasons they have to find principles that others also could not reasonably reject,” since aims provide reasons only in virtue of the reasons to have those aims.) This reason brings others in its train, namely the reasons that others have to object to principles on the ground of how they would be affected by them. A reason makes rejection of a principle reasonable only if it constitutes *sufficient* reason to reject that principle taking these other reasons into account.

I have assumed that claims about reasonableness in this sense are not moral claims—not claims made using moral concepts of right, wrong, obligation, etc.—but general normative claims about the strength of reasons. (I will return to the question of how the idea of “strength” is to be understood.) Even if claims about what is reasonable in this sense are not explicitly moral (deontic) claims, the fact that they require the reasons of different parties to be taken into account and treated symmetrically gives them the right content to have moral significance. For this reason, they seemed to me to be a

plausible “grounding place” for a reductive strategy. As I have said above in discussing the reductive strategy, however, this assumption may be mistaken. Perhaps some moral notions need to be relied on even at the most basic level. I will return to this question below.

In the version of contractualism defended in my book, reasons for rejecting a principle were limited to personal reasons—reasons having to do with the way that an individual in that position would be affected by complying with and having others act in accord with a principle. Contractualist justification as I described it thus excluded what I called *impersonal* reasons—reasons that do not derive from the way in which individuals would be affected if that principle were generally followed. For example, we have reasons not to fill the Grand Canyon with trash. There are, of course, personal reasons not to do such things, reason flowing from the reasons various individuals have to want to be able to experience such wonders in their unspoiled state. But it seems to me that there are also impersonal reasons not to act in these ways: that the qualities of these natural wonders give us reason not to do what would diminish or destroy them. The exclusion of these reasons is what Parfit calls my *Impersonalist Restriction*.⁹ In addition, the version of contractualist justification that I developed only takes account of the personal reasons of individuals, considered one by one, excluding aggregation of the personal reasons of many individuals. This is what Parfit calls my *Individualist Restriction*.

These restrictions were distinctive features of contractualism as I first presented it, and some of its most controversial aspects. Excluding aggregative reasons allows contractualism to avoid conclusions that I, at least, regard as implausible, such as that it is

⁹ See *On What Matters*, Volume Two, pp. 214.

permissible, or even required to let one person suffer in order not to derive a very large number of people of some very small benefit. But it also appears to lead to other conclusions that may seem implausible, such as that it is permissible to save one stranger from drowning rather than five, or ten. Parfit has argued that allowing appeal to impersonal and aggregative reasons would avoid these consequences, and would in general strengthen the contractualist view without depriving it of its distinctive character.¹⁰ In order to assess this proposal, I need first to consider what led me to exclude reasons of these kinds to begin with.

Here I need to turn to the question of acceptance, the problem of explaining the reasons we have to accept moral requirements and the significance that is properly attached to them. I have come to believe that the realm of morality, as that term is commonly used, is not a unified normative domain. So these questions of acceptance do not have a single answer when asked about morality in general. Failure to take proper care of one's children and willingness to despoil the environment are both properly called moral faults. But the reasons lying behind them are quite different and also different from those supporting normal duties to keep one's promises and refrain from acts that harm one's neighbors.

This pluralist view of morality as a whole seems to me to be supported by what I call the *remorse test*. This is the idea that the particular way in which it is appropriate to feel bad about doing something that is wrong indicates the distinctive kind of wrongness that is involved, and indicates in turn the kind of factors that make an action wrong in that particular way.

¹⁰ Derek Parfit, *On What Matters* (Oxford: Oxford University Press, 2011), Volume Two, pp. 231-243.

The kind of remorse made appropriate by wrongs of the kind I had in mind in developing my contractualist view is grounded in the sense that an individual who is affected by our action has a reason for objecting to it that cannot be answered.¹¹ As an example, I cited in my book my reaction to Peter Singer's argument about the moral case for contributing to famine relief. What affected me so strongly in this case was the fact that these starving people had reasons for wanting help that I was failing to respond to rather than just the objective badness of the fact that they were starving.

These different forms of remorse may both be appropriate. But they reveal different understandings of basis of the relevant moral requirements—that is to say, different answers to the question of acceptance.¹² On the latter view, because human beings have a particular kind of value, it matters what happens to them. In particular, it is a bad thing if they are harmed in certain ways, and we have reason to prevent that. Non-human animals, and perhaps works of nature, are also valuable, and there are reasons not to harm them as well. If the case of human beings is distinctive, it is because human beings are more valuable, or valuable in a different way than these other creatures and things.

