

LINKÖPING UNIVERSITY

The Department of Culture and Communication (IKK)

Specialized Course in Practical Philosophy (718G03)

Bachelor's thesis

What is Wrong Between Us?

On the problem of circularity in Scanlon's contractualism

Fall semester 2012

Student: Jesper Ahlin

Mentor: Henrik Lerner

1. INTRODUCTION	3
1.1 THE CONTRACTUALIST TRADITION.....	3
1.2 THE PURPOSE OF THIS ESSAY	4
1.3 WHAT WE OWE TO EACH OTHER	5
2. CIRCULARITY.....	7
2.1 CONTRACTUALISM AND CONSTRUCTIVISM	7
2.2 SCANLON’S ANSWER TO CHARGES OF CIRCULARITY	10
3. MORAL MOTIVATION	11
3.1 EXPLAINING MORAL MOTIVATION	11
3.2 THE CONTRACTUALIST DOMAIN OF MORALITY.....	14
4. THE DYNAMICS OF CONTRACTUALISM	18
4.1 THE FINAL OBSTACLE	18
4.2 CONTRACTUALISM APPLIED	20
4.3 SUMMARY	21
BIBLIOGRAPHY	23

1. Introduction

1.1 The contractualist tradition

The contractualist tradition stretches as far back as Plato's *Republic* and is usually thought of as closer connected to the field of political philosophy rather than to that of ethics. Following the Hobbesian line of thought, philosophers presuming some form of psychological egoism have held the social contract necessary for upholding a morally sustainable society. Others, advocating a deontological ethical perspective, have argued for Kantian contractualism, most famously pursued by John Rawls in his book *A Theory of Justice*. Both traditions have in common that they build upon either a hypothetical, an actual or a tacit ethical agreement among agents.¹

T.M. Scanlon presents his version of contractualism in his book *What We Owe to Each Other*. Scanlon uses the term 'contractualism' to describe his theory even though he recognizes that this labeling may have certain disadvantages. The contractualist tradition namely "seem[s] to many people to suggest a process of self-interested bargaining that is foreign to my [Scanlon's] account."² What distinguishes Scanlon's theory from other similar ideas is the conception of the motivational basis of the contractualist agreement. Scanlon does not follow the Hobbesian tradition, but neither does he follow the Kantian. In his article "Replies" Scanlon writes that he does not try to provide a conception of what reasons for action are 'good' in the sense of the term that is relevant for moral valuation. His theory only spells out the position of 'reasons' in moral valuation, which according to Scanlon rules out the option of labeling his theory Kantian.³ Scanlon's contractualism builds upon the idea of a "shared willingness to modify our private demands in order to find a basis of justification that others also have reason to accept", an idea traceable back to Rousseau.⁴ In the introduction to his book Scanlon writes that one of the main reasons he calls his view 'contractualist' is to emphasize its connection to the Rousseauian idea.

¹ Shafer-Landau, pp. 176-189

² Scanlon 1998, p. 5

³ Scanlon 2003, p. 424

⁴ Scanlon 1998, p. 5

1.2 The purpose of this essay

In this essay, the Scanlonian contractualist formula will be understood as follows: Within the domain of morality of what we owe to each other, an action is morally wrong if it follows principles that similarly motivated people can reasonably reject.⁵ Consequently, the concept of ‘reasonable rejection’ is the operative element in moral valuation, thus begging the question of what it is for a rejection to be reasonable. The problem of circularity in Scanlon’s contractualism builds upon a reading according to which Scanlon’s explanation of what it is to be ‘reasonably rejected’ seems to be understood as ‘when the action is morally wrong’.⁶ If this is the case, then Scanlon’s contractualism refers to its own thesis when performing moral valuations: that is wrong which can be reasonably rejected, and for an action to be reasonably rejected it must be morally wrong. The problem of circularity apparently renders Scanlon’s contractualism ‘empty’ as it cannot explain what it is for an action to be morally wrong without referring to its own thesis.

In a 2003 discussion in the philosophy journal *Ratio*, Onora O’Neill, Mark Timmons and Joseph Raz acknowledges the problem of circularity in Scanlon’s contractualism. They do not phrase their critique precisely as I do above, but they seem to have a similar understanding that renders *What We Owe to Each Other* vulnerable to serious charges of indeterminacy, vagueness and relativism. In his article “Replies”, published in the same *Ratio* edition as mentioned above, Scanlon does not answer to the charges of circularity, but refers to what he wrote on the subject in his book.⁷

As I understand Scanlon and his critics, the charges of circularity put forth post publication of *What We Owe to Each Other* differs from the charges that Scanlon neglects to answer in his article “Replies”. In his book, Scanlon deals with charges of circularity rising from some notion of well-being. Such charges are *substantial* as they presuppose some morally loaded metaethical standpoint, but the charges put forth by

⁵ Scanlon 1998, p. 4: “When I ask myself what reason the fact that an action would be wrong provides me with not to do it, my answer is that such an action would be one that I could not justify to others on grounds I could expect them to accept. This leads me to describe the subject matter of judgments of right and wrong by saying that they are judgments about what would be permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject.”

