

Jens Gillessen

Contractualism and the Numbers

Revision of a Moral Ideal

Book Abstract

At the heart of democracy lies the conviction that every single individual's interests matter, and equally so. In philosophy, this conviction fueled the twentieth-century resurgence of contractualism—most prominently through the work of John Rawls—seeking to safeguard the individual from domination by the many in the name of social utility. But how, exactly, should the individual be made to figure in moral and political decision-making?

“Contractualism and the Numbers” advances a new proposal through a critical reassessment of T. M. Scanlon's moral contractualism. Confronting a cluster of difficulties in *What We Owe to Each Other*, it argues that Scanlon's theory still falls short on three counts. First, the so-called aggregation problem: in rescue dilemmas, why are we under a moral duty to save the greater number? Second, the issue of decision under risk: Scanlon's theory offers no viable method for taking into account the kind of numbers that are probabilities. Third, the problem of future generations: what, if anything, can Scanlonian contractualists say about our apparent duties to merely possible, not-yet-existing persons? The book argues that these three seemingly disparate puzzles require a coordinated approach and offers an integrative answer.

Most contemporary contractualists treat these problems as settled. They are not. Recent formulations make them disappear, but at the high price of weakening the claims of concrete individuals vis-à-vis the many—a trade that distorts the contractualist ideal. “Contractualism and the Numbers” sets out to correct this distortion. Restating contractualism so that the individual is taken seriously from the start and never traded away, the book develops what the author calls Headcount Contractualism: a framework that lets numbers register directly in moral justification without diminishing the force of individual complaints. The result is, at present, arguably the best defensible systematic account of how the individual matters in ethical reasoning.

Deutsche Fassung

Zum Kernbestand demokratischen Denkens gehört die Überzeugung, dass die Interessen jedes einzelnen Individuums zählen, und zwar gleichermaßen. In der Philosophie liegt diese Überzeugung der durch John Rawls angestoßenen Revitalisierung kontraktualistischer Theoriebildung im

20. Jahrhundert zugrunde, die den und die Einzelne vor der Unterwerfung durch die Mehrzahl im Zuge der Förderung des gesellschaftlichen Gesamtnutzens schützen will. Doch welche Rolle genau soll die Einzelperson in Entscheidungen von politischer oder moralischer Tragweite spielen?

“Contractualism and the Numbers” macht diesbezüglich einen neuartigen Vorschlag, der einer kritischen Neubewertung von T. M. Scanlons moralischem Kontraktualismus entspringt. Im Zuge der Untersuchung eines Bündels teils wohlbekannter Schwierigkeiten mit *What We Owe to Each Other* argumentiert der Verfasser, dass Scanlons Theorie fortgesetzt drei Probleme aufwirft. Erstens das sogenannte Aggregationsproblem: Warum sind wir in Rettungs-Dilemmata verpflichtet, die größere Anzahl Menschen zu retten? Zweitens das Problem der Entscheidung unter Risiko: Scanlons Theorie artikuliert keine gangbare Methode, um diejenigen Zahlen angemessen in Rechnung zu stellen, um die es sich bei Wahrscheinlichkeiten handelt. Drittens das Problem zukünftiger Generationen: Was können Scanlonsche Kontraktualist*innen zur Aufklärung darüber beitragen, was wir nach allgemeiner Auffassung bloß möglichen, noch nicht existierenden Personen schuldig sind? Das Buch argumentiert, dass diese drei nur dem Anschein nach disparaten Probleme einen koordinierten Lösungsansatz erfordern, und beantwortet sie mit einem integrierten Entwurf.