On the alternative view, indicated by the kind of remorse I described myself as feeling, what is special about human beings is that they themselves have reasons,

¹¹ As Frances Kamm suggests, this makes it plausible to say this person has been *wronged* by such an action, not just that the action is wrong. See Kamm, "Owing, Justifying, and Rejecting," p. 466, and Johann Frick, "What We Owe to Hypocrites," *Philosophy & Public Affairs* 44 (2016) p. 262, note 48.

¹² I am indebted to Victor Tadros for a conversation in which he urged on me the following way of seeing the issue, on which he takes the opposite view to mine. Frances Kamm may also be taking that position when she recommends that I adopt "the simple idea that the value of persons is objectively great." See "Owing, Justifying, and Rejecting," p. 460.

including reasons to want not to be treated in certain ways. The fact that human beings have reasons opens up a further dimension of our relations with each other—namely the degree to which we are treating each other in ways that are responsive to the reasons that we have. This is the domain of interpersonal morality. We have reason to be concerned with this form of morality because we have reason to want to be related to other rational beings in a way that is responsive to the reasons they have. Realizing that we have not done this triggers the distinctive kind of remorse I was feeling.

I described this kind of remorse as the sense that one's actions cannot be justified to those whom they affect, and I took this to be a distinctively contractualist answer to the question of acceptance. This answer also seemed to me to indicate a distinctive, contractualist, answer to the question of content, according to which the rightness or wrongness depend in whether any individual has sufficient reason to reject a principle that would permit it, taking the corresponding reasons of others also into account.

The idea of justifiability to a person thus plays a role both in answering the question of acceptance and in the contractualist answer to the question of content, but the senses of justifiability that are involved are different. The contractualist answer to the question of content is that in order not to be wrong an action must be allowed by a principle that is justifiable to every person: the (personal) reasons that any individual has to this principle must be answerable. This form of justifiability is thus a stylized one, specified by the distinctive contractualist idea of reasonable rejection. The question of acceptance is then the question of whether this standard (of acting only in ways allowed

by principles that are justifiable to all in this special sense) is one that everyone has sufficient reason to accept, taking into account all the reasons that a person has.¹³

The idea of reasonable rejection as an answer to the question of content is incomplete unless the relevant range of reasons is specified. For example, such an account would be trivial if it allowed that principles could be rejected on the ground that they would permit actions that are morally wrong. As I said earlier, the version of contractualism stated in my book restricted these to what I called “personal” reasons, excluding impersonal reasons and aggregative reasons.

In taking this position, I was guided (perhaps misled) by my understanding of the remorse test. Actions that are wrong in the particular way I was concerned with—and thus trigger a distinctive kind of remorse—because of the reasons that individuals have to object to being treated in that way. These cases are quite different from ones in which the reason against acting in a certain way is an impersonal reason, such as the kind of reason that we have not to fill the Grand Canyon with trash, a reason grounded in the value of such natural wonders themselves (and going beyond the personal reasons that individuals have for wanting to be able to experience such natural wonders in their unspoiled state.)

If there are such impersonal reasons for preserving natural wonders, then it would seem that there are also impersonal reasons to object to others’ acting in these ways that would destroy them, and therefore reasons of this kind to object to a principle that would

¹³ This may be what Frances Kamm has in mind when she says that contractualism rests on an “objective theory of value.” See p. 460 of her “Owing, Justifying, and Rejecting,” in *Intricate Ethics* (Oxford: Oxford University Press, 2007). If what she means is that the adequacy of its answer to the question of acceptance depends on the facts about all the reasons that individuals have, then I agree. This dependence is not something distinctive about contractualism, however, but rather a general truth about the question of acceptance that any moral theory needs to answer.

permit such actions. It might even be said that these reasons would make it reasonable to reject such principles, and that the actions that they would allow could not be justified to others, since they would have sound (impersonal) reasons for objecting to them.

A person who raised this objection, however, would merely be calling attention to reasons provided directly by the grandeur of the Grand Canyon, reasons that which have nothing to do with him or her. Failure to respond to these reasons would be a fault, and would properly trigger a kind of remorse. But it is different from the kind of remorse that is triggered by the realization that one has treated a person in a way that he or she has personal reason to object to.

It might be said, of course, that these personal reasons are redundant. The fact that an action would cause harm to a person is, in itself, a sufficient reason not to do it. Because this is true, the person has a reason to object to being treated in this way. But to say this adds nothing. All the normative work is done by the reasons why it is a bad thing for the person to be harmed in this way. This seems to me a mistake. The fact that an individual in a certain position has a personal reason to object to being treated in a certain way is a special kind of reason for taking a principle that would permit that kind of treatment to be unjustifiable. It is one thing to take into account the (as it were impersonal) fact that it is a bad thing for a person to be harmed, and quite a different thing to take into account the fact, when it is a fact, that that person him or herself has reason to want not to be treated in this way. (Here I am just restating the distinction, mentioned earlier, between two different ways of answering the question of acceptance.)