⁶ Raz, 2003, p. 357: “Contractualist arguments are the ultimate arbiter of what we owe each other. This means that Contractualism is successful only if it has the resources to establish moral conclusions, and to do so independently of non-contractualist arguments or reasons.”

⁷ Scanlon 2003, p. 435

critics in Ratio are *structural* as they target the Scanlonian contractualist *formula* and not its content.

In this essay I will try to clarify the difference between welfarist and structural charges of circularity. I will argue that the structural charges of circularity are due to a fallacious constructivist reading of *What We Owe to Each Other*. As I understand Scanlon, the constructivist reading places Scanlon's theory too close to the contractualist tradition. I will also argue that critics holding Scanlon's contractualism to be circular have failed to note that his theory only claims to cover a narrow domain of morality. Where critics hold Scanlon's contractualism to refer to its own thesis when performing moral valuations I will argue that the theory refers to moral domains *outside* that of what we owe to each other. Hopefully my discussion on constructivism and circularity will shed some light on the simple brilliance and practical applicability of Scanlon's contractualism.

I will give a brief overview of *What We Owe to Each Other* before I present the critique put forth by Onora O'Neill, Mark Timmons and Joseph Raz. Then I will show how Scanlon treats the problem of circularity in his book, and how his defense targets substantial and not structural charges of circularity. I will then show that the structural critique is fallacious by analyzing the domain of morality that Scanlon's contractualism targets. Finally I will try to apply Scanlon's formula on personal relationships and on environmental issues. As of this point I will refer to Scanlon's thesis as 'contractualism' while other theories following the contractualist tradition will be referred to as 'contractarian'.

1.3 What We Owe to Each Other

Scanlon is a pluralist about morality and hence about moral wrongness, contractualism merely offers an argument for establishing that an action is wrong in one particular way.⁸ Contractualism aims to provide a common ground for thinking about morality in spite the fact that we may have different views on morality. That is, Scanlon's contractualism forces us as moral agents to look for the ultimate reasons for us to enter or uphold a moral relationship to each other. We can do so by using the contractualist formula that may be read as follows: Within the domain of morality of what we owe to each other, an action is morally wrong if it follows principles that similarly

⁸ Scanlon 2003, p. 428

motivated people can reasonably reject. For the purpose of this essay, three elements in the contractualist formula are subject to closer examination: the targeted domain of morality, the criterion of similarly motivated people and the operative component ‘reasonable rejection’.

The contractualist domain of morality includes that which is subject to possible reasonable rejection, which according to Scanlon are such things as “requirements to aid [other people], and prohibitions against harming, killing, coercion, and deception.”⁹ Actions like mean thoughts or voluntary sexual relationships between adults that some people condemn morally do not belong to the moral domain of what we owe to each other.¹⁰ The ‘we’ that is embedded in the contractualist formula is to be understood as those beings to whom we have good reason to want our actions to be justifiable. Having such reasons presumes the moral antagonist to possess certain properties, such as a rational mind and an ability to judge actions or circumstances as good or bad. In short, rational and conscious beings who are capable of judging things as better or worse and, more generally, capable of holding judgment-sensitive attitudes, are such beings to whom we have good reason to want our actions to be justifiable.¹¹ Scanlon does not view other beings (or non-living entities, etc.) as non-bearers of moral value, but he makes clear that those excluded by the criteria stated above are subject to domains of morality external to that of contractualism.

Scanlon does not give a substantial account of what it is for a rejection to be reasonable. If a rejection’s reasonableness would depend on some moral notion prior to the contractualist formula, then all the moral work would be done by this notion itself and the contractualist formula would be unnecessary.¹² Therefore, an explanation of what it is to be a reasonable rejection may not be morally loaded. That is why Scanlon only provides us with a framework for structural reasoning on the matter, he does not claim to give a moral account of reasonableness against which we can measure other rejections.¹³ However, contractualism locates the source of the reason-

⁹ Scanlon 1998, p. 6

¹⁰ Scanlon 1998, pp. 171-177

¹¹ Scanlon 1998, p. 179

¹² Scanlon 1998, p. 213: “If we were to appeal to a prior notion of rightness to tell us which considerations are morally relevant and which are entitled to prevail in cases of conflict, then the contractualist framework would be unnecessary, since all the work would already have been done by this prior notion.”

¹³ Scanlon 1998, p. 214: “Contractualism is not based on the idea that there is a ‘fundamental level’ of justification at which only well-being (conceived in some particular way) matters and the comparison

giving force of judgments of right and wrong in the importance of standing in certain relations to others.¹⁴ The importance of standing in certain relations to others is from where contractualism derives its moral motivation, and it is the sole basis at which reasons are to be measured against each other—any principle could be reasonably rejected if it undermines the motivation to act morally.

2. Circularity

2.1 Contractualism and constructivism

Many philosophers have read and discussed *What We Owe to Each Other* and they have raised very interesting questions. What I am concerned with is notions of ‘circularity’, a problem that has brought the attention of several of Scanlon’s critics. To properly deal with the problem I will first try to explain what I believe to be the point of view from which critics have read *What We Owe to Each Other*.

