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## Grounding Deliberative Contractualism

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Grounding Deliberative Contractualism

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts in Philosophy

by

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## **Abstract**

Contractualism is often seen as a kind of self-interested bargaining in which individuals engage to preserve their own desired outcome. If individuals are only out for themselves, then no one achieves his or her desired end. Yet, if individuals constrain some of their desires and are assured that others will do the same, then, the contractors can avoid mutual destruction. It is not hard to see why Contractualism is often viewed as a way to explain the origins of morality within civil society. In this paper, I take up a version of Contractualism espoused by Nicholas Southwood called Deliberative Contractualism. The outcome of a perfectly deliberative rational process is what grounds morality or says Southwood. I consider two objections against Southwood's account. I first consider the way Southwood criticizes a nearby Contractualist view and demonstrate that the same criticisms that Southwood levels against that account apply to Southwood's. I end with a modest conclusion. While I don't resolve the problems in either account, I do think I give more clarity to the debate about what it takes to ground morality.

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## Introduction

Contractualism is often seen as a kind of self-interested bargaining in which individuals engage to preserve their own desired outcome. If individuals are only out for themselves, then no one achieves his or her desired end. Yet, if individuals constrain some of their desires and are assured that others will do the same, then, the contractors can avoid mutual destruction. It is not hard to see why Contractualism is often viewed as a way to explain the origins of morality within civil society. Thomas Hobbes, for instance, famously argued that without a powerful sovereign or government we would not keep the agreements we made in the state of nature with our commonwealth folk.

However, as with any philosophical view, there are different versions of Contractualism. In this thesis, I take up a version of Contractualism called Deliberative Contractualism (DC). DC maintains that morality is the outcome of a process of deliberation *if we were perfectly deliberatively rational*. In his book, *Deliberative Contractualism and the Foundations of Morality*, Nicholas Southwood argues that DC is a more explanatorily adequate theory of morality than two of the contemporary versions of contractualism. The first is David Gauthier's Hobbesian style contractualism, and the second, Thomas Scanlon's Kantian style Contractualism (KC). My aim in this thesis is to argue DC fails to satisfy its own criteria for explanatory adequacy.<sup>1</sup>

I first describe explanatory adequacy. Any adequate moral theory, according to Southwood, must account for two features. First, it must explain the character of morality. It must explain key features like the "objectivity" and "normativity" of morality. Take objectivity, for instance. It must explain why morality does not merely depend on our interests or desires. And second, such a view should be properly explanatory. It should not just explain the character of morality but also explain morality itself. For instance, suppose a theory was trying to get at what makes moral claims "moral."

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<sup>1</sup> See Southwood's book, *Deliberative Contractualism and the Foundations of Morality*, Oxford: Oxford University Press, (2010). Although I don't discuss much of Gauthier's view see his book, *Morals by Agreement*, Oxford: Oxford University Press, (1986).

If that theory were to presuppose the existence of moral features while trying to explain morality itself, the explanation would be explanatorily circular. In essence, Southwood is trying to explain the *Foundations of Morality*.<sup>2</sup> The foundations determine and explain what morality is.

Next, I lay out Thomas Scanlon's KC account and Southwood's DC account. My purpose is to show how Southwood positions his account as explanatorily adequate over that of Scanlon's. In effect, I will argue that the same objections raised against Scanlon's account can be applied to DC. Southwood accuses Scanlon's account of being explanatorily circular and explanatorily non-fundamental. I argue that DC fails to be adequate in both of those ways.

I will conclude with a rather modest proposal. By pointing out a similar failure in another account, I haven't yet resolved what it does take to explain the foundations of morality. Perhaps by examining these views something can be sifted out that would in such an endeavor. I do not explore that option here.

Why do I not discuss Gauthier's account? Because my objection to DC is independent of how Southwood objects to Gauthier's account. Even if my objection to DC held up, it would not affect what Southwood has to say about Gauthier's version.

As I just said, my argument is aimed at DC not being explanatorily adequate. An adequate moral theory, according to Southwood, has to make sense of the foundations of morality. It has to get at the fundamental facts. That is, it has to get at what *makes* the moral facts what they are or what *grounds* the moral facts. One common way of saying this is "In virtue of what are the moral facts the

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<sup>2</sup> From what I read of Southwood, it is clear that he thinks something like Stephen Darwall's view. There should be no distinction between metaethics and ethics. When we are doing either we are doing "Philosophical Ethics" in Darwall's terminology. Disagreement about one's normative ethics is usually a sign about disagreement about one's metaethics. The two disciplines go hand in hand. This is what philosophers like Hobbes and Kant thought they were doing. Today, philosophers are think that the two disciplines are separate and may overlap. This is perhaps due to the rise in expressivist tendencies in the last one hundred years, which sees moral claims as nothing but expressions of personal feeling or sentiment. One can speak of these kinds of claims being normative but nothing of substance hangs on marking out this distinction in the metaethical domain. See Darwall (1998).

way they are?” For instance, we would make a moral fact like “Torturing someone for fun” is wrong. In virtue of what is it wrong? The answer might be that there is a more fundamental fact that explains why this is true or makes it true. The fact that “Torturing someone for fun” is wrong is the way it is because of a further fundamental fact that people have dignity and value, for example.