So it seemed to me that only personal reasons can make a certain kind of action wrong in the way that my contractualist theory aimed to capture. This was, so to speak,

the theoretical basis of my decision to exclude impersonal reasons in general and aggregative reasons in particular from the class of reasons for rejecting a principle. (I refer to this as my “theoretical” basis to contrast it with the aim of avoiding implausible conclusions that aggregative reasons might lead to in cases like my Transmitter room example.)

Given that there are cases in which it seems clear, intuitively, that it can be morally wrong to fail to save a greater number of people, we need to consider how this fact can best be explained in a way that does not lead to implausible conclusions in cases like Transmitter Room. One possibility, considered by Parfit, is a kind of moral pluralism, according to which actions that are not wrong in the contractualist sense might be wrong in some other sense.¹⁴ Suppose I can rescue either one, but only one of two groups of people: one group containing 5 people, the other containing 20. Perhaps either course of action would pass the contractualist test. Individual members of the two groups have identical reasons for wanting to be saved, and the fact that there are more individuals in one group does not give any of the individuals in that group a stronger reason for demanding to be saved. So it would not be reasonable for any of them to reject a principle requiring one to save the other group. So it might appear that saving either group would be permissible according to contractualism. But if this is so, and no individual would be wronged by either course of action, it could be added that it would show a lack of regard for the value of human life to save the smaller number. To do so

¹⁴ See *On What Matters*, pp. 213ff.

would thus be morally wrong in a different way than the one that contractualism describes.¹⁵

I am not opposed to the possibility of moral pluralism of this kind.¹⁶ There are different conceptions of morality (revealed by application of the remorse test.) The question to ask about them is not “which one gets it right about what *morality* is” but rather “which of them do we have reason to take as guides of conduct, and in what way?” This leaves open the question of what one should do when two forms of reasoning yield conflicting directives. This would not, in my view, be a *moral* question in the sense of “moral” described by either of the two conceptions, but only in a broad sense, encompassing all the different conceptions and not itself backed by any distinctive form of regret. The question would be one about what we have most reason to do in a more general sense.

This pluralistic explanation of the case for saving the greater number might, however, lead to a kind of implausible asymmetry between what might be termed subset and disjoint set cases. If I could save a whole group of people, it would seem clearly wrong choose to save only a subset of them, when it would be just as easy for me to save them all. Contractualist reasoning could explain why this would be wrong: someone in the position of those who are not saved would have reasons to reject a principle permitting this, and neither the agent nor anyone else would have any reason to object to

¹⁵This possibility is discussed in different ways by Elizabeth Anscombe, “Who Is Wronged?” *Oxford Review* 5 (1967), pp. 16-17, and by Veronique, Munoz-Darde, “The Distribution of Numbers and the Comprehensiveness of Reasons,” *Proceedings of the Aristotelian Society* 105 (2005), pp. 207-233. A stronger kind of pluralism has been suggested more recently by Johann Frick near the end of “Contractualism and Social Risk,” *Philosophy & Public Affairs* 43 (2015) pp. 175-223. I will discuss Frick’s view below.

¹⁶ See also *What We Owe to Each Other*, pp. 342ff.

a principle requiring one to save all. Contractualist reasoning would not, however, explain why it would be wrong to save the smaller number of people in a case that was like this except that the two groups were disjoint, and it may seem odd to say that these two actions are wrong “in different ways,” as the pluralist explanation says. A more unified account would be more plausible.

It seems to me on reflection that what I referred to as my theoretical reason for excluding aggregative reasons from the process of contractualist justification was too hasty. The remorse test suggests that when actions are wrong in the way that contractualism aims to describe they are wrong because of reasonable objections that some individuals would have to principles permitting them, reasons based on how those individuals would be affected by living under those principles. I concluded, further, that whether such an objection is reasonable depends *solely* on the relative strengths of that reason for objecting as compared with the strongest personal reason that any other individual has for objecting to alternative principles, thus arriving at the Individualist and Impersonalist restrictions. But this was too quick.

Even if impersonal reasons, or aggregative reasons, cannot be grounds for rejecting a principle, these reasons might play a different role in determining whether such rejection is *reasonable*. Return to the example of the choice between rescuing a group containing 5 people, and rescuing a group containing 20. Might it be said that while it would be reasonable for a person in the larger group to reject a principle permitting one to save the smaller number, it would not be reasonable for a person in the smaller group to reject a principle requiring one to save the greater number. This is not because an individual in the larger group has a stronger reason to be saved than the

corresponding reason of someone in the smaller group, but because it is unreasonable for someone in the smaller group to insist on being saved at such a great cost in human life overall—that is to say, unreasonable to insist on this given the many strong reasons against it. (I leave aside for the moment whether this is a kind of impersonal reason or not.) So even if these reasons did not provide grounds for rejection, they could be considerations that can make such rejection *unreasonable*. At least the remorse test does not rule this out.