Geoffrey Sayre-McCord writes in his article “Contractarianism” that contractarianism has stepped away from reliance on the real consent of real people, and that it has moved on to embrace as relevant only the hypothetical consent of idealized people in idealized circumstances.¹⁵ He goes on by explaining that recent contractarianism has grown with the sense that moral assessments are reflections of human reason or social convention.¹⁶ Contractarianism, according to Sayre-McCord, “holds out the seductive prospect of a theory that demystifies morality’s status and shows it to be a compelling expression of humanity’s nature. For if morality finds its source and authority in our capacity to embrace its demands, then understanding morality will ultimately require appealing to what we would need in any case to explain our own capacities and practices.”¹⁷ Finally, he writes that any form of contractualism has a “distinctive commitment to seeing legitimacy as grounded in what people might willingly agree to under the appropriate circumstances”.¹⁸

of magnitudes of well-being is the sole basis for assessing the reasonableness of rejecting principles of right and entitlement.”

¹⁴ Scanlon 1998, p. 178

¹⁵ Sayre-McCord, p. 254

¹⁶ Sayre-McCord, p. 254

¹⁷ Sayre-McCord, p. 254

¹⁸ Sayre-McCord, p. 255

Bearing this in mind when reading Scanlon one may easily take *What We Owe to Each Other* to make no actual contribution to the contractarian tradition other than stylistic enhancements—the foundation or point of departure may seem to be the same as in other contractarian theories.

Onora O’Neill begins her article “Constructivism vs. Contractualism” with the question “Are Constructivism and Contractualism different, and if so how?” Constructivism as a first-order moral account is, according to Stanford Encyclopedia of Philosophy, “the view that the moral principles we ought to accept or follow are the ones that agents would agree to or endorse were they to engage in a hypothetical or idealized process of rational deliberation.”¹⁹ O’Neill’s view on constructivism does not differ fundamentally from the one put forth by Carla Bagnoli in Stanford Encyclopedia of Philosophy. As Bagnoli does, O’Neill also recognizes constructivism as holding some form of rational deliberation as the foundation for moral assessment and for normative moral statements. Any ethical theory deriving morality from the bases of rational deliberation must provide an explanation on what provides a moral agent with the motivational force to act morally. In her discussion O’Neill pinpoints what makes it a consequent position to hold contractualism as a constructivist theory with a weak explanation of what provides people with moral motivation. She writes: “Scanlon’s contractualist justifications will fail when motivation is not shared, and that this reasoning will lack justificatory force when others (e.g. outsiders or the ill-disposed) happen not to have the relevant motivation. If so, the practical reasoning he endorses will offer reasons only to others with the appropriate motivation. The scope of his ethical reasoning will therefore be limited by the fact that it does not offer reasons to those who don’t happen to share that motivation.”²⁰

Like O’Neill, Mark Timmons views contractualism as constructivist. He does so on very similar grounds since he understands contractualism as explaining moral values in terms of the notion of justifiability, holding justifiability to refer to an account of both morality’s content and rational force.²¹ In his article he writes: “Because the very essence of the properties of rightness and wrongness, and thus facts about these properties, are constituted by the attitudes of individuals and, in particular, are constituted by agreements reached by a group of hypothetical agents under certain specified

¹⁹ Stanford Encyclopedia of Philosophy

²⁰ O’Neill, p. 325

²¹ Timmons, p. 397

conditions, Scanlon's contractualism is a version of moral constructivism."²² According to Timmons, the problem of circularity within contractualism is revealed by the structure of constructivism. Constructivism namely depends on some constraints on the conditions for valuing actions or principles.²³ These constraints are, as Timmons notes, "morally neutral and thus non-question-begging with respect to competing normative moral theories", and he chooses to call these constraints "'morally thin' characterizations of truth or correctness".²⁴ Because of this 'morally thin' characterization constructivism is subject to indeterminism: if adapting this structure of moral reasoning one must select moral principles with regard to factual circumstances, and make no nonmoral mistakes when distinguishing what factual circumstances are relevant, thus rendering the moral principles vague and indeterminate. On the other hand, if accepting some moral guidelines other than those imposed by the strictly constructivist moral theory in question, one dissolves the cogency of the thesis itself by admitting it to be incapable of single-handedly delivering judgments of right and wrong. Thus, contractualism yields either no results at all, or only results that are dependent on non-contractualist moral judgments.

Joseph Raz writes in his article "Numbers, With and Without Contractualism" that contractualism explains what unifies a central area of morality—that of wrong making reasons—and that it provides a framework for philosophical work on such matters.²⁵ Like O'Neill and Timmons, Raz holds contractualism to be constructivist, but he expresses his view in a slightly different way: "But Contractualist arguments do more than explain independently existing reasons. They constitute wrong-making reasons. Contractualist arguments are the reasons why certain actions are owed to others, and other actions are wrong. This makes Contractualism a constructivist theory."²⁶ Raz argues that contractualism (by constructing criteria for what it is to be a wrong-making reason) proves its own thesis through the back door. If contractualism is true, Raz observes, then judgments about what is morally right and wrong were actually false beliefs until *that which constitutes wrong-making reasons* was explicitly formulated by Scanlon in the late 90s. He writes: "Is it that no other argument can explain what is wrong with rape, or cruelty, or deceit, and so on? That implies either that