Die meisten gegenwärtigen Kontraktualist*innen halten die genannten Probleme für gelöst. Sie sind es nicht. Gegenwärtige Kontraktualismen auf Scanlons Spuren bringen die Probleme zum Verschwinden, aber um den hohen Preis einer Abschächung der Ansprüche und Einwände, die konkrete Individuen gegenüber den Vielen zur Geltung bringen können. Diese Abschwächung verzerrt das moralische Ideal, das der Kontraktualismus zeichnen will. “Contractualism and the Numbers” zielt auf eine Korrektur dieser Verzerrung. Indem es die Einwände der Einzelperson ernstnimmt und niemals aus dem Blick geraten lässt, entwickelt das Buch unter dem Namen *Headcount Contractualism* eine Theorie, die ‘die Zahlen’ in ganz unmittelbarer Weise in moralische Rechtfertigungen eingehen lässt, ohne jedoch Abstriche an der Kraft individueller Einwände zu machen. Das Ergebnis ist die gegenwärtig wohl am besten zu verteidigende normative Theorie über die Rolle des Einzelnen im ethischen Argumentieren.

Contents

Introduction	11
Moral Contractualism	11
What Makes Moral Contractualism Attractive	13
An Initial Motivation	14
The Kantian Inheritance	15
The Rawlsian Inheritance	18
A Genuine and Stable Two-Tier View	24
The Number Problems	29
Future Individuals and the Non-Identity Problem	33
Overview	35
 1 The Explanatory Structure of Scanlonian Contractualism	 37
1.1 Extant Structural Criticisms	37
1.1.1 Backwardness	38
1.1.2 Inferiority	40
1.1.3 Redundancy	41
1.1.4 Circularity	42
1.1.5 Non-Fundamentality	44
1.1.6 Still the Hard Core: Charges of Redundancy and Circularity	48
1.2 The Contractualist Ideal	54
1.2.1 From Circularity to Step-Wise Articulation	54
1.2.2 From the Moral Relationship to the Contractualist Reason	55
1.2.3 Avoiding Self-Referentiality of the Contractualist Reason	63
1.2.4 The Role of Conventional Morality within the Ideal	66
1.2.5 The Point of Preliminary Articulations of the Ideal	70
1.3 Reasonableness in its Various Contexts	71
1.3.1 Three Construals of Reasonableness	71
1.3.2 The Wider Meaning	72
1.3.3 'Reasonableness' as Part of the Contractualist Formula	76
1.3.4 Austere 'Reasonableness' of Rejection Defended	78
1.4 Removing Residues of Older Contract Theories	80
1.4.1 Residues of Hypothetical Deliberation	80
1.4.2 Residues of Desire-Based Contractualism	86
1.4.3 Avoiding an Infinite Regress of Motivation	88
1.4.4 A Deflated Version of the Contractualist Formula	91
1.5 The Expanded Complaint Model of Reasonable Rejection	92
1.5.1 Burdens in the Narrow and in the Wide Sense Only	93
1.5.2 Expanding Scanlon's Complaint Model	96
1.5.3 Running Internalization Costs as Individual Burdens	99
1.6 Defending the Model's Distributive Logic	107

1.6.1	Codifying the Complaint Model's Distributive Logic	108
1.6.2	Constraint 1: Egalitarian Individualism	110
1.6.3	Constraint 2: Non-Aggregativity	111
1.6.4	Constraint 3: Priority for the Strongest Complaint	112
	How Priority for the Worst-Off Matters in Contractualism	112
	Priority for the Worst-Off	114
	Priority for the Switch-Losers	118
	Priority for those Below Threshold	119
	Determinants of Complaint Strength Regarding Welfare	120
	Determinants of Complaint Strength Beyond Welfare	124
	Priority for the Strongest Complaint and Minimax Complaint	127
	How Switch-Losses Matter	128
1.6.5	Constraint 4: Pareto	132
1.6.6	Lexical Minimax Complaint	135
1.6.7	Two Logics for the Complaint Model, one Simple, one Correct	139
1.7	When is a Reason 'Personal'?	139
1.7.1	Personal Reasons and Structural Criticisms	140
1.7.2	Agent-Relativity	142
1.7.3	Non-Common Ownership	144
	Ownership of Reasons	144
	Deontological Reasons: Commonly Owned and Agent-Relative	146
1.7.4	Problematic Restrictions	148
1.7.5	The Permissive Construal	151
1.8	Non-Contractualist Values and Reasonable Rejection	153
1.8.1	Defending the Priority of the Contractualist Ideal	153
1.8.2	The Problem of Which Reasons are Grounds for Rejection	156
1.8.3	Four Rationales for Restricting the Grounds for Rejection	158
	Rationale 1: Inherent Properties of the Excluded Reasons	158
	Rationale 2: Making Room for Non-Contractualist Values	159
	Rationale 3: The Theory's Subject Matter	161
	Rationale 4: Interpersonally Aggregate Value and Beneficence	163
1.8.4	Beneficence, the Supererogatory and Grounds for Rejection	170
	Erogatory Beneficence as a Contractualist Value	171
	Supererogatory Beneficence as a Non-Contractualist Value	172
1.8.5	The Non-Erogatory and Option Reason Inclusion	179
1.9	Reasonable Acceptability and Self-Sacrifice	181
1.10	The Holism of Contractualist Justification	186
1.10.1	Reasonable Rejection—of What?	186
	Moral Principles	187
	Sets of Principles and Moral Codes	188
	The Problem	189
1.10.2	Target Holism: For and Against	189
1.10.3	Contexts of Reasonable Rejection	196
1.10.4	Conflicts of Rejectability	201

