

Contract Theories

In this chapter, I will examine potential contractualist justifications for deontic restrictions. More specifically, the first part of this chapter will be devoted to discussing Scanlonian contractualism and its resources to accommodate deontic restrictions. The topic of a significantly shorter second part will be a proposal by Rosenberg (1993)¹¹⁶ to account for deontic restrictions from within a contractarian framework.

7.1 Part I: Scanlonian Contractualism

In what follows I will first outline the contours of Scanlon's contractualist theory (7.1.1) and how it might be thought to provide a justification for a deontic restriction against killing the innocent (7.1.2). Next, I will critically discuss the account. This discussion (7.1.3) will be heavily inspired by Shaver (2007). Finally, in 7.1.4, I will rehearse Brand-Ballard's (2004) remarks on the prospects of Scanlonian contractualism to account for deontic restrictions.

7.1.1 *The General Contractualist Framework*

At the heart of Scanlon's contractualist framework is the idea that

an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject. (Scanlon 1998, 153.)

Alternatively:

an act is wrong if and only if any principle that permitted it would be one that could be reasonably rejected by people [who were moved to find principals for the general regulation of behavior that others, similarly motivated, could not reasonably reject] (or, equivalently, if and only if it would be disallowed by any principle that such people could not reasonably reject). (Scanlon 1998, 4.)

¹¹⁶ I chose to discuss Rosenberg, as opposed to other authors concerned with contractarianism, simply because of his explicit treatment of the problem of deontic restrictions. Compare also chapter 1 for some remarks on the selection of the foci of this thesis.

Crucial for understanding this conception of wrongness will be Scanlon's idea of reasonable rejectability.

Three features in particular seem to be worth mentioning. First, there is what has come to be known as the »individualist restriction«. The grounds that can be forwarded as grounds for reasonable rejection are restricted to the claims of individuals. Neither are claims of groups legitimate nor are aggregated claims. While I may object to a principle that it would greatly diminish *my* personal welfare, I could not legitimately object that the principle would be likely to reduce *overall* welfare. Also, if persons A, B, and C each have reasonable objections to some principle, their objections are not to be aggregated in some way or other. What will be decisive for deciding whether or not a given principle that prohibits some action can be reasonably rejected is whether the strongest individual objection among the objections of A, B, and C, respectively, is stronger than the strongest objection to a corresponding principle that permits the namely action. (Compare, for instance, Southwood 2009, 927.)

That brings us to another important feature of Scanlon's test of reasonable rejectability: reasonable rejectability is a comparative matter. Whether some action is wrong will depend on whether the reasons for rejecting a principle that prohibits it – call these »objections to prohibition« – are stronger than the reasons for rejecting a principle that permits it – call these »objections to permission« (compare Scanlon 1998, 195). Accordingly, we should distinguish reasons for rejecting a proposed principle from a principle's being reasonable rejectable. A principle that permits X is reasonable rejectable if the reasons for rejecting it outweigh the reasons for rejecting a corresponding principle that prohibits X.

A last crucial feature of Scanlon's notion of reasonable rejectability is that all kinds of considerations are allowed for as grounds for objection. Most notably, grounds for objections include but are not restricted to considerations of welfare/well-being. Reasonableness is »an idea with moral content« (Scanlon 1998, 194):

A claim about what it is reasonable for a person to do presupposes a certain body of information and a certain range of reasons which are taken to be relevant, and goes on to make a claim about what these reasons, properly understood, in fact support. (Scanlon 1998, 192.)

A strength of Scanlon's framework might thus be thought of as its having a unifying function, bringing under one umbrella and systematising divergent moral considerations, such as well-being, fairness, justice, and others more. On the other hand, its reliance on substantive evaluative judgments in fixing what