²² Timmons, p. 399

²³ Timmons, p. 400

²⁴ Timmons, p. 400

²⁵ Raz, p. 355

²⁶ Raz, p. 355

no one understood what is wrong with such acts until *What We Owe To Each Other* [sic], or at least until Kant, the first constructivist, or that those who did understand were constructivist *manqués*.”²⁷ This is Raz’s way of expressing the point of view from which circularity becomes a problem for contractualism. From this standpoint, contractualism seems to neglect intuition rather than aim to provide a reasonable explanation of what makes actions morally right or wrong. It seems so since the theory explains what is morally wrong by referring to its own thesis: “Contractualist arguments are the ultimate arbiter of what we owe each other. This means that Contractualism is successful only if it has the resources to establish moral conclusions, and to do so independently of non-contractualist arguments or reasons.”²⁸ He summarizes elegantly: “[The suspect feature of Contractualism] is that its test yields results only by presupposing moral views which can only be established independently of it.”²⁹

2.2 Scanlon’s answer to charges of circularity

In his book, Scanlon discusses notions of circularity by counter-attacking hypothetical charges resting upon accounts of well-being. He writes that his theory is vulnerable to two possible charges of circularity, both of them derived from a point of view in which some notion of well-being is central. According to Scanlon, contractualism may be circular, but only if claims of well-being uniquely would need no further justification.³⁰ Say that we have some conception of well-being and that this conception is threatened by a certain principle favoring some other conception of well-being. Rejecting the principle favoring some other welfarist conception on the grounds that our own view is morally better would render contractualism circular (or ‘empty’, as the evaluative element would be prior to the contractualist formula). But a conception of well-being is not necessary to reject principles favoring some over others. If a principle would arbitrarily favor the claims of some over the identical claims of others, we would have reason to object to these principles without having to refer to a moral idea prior to the contractualist formula. Rejecting partial principles need no further justification than that which contractualism provides, there is reason to reject such principles simply because they favor some over others, thus depriving the non-favored of motivation to act morally.

²⁷ Raz, p. 356

²⁸ Raz, p. 357

²⁹ Raz, p. 358

³⁰ Scanlon 1998, p. 215

Charges of circularity of the second kind are, according to Scanlon, restatements of charges of the first kind. These charges would claim that “if we count generic reasons not arising from effects on well-being as relevant objections to a principle, this can only reflect a substantive moral judgment and is therefore objectionably circular.”³¹ But these charges implicitly holds that there *are* no generic reasons for objecting to a principle other than those arising from its effects on how well people’s lives go. So put, holding contractualism as circular must presuppose a view that *also* is circular. Scanlon finishes up accordingly: “the judgment that *any* consideration constitutes a relevant, possibly conclusive, reason for rejecting a principle in the context of contractualist moral thinking [...] is a judgment with moral content. This may be easy to overlook when the reason in question is based on the impact that a principle would typically have on ‘how well life would go’ for a person in a certain position, but it is no less true in that case than in any other.”³²

A version of contractualism that took some notion of well-being into consideration would derive all its normative content from this notion, every rejecting of a principle would be a claim about the nature of right and wrong. Being a ‘reasonable rejection’ would thus only prove some account of well-being to be more valuable than some other account of well-being, thereby rendering the theory a model for weighing different accounts of well-being against each other. Since Scanlon is a pluralist about moral values his theory is intended to take into account the fact that people may have different views on what is valuable, and that these views must be merged into a cohesive point of view from which one may settle moral disagreements.

3. Moral motivation

3.1 Explaining moral motivation

As constructivist, contractualism is circular as it seems to refer to its own thesis as the operative element in moral assessment. Joseph Raz puts it well when he writes that contractualism explains what constitutes wrong-making reasons, and that its account of what it is to be morally wrong depends on its own formula, thus rendering contractualism circular. When contractualism is understood as constructivist, the operative

³¹ Scanlon 1998, p. 217

³² Scanlon 1998, p. 217

element in moral assessment consists of the agreement between agents. The contractualist explanation of how to achieve this agreement is dependent on what provides people with moral motivation, which according to the constructivist reading is the rational deliberation forming the agreement. Understanding contractualism as constructivist thus inevitably brings about the problem of circularity. As I see it, Scanlon answers to *substantial* charges of circularity in his book, but the constructivist reading of contractualism is one of *structure*. In order to avoid charges of circularity one must show that the constructivist understanding of *What We Owe to Each Other* is fallacious. That can only be done by explaining how contractualist moral motivation is not derived from a hypothetical agreement, but from people's experience of having reasons to enter contractualist agreement.

The aim of this section is to give an account of how contractualism explains moral motivation. In my view, there are three possible interpretations of contractualist moral motivation. First, one may hold those accepting the contractualist formula as similarly motivated. This view on moral motivation would not provide contractualist skeptics with moral motivation. The second view, which has stronger support in Scanlon's way of formulating the contractualist formula, would hold those with ambition to find principles for the general regulation of behavior as similarly motivated. If one holds contractualism as constructivist this second view finds support in Scanlon's formula since 'similarly motivated' then may be understood as 'motivated *to enter contractualist agreement*'. I will argue that this is not how the contractualist formula is to be read. Both these views presume contractarianism in some form since it derives its moral motivation either from the formula itself, or from the will to justify morality in mutual agreement.