So the line of thinking that seemed to me to provide theoretical grounds for excluding impersonal and aggregative reasons from the contractualist justification procedure appears to be flawed. The remorse test led me to focus on reasons for rejecting a principle, neglecting the fact that other reasons are relevant to the reasonableness of rejection. This way of looking at the matter leaves us with the question of how the number of individuals that are affected can make an objection to a principle unreasonable, which raises in turn a larger question about the strength of reasons and reasonable rejection.

The idea that the reasonableness of rejecting a principle is a matter of the comparative strength of individuals' reasons for and against it is invited by cases like those that Parfit discusses, in which we are considering principles for choosing between benefitting (or burdening) a person in one position and benefitting or burdening a person in another position, and where these benefits and burdens can be described in terms of quantifiable changes in welfare, such as years of added life or hours of pain. These cases are misleadingly simple, however. Whether one party in such a case has sufficient reason to object to a principle can depend on many factors. It can depend not only on the change

in welfare involved but also, as Parfit notes, on how badly off each party would be if not aided and, as I would add, it can depend on the opportunities each person has to avoid bearing these burdens. A relevant notion of the relative strength of personal reasons would need to assign normative significance to many diverse factors of these kinds.

I have come to believe, however, that the relative strength of reasons is not a basic notion that can play this role.¹⁷ The question at issue is whether the way in which a person in a certain position would be affected by that principle—either by what it would require such a person to do or by what it would allow others to do—would be *sufficient* reason for this rejection (taking into account the other factors that the contractualist procedure identifies as relevant.) There is no normative property of strength that is independent of such facts about the sufficiency of reasons that provides that basis for such facts and that we can use as a way of arriving at judgments about reasonable rejectability. What is basic, rather, are facts about whether some consideration is a sufficient reason for a person in certain circumstances to perform a given action, or reject a certain principle. Judgments about the “strength” of reasons should be understood simply as claims that certain reasons are or are not sufficient, or often as claims about whether they would or would not be sufficient in certain counterfactual circumstances.

This view allows for the possibility that in some cases, such as those Parfit describes, the question is just whether the fact that a principle would burden one person in a certain way is sufficient reason to reject it given the fact that alternative principles would all have a certain cost for an individual in some other position. But it also allows for the possibility that the sufficiency of a reason for rejecting a principle can depend on a

¹⁷ I defend this view in Chapter 5 of *Being Realistic about Reasons* (Oxford: Oxford University Press, 2014).

broader range of factors, not just on the particular reason some other individual has for objecting to alternative principles.

Consider again cases in which an agent can, with the same ease, save either a larger or a smaller group of people, and suppose that the two groups are disjoint. It seems to me plausible to say that a member of the smaller group could not reasonably reject a principle requiring the agent to save the larger number. This would not be because it is impersonally better for more lives to be saved, but rather because the reasonableness of rejecting the principle must take into account the reasons that all the individuals involved have to want to be saved, and the fact that there are more of these reasons counting in favor of the other action.

Can we also say, on the other hand, that members of the larger group *could* reasonably reject a principle permitting the agent to save the smaller number? Their personal reasons for objecting to such a principle are identical to the reasons that members of the smaller group have for favoring that principle. So, comparing these reasons one by one, it might seem to be a standoff. But it would be unreasonable, for the reasons just surveyed, for members of the smaller group to insist on a principle that would favor them. So it would be reasonable for members of the larger group to reject a principle allowing the agent to save the smaller number, even taking into account the reasons those in the other group have to object. If this is correct, it follows that saving the smaller group would be wrong, in the way that contractualism describes. The reasoning involved here is “aggregative,” insofar as that the numbers of people on each side do make a difference. But the magnitude of the difference in the sizes of the two groups does not seem to matter much. Given that the individual reasons on each side are the same, the

reason that one additional person in the larger group has to want to be saved can make the difference.

This argument would not apply in cases like my Transmitter Room example, in which the reasons of those in the larger group are very different. If, as I assumed, the pain of the person trapped behind the transmitter is very great, it does not seem unreasonable for a person in that position to reject a principle requiring that his rescue be delayed until the game is over. The fact that the others have reason to object to their enjoyment of a sporting event being interrupted does not make this unreasonable.

This way of interpreting the idea of reasonable rejection avoids the implausible aggregative conclusion by rejecting the idea that the reasons that individuals have to want the broadcast not to be interrupted can be identified with the degree of pleasure or well being involved, and that the strength of these reasons “adds up,” so that the collective strength of these reasons can become arbitrarily large, as the numbers of people watching the game increases. My readiness, in *What We Owe to Each Other*, to exclude aggregative considerations altogether was due in large part to the mistaken supposition that if the number of people affected by a principle did make a difference it would have to be in this additive way.