These fundamental facts make the moral facts what they are. DC maintains that it is the deliberative facts of the deliberative process that ultimately ground the moral facts and make them what they are.

DC fails to adequately explain the fundamental facts by appealing to the deliberative process. This is because deliberation, as I will argue, is itself explanatorily circular, and explanatorily non-fundamental. DC is explanatorily circular because it presupposes moral features from the outset. DC is also explanatorily non-fundamental. It claims that the fundamental facts are the deliberative facts of the deliberative process. Yet, as I will argue, because the deliberative facts contain further fundamental facts, DC is explanatorily non-fundamental.

My argument against DC is quite simple:

- 1) If DC adequately grounds the moral facts, then DC will neither be explanatorily non-fundamental (the ultimate explanation of the moral facts stops at bedrock facts; there aren't other further facts that explain the moral facts), nor-explanatorily circular.
- 2) DC is explanatorily non-fundamental, and explanatorily circular.
- 3) Therefore, DC doesn't adequately ground the moral facts.

Premise (1) should not be in dispute. Southwood agrees that DC meets these explanatory criteria.

Thus, the dispute will be about premise (2) as to whether a case could be made that DC is explanatorily inadequate in those two ways. As I said, I will show that the deliberative facts, those having to do with the deliberative contractualist situation, do not explain the moral facts. The problem for DC is that moral features are already found in the deliberative process. Thus, it is explanatorily circular. And DC is explanatorily non-fundamental because there are further facts

beyond the deliberative facts that explain the moral facts. The deliberative facts do not hit explanatory rock bottom.

## 1 Grounding and Explanatory Adequacy

According to Southwood, there are fundamental facts that ground non-fundamental facts. When we get to the fundamental facts we get to the ultimate explanation of the non-fundamental facts. The fundamental facts are explanatory “bedrock” so to speak.

Southwood states that grounding is a constitutive type explanation between the moral facts and the fundamental facts.<sup>3</sup> Southwood takes the constitutive explanation to be a kind of determinative explanation.<sup>4</sup> He says, “First, notice that it [grounding] is an *explanation* or *determination* relation...”<sup>5</sup> It is supposed to determine the moral facts. For instance, consider a non-moral example. Water is said to be constituted by H<sub>2</sub>O.<sup>6</sup> Water is *made up* of the chemical compound H<sub>2</sub>O. H<sub>2</sub>O constitutively determines what water is. This is to be contrasted from causal explanations. Causal explanations differ in that the effect is not *made up* of the cause in the same way that water is *made up* of H<sub>2</sub>O. That would be odd. Water is not an effect of H<sub>2</sub>O. Water just is H<sub>2</sub>O.<sup>7</sup>

Consider one more example. To use a famous case from Carl Hempel (Southwood does not mention this), consider the fact that a pendulum  $p$  has length  $l$  and period  $t$ . From the length  $l$  we can determine the period  $t$  of the pendulum  $p$ . And from the period  $t$  we can determine the length  $l$

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<sup>3</sup> Not all grounding theorists take grounding to be a constitutive type explanation. Paul Audi thinks that in the case of the wrongness of actions they could not be said to be constituted by natural properties in the same way we might think that the clay constitutes a statue. See Audi (2012). For a good understanding of grounding see Schaffer (2009), (2012); Trogon (2013); Rosen (2010); Correia (2008); Fine (2001), (2012).

<sup>4</sup> However, there are questions about what role these explanations play in science. So, there is a further question of what role they play in philosophical discussion. Craver (2007) for a critical discussion of this.

<sup>5</sup> p. 9, (2010).

<sup>6</sup> Ibid. p. 10.