The contractualist formula is to be understood as follows. Agents find their moral motivation in their *having reason to enter contractualist agreement*. Contractualist agreement is thus the object for an agent *having reason to*, which forces us to turn to the contractualist agreement *per se*. Contractarian agreement has traditionally been thought of as hypothetical, actual or tacit. The agreement that Scanlon refers to in his formula is neither of the three. Contractualist agreement is of a much more harsh character than traditional contractarianism in its reference to what *can reasonably* be rejected. So understood, contractualism derives its moral motivation in the agents *having reason to find principles that cannot be reasonably rejected*.

This is closely connected to the second interpretation of contractualist moral motivation (that which holds those with *ambition to find principles for the general regulation of behavior* as similarly motivated), but there is a difference. In the first case, those *having reason* to enter contractualist agreement are similarly motivated; in the second case, those *with ambition* to enter contractualist agreement are similarly motivated. Having reason to enter contractualist agreement does not imply that the agent in question have *ambition*, it is only a statement saying that she has *reason*, to do so. Having ambition to enter contractualist agreement may of course provide an agent with motivation to advocate contractualism, but to explain contractualist moral motivation in such terms would be circular since the thesis' explanation of moral motivation would refer to itself. Though, it is possible to explain the moral motivation behind *having ambition to enter* contractualism in terms of reasons: having such ambitions *is* a reason, but 'having reason' is not by definition equal to 'having ambition'. Explaining 'similarly motivated' in terms of 'ambition' is thus a misunderstanding concerning moral motivation—'having ambition' presupposes a consciously stated preference while 'having reason' does not. Contractualist moral motivation is rooted in the agent's experience of having certain reasons, thus rendering the criteria for what constitutes proper reasons subject to individual judgment. In the (constructivist) case where moral motivation is derived from the *ambition* to enter contractualist agreement, one explains moral motivation with contractualist arguments, holding it to be some form of natural will to *specifically* attain contractualist agreement.³³

Having reasons to find principles that cannot be reasonably rejected presupposes that finding such principles is worth achieving. This may be said to implicitly hold contractualism as worth achieving, as the thesis would not provide people with moral motivation if it were not. On the other hand, having such reasons may be said to be the *proof* that contractualism is worth achieving. In other words, if there were no reasons to aim to find principles that cannot be reasonably rejected, contractualism would never be an option for the moral agent. Though, if there are such reasons, contractualism is not only an option for the moral agent, it is the *only* option. We seem to be in need of an explanation of what it is to be a reason in order to settle the question of how contractualism explains moral motivation.

³³ Compare with Raz's "constructivist *manqués*" as cited above

Scanlon begins his book by stating that he will take the idea of a reason as primitive. That is, according to contractualism there is no relevant notion prior to ‘reason’ when thinking about morality. A reason is “a consideration that counts in favor of some judgment-sensitive attitude, and the content of that attitude must provide some guidance in identifying the kinds of considerations that could count in favor of it.”³⁴ So understood, were we to adapt a moral theory, both the adaption of it and the theory itself would be possible to explain in terms of reasons. Explaining contractualist moral motivation in terms of reasons must therefore be an explanation of what it is about contractualism that makes considerations count in favor of it.

In a contractualist world where our mutual agreement is never broken, we would never be exposed to actions that we could reasonably reject. We do have reason to adapt an idea of such a world, given that its achievement would be realistic. Thus, theoretically, the effect of a successful contractualist agreement provides us with reasons to aim for it. We as moral agents have reason to look for principles that cannot be reasonably rejected and it is from this notion that contractualism derives its moral motivation.

Putting the argument in this way might beg the question of whether contractualism only provides an agent with moral motivation as long as contractualism itself is successful. In my view, though, if such an objection is plausible, then every moral theory has to answer to the same question. In my view, the contractualist answer to moral motivation is fully plausible. It is in our having reason to enter contractualism that the theory derives its moral motivation.

In this section I have tried to portray the contractualist explanation of moral motivation in terms of reasons. However, if reasons to enter contractualism are explained by contractualist arguments we are still stuck in the problem of circularity. To avoid charges of circularity contractualism has yet to give an account of the *origin* of morally relevant reasons that is independent from contractualism itself.

3.2 The contractualist domain of morality

In my view, construing a narrow domain of morality presume some moral relationship between the agents targeted. The ‘we’ who are included in the scope of contractualist morality are assumed to ‘owe’ something to each other, which may bring about ques-

³⁴ Scanlon 1998, p. 67

tions of whether moral agents are born into moral debt or whether a (coherently construed) moral relationship must presuppose a morally more neutral starting point. In other words, tapering the scope of morality is a structural move that, in its present form, entails questions of moral substance: the mere method for distinguishing what is targeted by contractualism seems to be morally loaded, thus rendering the theory as a whole already influenced by moral notions prior to the theory itself.