Interpreting reasonable rejection in terms of a more abstract idea of the sufficiency of a reason under certain conditions allows for the possibility that in some cases the fact that many people have opposing reasons can make a given reason insufficient ground for rejecting a principle although in other cases, such as Transmitter Room, this is not the case. Whether the fact that many people have certain conflicting

makes a single person's reason insufficient grounds for rejecting a principle is a question that is settled, as it were, at the level of reasons.

This seems to me the correct place to locate the question. For one thing, the question in this form (as a question about reasons) cannot be evaded. If it does not arise within contractualism, as a question about the reasonableness of rejecting a principle, then it will arise externally, within a pluralist view, as a question about what to do when conclusions about reasonable rejection conflict with reasons of other kinds. And my main reason for preferring the latter alternative, deriving from the remorse test, now seems to me mistaken.

This shift comes at the price of putting a great deal of weight on judgments about the sufficiency of reasons, in a way that weakens the explanatory character of this contractualist version of the reductive strategy. If we say in some cases, such as Transmitter Room, that certain conflicting reasons are, in Frances Kamm's phrase¹⁸ "not relevant" to a certain decision, what kind of relevance is in question? Judgments of this kind look more like moral judgments than (apparently) simple comparisons of the strength of reasons did.

Here is one way to bring out this explanatory loss. If we stick with the idea that the reasonableness of rejecting a principle depends on whether a reason for objecting to it is stronger than the strongest reason any other individual has for objecting to alternative principles, then the question of whether this is so might be answered by invoking the *Intrapersonal Test*, according to which the reason provided by benefit B is stronger than that provided by avoiding cost C if gaining B would be sufficient reason for a single

¹⁸ See Kamm, *Intricate Ethics*, pp. 33-37.

individual to choose a certain option even if it involved cost C .¹⁹ This test might be appealing because it seems to indicate that the comparisons involved are not moral judgments.

Something like this test may be at work behind many of the examples that Parfit discusses, involving loss of years of life, loss of limbs, and hours or days of pain. The test could allow for the significance of the “base line” of welfare at which a person would be left if unaided, as in Parfit’s *Contractualist Priority Rule*, since this base line may be relevant to the strength of an individual’s purely prudential reasons. Moreover, the test does not depend on whether the strength of a reason is taken as a basic notion or as dependent on a prior idea of a sufficient reason, and could be stated in the latter terms as well as in the former. What it seems not to allow for, however, is the possibility that the number of people whose lives would be saved by following a principle could be relevant to the sufficiency of a reason for rejecting that principle. As far as I can see there is no way of representing this factor in intrapersonal terms.

If this is so, it brings out the way in which allowing for such factors to be relevant weakens the explanatory power of this version of the reductive strategy. The resulting

¹⁹ Since I am not endorsing the Interpersonal Test, I will not explore the question of how it should be formulated. But the version I have just given does not, it seems to me, capture a sufficient condition for drawing a morally significant conclusion. Gaining a certain increase in expected life expectancy might be a sufficient reason for a person to join a ‘body lottery scheme.’ But even if this is so, it would not follow that the donation of vital organs that such a scheme would involve could be morally required. One possible explanation for this is that the question of whether an individual would have sufficient reason to *choose to join* accept the terms of such a scheme build in an element of voluntary acceptance that would be missing from the moral requirement. It is one thing to give up a vital organ because one agreed to do so, and something else to be morally required to do this whether one would agree to or not. Johann Frick makes this point in “Uncertainty and Justifiability to Each Person: Response to Fleurbaey and Voorhoeve”, in Nir Eyal, Samia Hurst, Ole Norheim and Dan Wikler (eds.), *Inequalities in Health: Concepts, Measures, and Ethics* (New York: Oxford University Press, 2013).

view seems to offer less guidance in cases about which we are otherwise unclear. This shift does not, it seems to me, render the view empty. This version of contractualism still has the virtue of the reductive strategy in general: it offers a distinctive characterization of the basic determinants of right and wrong—namely the reasons individuals have to principles that would affect them in certain ways—even if it does not provide a clear standard for assessing these reasons. Perhaps no view can do that. But the sacrifice should be acknowledged, even if it is a price that must be paid.

Parfit argued that dropping both the *Individualist* and *Impersonalist* restrictions would strengthen my contractualist view. This modification, he thought, would avoid implausible conclusions without sacrificing the basic ideas that make the view appealing. In my earlier thinking about the matter, I took aggregative reasons to be a species of impersonal reasons. It seemed to me that in order to “make the “numbers count” it was necessary to place value on the *sum* of individual benefits, and that a reason for promoting such a sum had to be impersonal. Parfit maintained that this was a mistake, and I have just suggested, in a different way than Parfit, that the number of people who are affected by a policy can be relevant in a way that relies only on the personal reasons that they have.