Justification is Inherently Provisional	201
Relevant and Irrelevant Contexts of Rejection	208
1.11 Summary and Conclusion: The Structural Worries Put at Rest	210
2 The Complaints of Possible Persons	213
2.1 The Non-Identity Problem	215
2.1.1 Parfit's Original Case	215
2.1.2 Creating Unbearable Lives	221
2.2 Can Contractualism Get Around the Non-Identity Problem?	222
2.2.1 Merely Committing a Wrong versus Wronging a Person	223
2.2.2 A Non-Relational Account	226
The Minimalist Cluster	226
Non-Relational Contractualism?	228
Modalized Sufficiency: A Non-Contractualist Value?	229
Against Revisionary Construals of 'Owing'	230
2.2.3 The Relational Account	233
A Directed Right to Not Be Created	233
Actual vs. Merely Possible Rights	234
2.2.4 Metaphysical Trouble with the Relational Account	235
Future Persons as Metaphysical Possibilities	235
The Threat of Modal Deadlock	239
2.2.5 A Partly Relational Account?	240
2.2.6 Defending the Fully Relational Account	242
A Metaphysical Reply—and its Limitations	242
A Substantive Vindication of the Relational Account	245
2.2.7 The Actuality of Some Merely Possible Persons' Complaints	248
2.2.8 An Objection: Do the Complaints of Actual Persons not Suffice?	251
2.2.9 Intermediate Conclusion	253
2.3 Reflecting on the Proposed Solution	253
2.3.1 Non-Comparative Reasons	253
Non-Comparativity	254
A Proliferation of Non-Comparative Burdens?	256
Determinants of the Strength of Non-Comparative Complaints	257
2.3.2 How Causing to Exist Might Benefit	262
2.3.3 Two Kinds of Person-Affecting Claim	265
The Proposed Theory is Only Widely Person-Affecting	265
A Narrowly Person-Affecting Complaint Model	268
2.4 The Limits of More 'Generic' Contractualisms	269
2.4.1 Generic Reasons and Standpoints: The Epistemic View	270
2.4.2 Strongly Generic Contractualism	272
2.4.3 Weakly Generic Contractualism	274
2.4.4 De Dicto Contractualism	279
A Modal Ambiguity Afflicting Descriptions	279