As the problem of circularity targeted in this essay is one of *structure*, I find it important that questions concerning the moral status of the scope of morality targeted by contractualism are eliminated before they call our attention to *substance*, thus disturbing our view on the theory as a whole. As I see it, Scanlon has no intentions to impose moral values on the structure of contractualism when distinguishing the scope of morality targeted by his theory. Therefore I will take it as fully compatible with the aim of his contractualist formula to think of the domain of morality of what we owe to each other as ‘the moral relationship between us’. Thus, contractualism targets the moral relationship between rational and conscious beings who are capable of judging things as better or worse and, more generally, capable of holding judgment-sensitive attitudes. The structural formula of contractualism may then be restated as follows without affecting the substance of the theory: between us, an action is morally wrong if it follows principles that similarly motivated people can reasonably reject.

If my understanding of the domain of morality targeted by contractualism is correct—which I find it to be since I am concerned only with the structure of contractualism and not the substance of it—the element of ‘similarly motivated people’ may be embedded in the ‘we’ that have a moral relationship to each other. That is, the ‘we’ that constitutes those targeted by contractualism must be understood as ‘similarly motivated’. It is not necessary to explicitly formulate the notion of similarly motivated people in the contractualist formula as long as it is understood that those included in it are presupposed to be similarly motivated. Thus, without altering the intention of the contractualist thesis, its formula may be formulated as follows: between us, an action is morally wrong if it follows principles that we can reasonably reject. By restating the contractualist formula in terms of ‘between us’ it may be clearer to the reader that contractualism only targets a certain domain of morality including certain people. The ‘stripped’ version of the contractualist formula that I suggest stresses the fact that ‘reasonable rejection’ only concerns those who are similarly motivated—namely ‘us’, the agents and the domain of morality targeted. So understood, thinking of contractu-

alism in terms of what can be reasonably rejected ‘between us’ emphasizes that there are other domains of morality external to that targeted by contractualism, and that it is in these external domains that moral motivation originates from.

Readers finding contractualism to be constructivist namely have in common that they look for Scanlon’s account of moral motivation *within* the contractualist formula. To avoid circularity contractualism must derive moral motivation from a domain of morality external to its own formula. In his book, Scanlon argues that charges of circularity rising from some welfarist notion also must be circular.³⁵ The constructivist reading of contractualism is subject to the same kind of critique. For if one sets out to look for accounts of moral motivation *within* the theory in question one will undoubtedly end up holding the theory as circular. So, critics holding contractualism as circular must presume some form of evaluative element that also renders their own position circular.

There seems to be an implicit understanding concerning reasonable rejection amongst those holding contractualism as constructivist. As I see it, critics deal with reasonable rejection in the same way as one would think of a ‘hypothetical agreement’, but Scanlon is very clear that this is not the case with contractualism. Thinking about reasonable rejection in terms of ‘hypothetical agreement’ turns this agreement into an evaluative element in the contractualist formula, however, as reasons are held to be primitive, it is in the conception of ‘reason’ that the actual moral assessment occurs.

If my understanding that the moral valuation occurs in the conception of ‘reason’ is correct, the contractualist account of reasons may not be morally loaded, or else the theory is again vulnerable to charges of circularity. In his book, Scanlon describes contractualism as an account of the property of ‘moral wrongness’, an account that is based on the contractualist conception of reasons. In “Replies” he writes that he has reconsidered this formulation and suggests instead that his theory is an account of *what makes* actions wrong.³⁶

This move unloads the conception of a reason from moral substance. Contractualism does not claim to describe the *property* of moral wrongness, but merely the circumstances under which one may view something as morally wrong. It is a clarifica-

³⁵ Scanlon 1998, pp. 215-218

³⁶ Scanlon 2003, p. 438

tion of the fact that contractualism first and foremost aims to perform a structural analysis of the moral relationship between us. The normative statements derived from this analysis withholds that that which we can reasonably reject is morally wrong—the evaluative element is clearly not what we would *hypothetically* agree or not agree to. That which makes actions wrong is to be found in the contractualist conception of reasons.

Reading Scanlon with the contractarian tradition in mind, it is understandable that one may think about reasonable rejection in terms of hypothetical agreement. As explained above, holding contractualism to ground its justification in hypothetical agreement easily entails the constructivist label. But contractualism does not derive moral motivation from hypothetical agreement, that is, in some form of rational deliberation. The contractualist formula builds upon the view that it is in the conception of reasons that we find moral motivation. In my view it is clear that contractualism refers to the agents *having reason to enter contractualist agreement* in its account of moral motivation.

If contractualism would claim to describe the property of moral motivation it would be circular in its referring to its own thesis. But the contractualist account of moral motivation is not a claim to describe the *property* of moral motivation (on the same grounds that it does not claim to describe the property of ‘moral wrongness’, as explained above), but merely the framework within which people find their motivation to act morally. More accurately, contractualism acknowledges that moral motivation has its roots in domains of morality other than the moral relationship between us. Say that I have some conception of well-being, and that I find contractualism to best provide protection for my welfarist views. That is a perfectly understandable reason to enter contractualist agreement, and my moral motivation is thus derived from a domain of morality not concerning the moral relationship between us, namely in my conception of well-being.