Whether or not this amounts to “dropping the individualist restriction,” it is a way of making the numbers count that is compatible with the basic ideas of contractualism. This raises the question of whether something similar could be done with regard to impersonal reasons. The idea would be to continue to hold that the reasons that make an action wrong in the way contractualism describes must be personal reasons to reject any principle that permits such actions, but to allow that personal reasons can fail to be

insufficient grounds for rejecting a principle because of countervailing *impersonal* reasons.

This strategy is not, however, fully successful. Suppose that something of impersonal value would be destroyed if many people engage in some activity that it would be mildly inconvenient for them to avoid. For example, if many people walk over the dunes near a beach, this may cause erosion, destroying dunes that are the habitat of many plants and birds. Because of the impersonal value at stake, the inconvenience involved might be insufficient reason for rejecting a principle forbidding people from doing this. In order to explain why walking over the dunes would be wrong, however, we need to cite some reason for rejecting a principle that would permit this. In the cases of aggregative reasoning discussed above, some individuals had personal reasons for rejecting a principle permitting one to save the smaller number, reasons which were made sufficient by the fact that opposing reasons were not reasonable. In the present case, however, if the impersonal reasons for protecting the dunes are the only reasons for rejecting a principle that prohibits walking over them, then even if these reasons are sufficient they do not suffice to make dune walking wrong in the way that contractualism describes. (If these are the only reasons against it, then walking on the dunes should not trigger the appropriate kind of remorse, but only a different kind, a sense of having failed to respond properly to an impersonal value.) Allowing that impersonal reasons could make an action wrong in this way would therefore involve a more significant departure from contractualism. A form of pluralism seems a more plausible way of accounting for the force of such reasons.

This analysis sheds some light on a different class of cases discussed by Johann Frick. These are cases in which we face a choice between a policy that brings certain benefits to a small number of people and one that benefits a larger number of people by reducing their risk of some harm. Frick considers cases in which the choice is between rescuing a small number of miners who are already trapped in a mine and investing the same resources in improved mine safety, which would save the lives of miners in the future. He argues convincingly that, contrary to what I maintained in *What We Owe to Each Other*, the benefits of improved safety should be assessed *ex ante*, as a reduced likelihood, for current miners, of being trapped in the mine in future. If this reduction in risk is quite small, say from 3% to 1%, and the number of affected miners not very large, then the reasons that the trapped miners have for being saved seem sufficient grounds for rejecting a principle requiring, or even permitting, investment in mine safety rather than on rescuing them.

Frick points out, however, that as the number of miners becomes larger it becomes extremely likely that a number of miners will be saved by the latter policy. It may then, he says, be difficult to accept a policy of saving one miner now if this means 20 deaths later. If we adhere to considering only *ex ante* reasons, as Frick argues we should, then the certainty of these deaths does not alter the personal reasons that current miners have for favoring investment. So if the certainty of these deaths counts in favor of that policy, and against rescuing the miner or miners who are currently trapped, it can only be as a form of impersonal value. He concludes that if failing to prevent these future deaths would be an interpersonal wrong this could best be explained by a form of

pluralism within interpersonal morality, one part of which is responsive to the reasons that individuals have, the other responsive to the impersonal value of their lives.

An alternative would be to say, parallel with the case of dune walking just discussed, that the impersonal value of the 20 “statistical” lives that would be saved when the number of future miners is larger is relevant because it makes it unreasonable for the trapped miner or miners to insist on being saved. However, in contrast to the dunes case, in which no personal reasons counted in favor of prohibiting dune walking, in this case many miners have personal reasons to want their risk of being trapped to be reduced (even slightly). Perhaps these reasons (even if they are no different from the reasons they would have if their numbers were smaller) could be sufficient reasons for them to reject a policy requiring us to save those who are currently trapped, given that the reasons of those currently trapped to insist on rescue are insufficient. It is not *obvious* to me that this is so (or obvious what the right thing to do is in such a case). But it is a possibility opened up by the interpretation of reasonable rejection that I have been discussing.

With this as background, let me return to the question of overdemandingness as a problem for contractualism and for the reductive strategy more generally. Parfit presented the problem as it arises from the *Greater Burden Claim*, that “it would be unreasonable ... to reject a principle because it imposed a burden on you when every alternative principle would impose much greater burdens on others.”²⁰ Parfit presents as an example his Case One, in which the Greater Burden Claim would seem to require a person to give up one of his vital organs if that organ would give some other person more years of added life. But there is a much wider range of cases in which the Greater Burden Claim would

²⁰ *On What Matters*, Volume Two, p. 192, citing *What We Owe to Each Other*, p. --

seem to require implausible levels of sacrifice, which makes the problem particularly threatening.