Putting <i>De Dicto</i> Readings to Work	284
2.4.5 The Challenge of Different-Number Choices	286
2.4.6 Averaging Contractualism	289
2.4.7 Burden-Defined Standpoints and the Unfairness of Averaging	294
2.4.8 Assessing the Contenders	295
The One-versus-One Case	296
The Different-Number Case	298
Final Assessment	299
2.5 Summary and Conclusions	300
 3 Contractualism as a Consequentialism	 303
3.1 How Contractualism is ‘Consequentialist’, and How it is Not	304
3.2 ‘But we do not Know the Consequences’	311
3.3 Actual versus Expected Consequences	313
3.4 Actualism and its Problems	315
3.4.1 Three Initial Problems	315
3.4.2 Actualism as the Default Option	316
3.4.3 The Problem of the Nearest and Dearest	318
3.4.4 The Three Drugs Problem	318
3.5 Actualism’s Initial Problems Solved	320
3.5.1 Addressing the Problem of Blameworthiness	320
3.5.2 Addressing the Problem of Ordinary Moral Knowledge	322
3.5.3 Addressing the Problem of Application	324
3.6 Expectationalism and its Problems	328
3.6.1 Hindsight	328
3.6.2 Advice	329
3.6.3 True Conscientiousness	334
3.6.4 Epistemic Inaction	336
3.7 Ambiguity Theory about Ought Defended	343
3.7.1 The Deliberative Ought: Not Very Illuminating	344
3.7.2 The Ought of Most Reason	350
3.7.3 The Perspectival Ought	351
3.8 The Contractualist Solution of the Three Drugs Problem	351
3.8.1 Preliminaries: Some Deontic Logic	352
3.8.2 No Conflict in ‘Three Drugs’	354
3.8.3 An Objection from Purely Prudential Cases	355
The Rational Ought	355
How Rationality is (Not) Normative	358
3.8.4 The Ought of Most Reason is Always Genuinely Normative	360
3.9 A Synthesis of Actualism and Expectationalism	362
3.9.1 Reconciling Actualism with Expectationalism	362
3.9.2 What Effects Inform the Permissibility of Particular Action?	367
3.10 Summary and Conclusions	374

4	Probabilities in Contractualism	377
4.1	Three Types of Deliberative Situation	378
4.2	The Nature of the Relevant Probabilities	379
4.3	The Structure of Probabilistic Deliberation	385
4.3.1	Four Dimensions of Relevant Information	385
	Codes and Persons: The Simple Matrix	385
	Codes, Persons, Events (1): The Event Matrix	386
	Codes, Persons, Events (2): Probability Matrix, Burden Matrix	387
	The Reference Class Problem and Generic Standpoints	391
	Experts, Codes, Persons, Events	395
4.3.2	Two Stages of Reasoning	398
4.4	Expert Disagreement on Probabilities	398
4.4.1	The Most-Weighty-Opinion Approach	399
4.4.2	The All-Opinions Approach	399
4.4.3	The Opinions-Aggregative Approach	401
4.5	Three Methods for Processing Events	406
4.5.1	Most-Likely-Outcome Contractualism	407
4.5.2	All-Outcomes Contractualism	408
4.5.3	Outcomes-Aggregative Contractualism	409
4.5.4	Summary	410
4.6	Ex Ante Contractualism	411
4.6.1	Idea and Application of Ex Ante Contractualism	411
4.6.2	Differentiating Ex Ante from Ex Post Contractualism	415
4.6.3	Problems of Ex Ante Contractualism	417
	Risk Neutrality	417
	The Losers of Life's Lotteries	419
4.6.4	How Extant Defenses of Ex Ante Contractualism Fail	422
	Decomposition into Stages?	423
	Bracketing Out Multi-Stage Action and Identified Victims	423
	Background Principles 1: Reasonable Precautions, Intentional Killings	425
	Background Principles 2: A Special Right Over One's Body?	428
	Other Reactions	431
4.6.5	Scanlon's Appeal to a 'Natural Veil of Ignorance'	432
4.7	Scanlon's Ex Post Contractualism	436
4.7.1	Scanlon's Ex Post Contractualist Theory was Incomplete	437
4.7.2	Expected Numbers of People in Scanlon's Contractualism	439
4.7.3	Expected Numbers of People in Other Ex Post Contractualisms	440
4.7.4	Does Ex Post Contractualism Disregard the Probabilities?	443
4.7.5	How Scanlon's Ex Post Contractualism Fails	445
4.8	Risk-Acknowledging Ex Post Contractualism?	447
4.8.1	The Case for Additional Risk-Burdens	448
4.8.2	A Vaccination Example	451