Any reason to enter contractualist agreement appears within the framework that contractualism gives an account of. Since contractualism does not claim to describe the substance of moral motivation but only its structure, contractualism does not explain moral motivation by referring to its own thesis. The motivation to act morally is to be found in our having reason to enter contractualist agreement, and these reasons appear in moral domains other than that targeted by contractualism. Having separate

views on moral values does not disallow for agents to have similar experiences of reasons to enter contractualist agreement. By referring to reasons one may find a common ground for moral valuation without claiming a ‘master value’ to settle moral disagreements.

4. The dynamics of contractualism

4.1 The final obstacle

Charges of circularity within contractualism, both welfarist and constructivist such, have in common that they hold contractualism to refer to its own thesis when pointing out the operative element for moral assessment. As I understand contractualism, these charges are implausible. Contractualism does not claim to describe the property of moral wrongness, of moral motivation or of reasonable rejection, it only gives an account of the conditions under which such considerations are coherent and relevant for moral assessment. Though, one may still claim that to avoid explaining nothing at all (which would be a possible interpretation), contractualism must provide us with some substance in order to perform moral valuations. This is the final obstacle for those dismissing contractualism on the grounds of the problem of circularity.

Contractualism does not provide us with such moral substance, however, that has never been the aim of the theory. The strength of contractualism is found in its ‘openness’, in its approval of individual interpretations of that which constitutes reasons to engage in moral relationship with others. Contractualism *is* the static structure of moral assessment of the relationship between us, and is thus deprived of all moral substance. Therefore, in order to deliver moral answers something must be added to it. As explained above, constructivist readers look for the element that has to be added to the contractualist thesis *within* the domain of morality targeted by contractualism, which inevitably entails the problem of circularity. Thus, in order to solve the problem of circularity contractualism must provide an explanation of how moral motivation is derived from domains of morality other than that of what we owe to each other, or in other words, the moral relationship between us.

The motivation to act morally is found in peoples having reason to enter contractualist agreement. These reasons occur in domains of morality other than that targeted by contractualism. Say that I am deeply religious, and that I acknowledge that

atheists can easily reject moral opinions derived from my spiritual views. Yet I withhold that I have reason to enter or uphold a moral relationship even with atheists, perhaps in order to protect my (experienced) rights to surrender to my own perception of some divine commands. My reasons to establish a moral relationship with others is thus derived from some domain of morality other than that of the moral relationship between us. From a *contractualist* perspective, these reasons may be treated as non-moral since they arise in external domains of morality: they are not relevant for actual moral assessment. Thus, these reasons—whatever they may be—must be seen as *hard facts* altering the result of the contractualist thesis. They are the operative element in contractualism, or perhaps more accurately, the *factual input* that renders dynamic results from the static contractualist formula. So understood, contractualism replaces the evaluative elements sought after within the formula with hard non-moral facts prior to it. These evaluative elements are not *constituted* by contractualist arguments, the contractualist thesis only gives an account of *what makes* such elements reasonable.

As cited above, Onora O’Neill holds that contractualism fails when moral motivation is not shared. In my view that is mistaken. Contractualism does not fail when motivation is not shared—if motivation is not shared there simply is no moral relationship between the agents in question. When Mark Timmons writes that contractualism yields either no results at all, or only results that are dependent on non-contractualist moral judgments, he is half right and half wrong. Contractualism not only allows for, but is built upon the necessity of non-contractualist moral judgments in its reference to the ‘hard-facts’ put in prior to the formula by agents having personal ethical views. What Joseph Raz calls a ‘suspect feature’ of contractualism (that it presupposes moral views that can only be established independent of it) is the strength of the theory: it allows for people to create their own moral relationships.

In my opinion Scanlon’s theory is not circular. The problem of circularity is due to a failure to note that contractualism refers to operative elements *outside* the targeted domain of morality when performing moral assessments. It is the contractualist move to constrain the domain of morality targeted that saves it from charges of circularity. However, is it reasonable to claim that it is possible to break down morality into smaller pieces? If there is such a thing as moral, should we not treat it as it is? Perhaps not.

4.2 Contractualism applied

Scanlon writes in his book that “[when] I ask myself what reason the fact that an action would be wrong provides me with not to do it, my answer is that such an action would be one that I could not justify to others on grounds I could expect them to accept.”³⁷ Reading this passage I think of the moral relationship that I have with my friends and family. In this group of people we have in common that we find ourselves to have reasons to act morally towards each other, and we have these reasons since we appreciate our having relationships with people we care about. I have several such kinds of moral relationships with different people, and the character of these relationships may differ. With some of my friends it is not morally wrong to use certain expressions or acts that under other circumstances or with other people quite reasonably *should* be considered morally wrong. That which constitutes moral wrongness within the different relationships I have to different people always follow the same structure in our having reason to engage in moral relationships, but what is morally wrong may differ wildly dependent on which group of people I am with at the moment. Moral, in this sense, is absolutely dynamic in its substance but static in its structure—‘static’ in the sense that it is possible to explain that which is morally wrong in terms of what we can reasonably reject, and ‘dynamic’ in the sense that what we can reasonably reject differs depending on whom we consider to be included when we say ‘between us’—and I find the contractualist explanation of how this is so very convincing.