I have already explained why it would be overly simple to think that the reasonableness of rejecting a principle is always determined by the comparison of individual benefits and burdens in this way. But this is true in some cases. It appears to be true, for example, in Peter Singer's pond example, in which a lone passerby can save a child from drowning at the cost of wet clothing and perhaps a missed appointment.²¹

But what is right or wrong in this case is not settled simply by a comparison of these particular benefits and burdens (some soiled clothing and shoes and a missed appointment vs. a child's life.) First, there is no alternative way in which the child's life might be saved other than by the passerby's making this sacrifice. (The relevance of this fact is recognized in the Greater Burden Claim: any alternative principle would lead to the child's death.) Second, as I mentioned earlier, the reasonableness of rejecting a principle depends on the burdens that would be involved in complying with it *in general*, not simply on the sacrifice it would involve in a particular case. Cases like the pond example are rare. So the costs of complying with a principle requiring one to rescue a person in every such case one encounters are not very great—probably not greater than those involved in a single case. There is no “intrapersonal aggregation” of these burdens.

Things are very different in the case of what might be called the Greater Burden *Principle*, which would require us to decide what to do in every instance by comparing the benefits and burdens to everyone affected by our choice. This principle could

²¹ Singer, “Famine, Affluence, and Morality,” *Philosophy & Public Affairs* 1 (1972), pp. 229-243.

reasonably be rejected.²² Complying with it in general would have a paralyzing effect on our lives. If we had always to take the interests of other potential users into account and giving them the same weight as our own comparable interests in each individual case we would not be able to give any preference to individuals toward whom we have special relations and would not be able to plan effectively to carry out any project, since other more pressing uses would be very likely to arise.²³ Moreover, in many cases there will be other, less costly, ways of promoting the benefits in question.

The relevance of alternative principles is a way of capturing Liam Murphy's idea that preventing harms of the kind in question may be a collective project—that is to say, that others may also have obligations to contribute to doing this.²⁴ This leads to the question, which Murphy focuses on, of what must be done in cases in which others are not complying with the “first-best” principles for dealing with a problem. (In my terms, the question is which principles specifying such “second-best:” duties could not reasonably be rejected.) It seems to me that the consideration of “intrapersonally aggregated” cost of general compliance plays the primary role here. For example, in Murphy's “W. C. Fields” example, a pond case in which there are two drowning children

²² The following response is obviously similar to the objection Bernard Williams raised to utilitarian or Kantian morality in “Persons, Character, and Morality.” One difference is that I am raising it as a point about the content of contractualist morality, whereas his point was a negative answer to what I am calling the question of acceptance, given what he took the content of these forms of morality to be.

²³ Parfit offers a somewhat similar response on pp. 209-212, focusing on what it would be like to have these demands on our resources and our bodies be enforceable by law. Like the argument I have just sketched, his relies on considering the general consequences of living under a principle, rather than considering each case separately. But I think that once one sees that this is the way to look at the matter the point holds at the level of moral requirements, without taking enforcement into account.

²⁴ See Murphy, “The Demands of Beneficence,” *Philosophy & Public Affairs* 22 (1993), pp. 267-292.

and two passers-by one of whom refuses to help because he hates children, the other person could not reject a principle requiring him or her to save both children. This involves greater sacrifice than what the fairest principle would require, but not a great enough sacrifice to ground reasonable rejection.

As I said earlier, although Parfit presented the problem of the overdemanding nature of the Greater Burden Claim with reference to his Case One, in which it seemed to require giving up one's vital organs in any case in which they would provide more years of life to some other person, the problem is much broader, since there are many cases in which that claim, if interpreted as what I have called the Greater Burden Principle, would require implausible levels of sacrifice. The two factors I have just mentioned—the need to consider the burden of complying with a principle *in general*, not just in a particular case, and the relevance of alternative principles that would providing the needed aid—seem to me to be the main bases of a defense of contractualism against the charge that it is overly demanding in this way. But these factors do not fully account for Parfit's Case One.

If giving up a vital organ involves dying immediately, then one cannot be required to do this more than once. So we cannot appeal to the costs of repeated application of a principle requiring this sacrifice in order to explain why it could be rejected. Nor does the possibility of a less burdensome alternative seem to make a difference avoid the problem. Being required to make this sacrifice seems objectionable even if the principle requiring it spreads this burden as widely and fairly as possible, say by a lottery among possible donors. The case thus raises a question about whether contractualism, or any form of the reductive strategy, which focuses solely on the benefits and burdens that a principle

involves can give a full account of the limits within which constrained versions of the greater burden claim might apply.