4.8.3	The Problem of Minute Risk-Burdens	454
4.8.4	Do Risks Burden As Such?	457
4.9	Summary and Conclusions	462
5	Did Scanlon Make the Numbers Count?	467
5.1	The Problem	467
5.2	An Analysis of Scanlon's Tie Breaking Argument	472
5.3	Assessing the Proposed Requirements of Unrejectability	477
5.4	The Straightforward Argument	482
5.4.1	Plain Appeal to Moral First-Order Reasons	482
5.4.2	The Agglomerativity of Reasons	485
5.4.3	Moral Reasons to Rescue or to Hold a Lottery?	488
5.4.4	The Problem of Lacking Explanatory Power	493
5.4.5	Remaining Options	497
5.5	Difference-Making	497
5.5.1	Varieties of Difference-Making	497
5.5.2	Making a Difference for Outcomes	499
5.5.3	Making a Difference for Proceedings	501
5.5.4	Making a Difference as to Which Principle to Apply	503
5.5.5	What is Wrong with Difference-Making	503
5.6	The Deliberative Argument	504
5.6.1	The Deliberative Principle	505
5.6.2	Justifying the Deliberative Principle	506
	Immediate Appeal to the Contractualist Ideal?	506
	Is the Deliberative Principle Reasonably Unrejectable?	507
	A Local Requirement of Fairness	515
5.6.3	Justifying the Principle to Save the Larger Number	516
5.6.4	A Thoroughly Deliberative Theory?	518
5.7	Summary and Conclusion	520
6	Headcount Contractualism	523
6.1	Outline and Precursors	523
6.2	Burden Ranges and Relations of Relevance Between Burdens	528
6.3	Headcount Matrices	532
6.4	Code-Choice Under Certainty and Under Ignorance	534
6.5	Code-Choice Under Risk	535
6.6	How Contractualist is Headcount Contractualism?	537
6.6.1	Objection 1: Immediate Relevance of Numbers of People	537
6.6.2	Objection 2: Interpersonal Aggregation?	538
	What is Interpersonal Aggregation?	540
	Headcount Contractualism is not Interpersonally Aggregative	548
6.6.3	Objection 3: Reasonable Rejection by Whom?	551

6.6.4	Greater Wrongs	553
6.6.5	Objection 4: The Wrong Kind of Reasons for Rejection?	553
6.7	Doing Away With “Ex Ante” and “Ex Post”	558
6.8	The Argument for Headcount Contractualism	559
6.9	Averting Moral Gridlock	561
6.9.1	The Likely Ordeals of the Few	561
6.9.2	Illustration 1: Pacifism	562
6.9.3	Illustration 2: Vaccination and Disease	565
6.9.4	A Limitation of the Argument: Avoidable Burden Contractualism	569
	Disregarding Unavoidable Burdens	569
	Events in Avoidable Burden Contractualism	573
	Three-Option Scenarios	575
	Avoidable Burden vs. Headcount Contractualism	576
6.10	The Victims of Civilization	577
6.11	Hard Cases for Headcount Contractualists	579
6.11.1	Explaining Strict Deontic Constraints	580
6.11.2	Hard Problems of Social Risk Imposition	588
	Non-Lethal Vaccination Against Lethal Disease	589
	Non-Lethal Vaccination Against Non-Lethal Disease	592
	Identified Victims versus the Many	595
6.12	The Value of Continuing Humanity	598
6.12.1	An Obligation to End Humanity?	599
	Negative Utilitarianism and the Elimination of All Humankind	599
	Anti-Natalism and the Phasing-Out of Humanity	602
6.12.2	Reasons to Reject Anti-Natalism	605
	Reasons of Concern, or Love of Humanity	606
	Reasons of Interest	608
	Reasons of Valuation	612
	Reasons of Reciprocity	612
6.12.3	The Burdens of Meaning Loss	613
6.12.4	Why Headcount Contractualism does not Lead to Anti-Natalism	616
6.13	Summary and Conclusion	621
	References	625