Applying contractualism to what I believe to be a very common view on friendship we find it that actions are wrong if they can be reasonably rejected. That is, actions that deprive others, similarly motivated, with motivation to act morally undermines the foundation of our friendly moral relationship. Why would I stay friends with someone who acts in this way? Or rather: their actions, if I can reasonably reject them, seem to be morally wrong. She who acted in such a way may be of a different opinion. That does not legitimize her action morally, but explains why we will have to develop a new relationship to each other. Perhaps we should no longer be friends, but settle with a relationship as ‘class mates’ or ‘citizens of the city of Linköping’. Such a redefined relationship shifts our responsibilities towards each other, and the shift occurs in our having reasons to have a relationship with each other. As class mates instead of friends, our reasons to uphold a moral relationship to each other would no

³⁷ Scanlon 1998, p. 4

longer be constituted in terms of our appreciation of having relationships with people we care about, but perhaps in our strife for a good education or a satisfying study environment. Between us, that which we can reasonably reject is still morally wrong—but now we reject other actions than we did before.

The most interesting question is who we should consider to have reason to engage in moral relationships with, and to what extent. Do I not have reason to enter a contractualist agreement with all other beings on this earth? That is, do I not have reason to act in such a way that no one could reject my actions? I find it that we all have reason to, for instance, act according to principles that do not damage the environment and that it is morally wrong not to follow such principles. It seems to me that I have a moral relationship to everyone that is affected by my actions, but the moral reasons that I have in common with all these people are probably very vague. As cited above, Mark Timmons holds this notion against contractualism, but in large-scale moral relationships vague principles are necessary since we otherwise would deprive each other of motivation to act morally. The static contractualist structure is still effective no matter on which scale we count whom to include in the moral relationship in question.

4.3 Summary

In my view Scanlon does not answer to the problem of circularity as put forth by O'Neill, Timmons and Raz. His book treats charges of circularity that arises within the theory, that is, charges based upon some welfarist notion. However, the charges of circularity dealt with in this essay builds upon a constructivist reading of contractualism that poses *structural* difficulties for Scanlon's theory. The constructivist reading places Scanlon's theory too close to the contractarian tradition in its reference to some form of hypothetical agreement instead of recognizing Scanlon's account of 'reasons', which is where the actual moral assessment occurs. Scanlon is not a Kantian and his theory is not constructivist. Where critics have been looking for a metaethical position—in his article, Mark Timmons suggests a minimalistic such in order to avoid relativism—I find it that moral values are put into the contractualist formula by those included by it.³⁸ This view presupposes that some are not included in contractualism. As I understand Scanlon, that is not a problem. Everyone is actually included, but on larger or smaller scales. In *this certain* moral relationship agent X is not taken into

³⁸ Timmons 2003, pp. 418-421

consideration, but there are many forms of moral relationships and in at least one respect she will be included.

The strength of the contractualist formula lies in its dynamics. As I argue in section 4.2, I find it that moral relationships differ in its content depending on the situation or on the group of people whom I am with at the moment. I do have a moral relationship to everyone ('everyone' in the sense explained in section 1.3: "those beings to whom we have good reason to want our actions to be justifiable"), and the relationships always follow the same moral structure ("that is wrong which can be reasonably rejected"). However, I am morally more tolerant with people that I know very well—my friends may say or do things to me that other people could not say or do without offending me, etc.—and that is the dynamics of contractualism. What alters the outcome of the moral assessment is not the action *per se*, but whether or not the action deprives me of motivation to act morally in return. Thus, the principles governing my moral relationship to people on the other side of the earth, or to people whom will not be born for another hundred years, are very vague in their definition. Perhaps we all have the moral responsibility to 'treat the environment as well as we are able to' and 'help people in need'—but it cannot reasonably be argued that everyone, including the poorest people on earth, have the moral responsibility to 'exclusively consume non-environment-threatening clothing' or 'donate all surplus resources to the least favored'. Such precisely defined principles would, as I see it, deprive many people of motivation to act morally. On a smaller scale, though, I may find it that my friends have these kinds of moral responsibilities.

Scanlon's theory may of course still have problems that must be solved, but in my opinion circularity is not one of them. Such charges rest upon a reading that does not recognize the dynamics of contractualism.

Bibliography

Bagnoli, Carla, "Constructivism in Metaethics", *The Stanford Encyclopedia of Philosophy (Winter 2011 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2011/entries/constructivism-metaethics/>

O'Neill, Onora, "Constructivism vs. Contractualism", *Ratio*, 2003:16:4, pp. 319-331.

Raz, Joseph, "Numbers, With and Without Contractualism", *Ratio*, 2003:16:4, pp. 346-367.

Scanlon, T. M., *What We Owe to Each Other*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, and London, England, 1998.

Scanlon, T. M., "Replies", *Ratio*, 2003:16:4, pp. 424-439.

Shafer-Landau, Russ, *The Fundamentals of Ethics*, Oxford University Press, New York, 2010.

Timmons, Mark, "The Limits of Moral Constructivism", *Ratio*, 2003:16:4, pp. 391-423.