This problem is brought out by the apparent asymmetry between the following two kinds of cases. In the case that Parfit presents, the principle in question would require a person to give up one of his or her vital organs for donation if this organ would give some other person more years of continued life. I assume that in this case donating this organ means dying immediately. Suppose, in a second kind of case, that a person will die of organ failure if he does not receive a transplant immediately. Some suitable organs are available, from people who have donated their organs after dying from other causes. These are, however, in short supply. It seems to me that a person could not reasonably reject a principle according to which in such a case the scarce organs should be allocated to those in immediate need whose lives will be extended the most. But the benefits and burdens on the various sides in this case (in terms of years of future life) may be exactly the same as in cases of the first kind, like the one Parfit presented. The question is why a comparison of the benefits can settle the matter in a case of this latter kind but not in one of the former kind, which Parfit described. The difference between the two suggests that, intuitively, what matters is that, in Parfit's case, the organs are "his" or "hers" and that a person has a right to his or her own organs. This is a problem for contractualism and for reductive views in general since the significance of this fact is not captured by the benefits (extended life or quality of life) that the person in a case of the first kind gains by keeping his own organs.

The general point is brought out by something Parfit says in presenting another of his examples. He writes, "...we can suppose that certain people have painful diseases and

that as doctors who have scarce medical resources we must decide which of these people we must treat. None of these people has any special claims, nor do they differ in any other morally relevant way.”²⁵ This presents the case within a particular moral background, in which there are “resources” on which none of the possible recipients have any special claims. In situations of this kind, the greater burden principle has considerable plausibility. The question is when is this the case: when are certain ‘resources’ ones that no one has any special claim to? Intuitively, it seems that Parfit’s Case One is not a situation of this kind: people do have “special claims’ to their own vital organs. The challenge to contractualism and to reductive views in general is whether they can explain when these conditions apply, or whether such views are applicable only within moral limits set in some other way. What I called above the greater burden principle would treat our time and energy as resources on which no one has any special claim. So if I was correct in claiming that this principle could reasonably be rejected, then this is one claim about these limits that contractualism can explain. The question is whether a contractualist (or, more generally a reductive) view could explain these limits more generally, without an appeal to independently given rights.

One possible explanation would be that a person has stronger reason to object to losing some benefit he or she presently has than to failing to receive a similar benefit (at least as long as the way the person came to have that benefit was not itself subject to some objection), and that this makes it reasonable for the person in Parfit’s case to reject a principle requiring him or her to give up the organ. In cases of the other kind, however, neither of the affected parties has the organ to begin with. This explanation would

²⁵ *On What Matters*, Volume Two, p. 196.

amount to a kind of status quo bias at the level of reasons (as long as the status quo did not come about in a way that someone has sufficient reason to object to.) A second possibility would be to appeal to the fact that giving up the organ in the first case would require cutting into the person's body, and to claim that each person has sufficient reason to reject a principle that required him or her to submit to this.

It may be said that these explanations are insufficient, and that the only adequate explanation of the fact that a person's organs are not resources that should be distributed to those who would benefit the most from their use lies in the fact that individuals have a right to their own organs. But that leaves us with the questions of how the claim that there is such a right is to be defended, and in particular whether this claim does not depend on claims about reasons of the two kinds just mentioned. Are rights just a way of building in a "status quo bias"? If not, why not? But if so, why is it an objection to a reductive view that it forces us to make this bias explicit?

In this paper I have tried to clarify the line of thinking that led me to my contractualist theory of right and wrong, to identify some problems for that view and to consider some ways of responding to these problems. I have described contractualism as an instance of a more general normatively reductive strategy in moral philosophy, a strategy that seeks to explain more complex deontic notions in terms of simpler ones. Contractualism is distinctive in taking these most basic elements to be the reasons individuals have to object to or to favor principles because they would affect their lives in certain ways.

Actions are wrong in the way that contractualism describes if the objections of this kind to principles that would permit such actions cannot be answered adequately. I

put this by saying that such actions are not justifiable to those whom they would affect. They therefore make appropriate a distinctive kind of remorse. But I erred in inferring from the fact that actions are wrong in this way only if individuals have sufficient personal reasons for objecting to principles that would permit them that such personal reasons are the only such reasons are relevant to the reasonableness of rejecting a principle.

Taking account of this fact, and of the more general fact that the strength of reasons is not a basic notion, but depends on the idea of a sufficient reason, I described a revised version of the contractualist idea of reasonable rejection, which allows for the numbers of individuals affected by an action to be relevant to its permissibility. Finally, in the light of this modification, I considered the resources that a contractualist view, or any normatively reductive view, has to set the limits to the sacrifices that individuals can be required to bear.