<sup>7</sup> Is this a claim of identity? Southwood doesn't say as much. Yet, Saul Kripke, for instance, thought that water and H<sub>2</sub>O were *a posteriori* necessary identities. Others have disputed this claim. See Barnett (2000). I will just take it for granted that it is not a claim of identity since Southwood is silent on the subject.



of the pendulum  $p$ . But surely, given the latter fact, the period  $t$  does not cause the length  $l$  of pendulum  $p$  to have the length that it has. Yet, it does explain it. Period  $t$  constitutively explains the length  $l$  of pendulum  $p$ .<sup>8</sup>

According to Southwood, these kinds of explanations get to the rock bottom, fundamental facts. As he calls it, this is the “ultimate explanation.” Maybe there is a further fact of what explains why H<sub>2</sub>O is the way it is or why the pendulum shares a relationship with its period. That is all well and good. The point is that this “further” fact is at bottom the fundamental fact that determines or explains the non-fundamental facts.<sup>9</sup>

Southwood develops two criteria for any theory of morality that must be an adequate account of morality’s foundations. The first criterion is the *moral accuracy criterion*. Part of getting at morality’s foundation requires getting morality right. There are two ways to do this. One must get what he calls morality’s intensional and extensional character right to explain the character of the moral facts. If a moral theory fails to do this, then it is an inadequate account of morality’s foundations.

Morality’s intensional character has to do with the meaning of moral predicates like “morally obligatory” and “morally permissible.” A moral theory must make sense of our use of moral judgments and our understanding of what the concepts involved in those judgments mean. For example, by “morally obligatory” we generally mean that there are certain demands made on us

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<sup>8</sup> See Hempel’s *Aspects of Scientific Explanation*, Free Press, p. 352, (1965). I’m using this as a counterexample against Hempel’s view. Yet, Hempel is perhaps the first to use the pendulum example for his DN-Model of explanation.

Also, we shouldn’t understand this necessary co-extensiveness as metaphysical. At least, I don’t think Southwood is taking it this way. For instance, the laws of the universe could have been different and thus the physical quantities present in these examples could have been different. Contrast this with the necessary co-extensiveness of the number 2 and the property of evenness. It seems that there is no world in which the number 2 can be odd. This is metaphysically impossible.  
<sup>9</sup> Southwood at one point considers an objection that there is an infinite amount of fundamental facts. Once we dig deeper, could there always be a further fact to that explains this deeper fact. I won’t consider this objection or its implication on grounding. However, this is a notable problem in the grounding literature. See Trogon (2013) where he has a brief discussion about this.

whether we feel like performing the action or not. This will also include explaining notions of normativity, objectivity, and universality. For instance, consider what it means for morality to be *categorical* and *binding*. The categorical nature of morality means that it is not dependent on our desires or interests while the bindingness of morality means that we can't just disregard the demands that it makes on us.<sup>10</sup>

Morality too has an extensional character. This should make sense of the way in which we apply our moral judgments. That is, how we properly bring them under the right category. Southwood breaks up the extensional character of morality into two parts, the partiality and impartiality of human persons. Take the partiality of morality. There are several acts that we would consider good for us to do even if there were other more altruistic acts we could perform. For example, it seems permissible that we could enjoy watching a game of basketball instead of helping out at the food shelter given other considerations. It takes into consideration our individual plans and pursuits. Next, take the impartiality of morality. These are the kinds of acts that we should perform because people ought to be treated a certain way despite status, ability, or power. Any theory that can address the intensional and extensional character of morality meets the *moral accuracy criterion*.<sup>11</sup> For the remainder of the thesis, I leave aside questions about this criterion. I am only interested in the second criterion.

The second criterion is the *explanatory adequacy criterion*. A moral theory can't just get the meaning of our moral terms right in relation to the character of the moral facts. It must also explain the moral facts. Southwood lays out five ways a theory can be explanatorily adequate. For a moral theory to be explanatorily adequate it must not be explanatory backwards, explanatorily circular,

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<sup>10</sup> Southwood, p. 15, (2010).

<sup>11</sup> p. 12, (2010).

explanatorily superseded, explanatorily epiphenomenal, and explanatorily non-fundamental.<sup>12</sup> I'm concerned with explanatory circularity and non-fundamentality.

For example, consider a circularity objection to a reason based account of contractualism:

Contractualism says x is wrong if and only if x is forbidden by principles no-one can reasonably reject. Anyone can reasonably reject a principle on the grounds that it permits actions that are wrong. So a principle that no-one can reasonably reject is a principle that permits no actions that are wrong. If we don't already know which actions are wrong, then we cannot use the contractualist apparatus. But if we do already know which actions are wrong, then we don't need to use it.<sup>13</sup>

This account is charged with being circular because it looks like the only way for someone to know what is wrong is to be able to reasonably reject principles that forbid that action.<sup>14</sup> Yet, this requires presupposing acts which we already knew were wrong.

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<sup>12</sup> pp. 20-22, (2010).

<sup>13</sup> Ashford and Mulgan, (2012). This is really Scanlon's account but I use it for illustrative purposes.

<sup>14</sup> Notice there are similarities with something being explanatorily backwards. One might say that what comes first are the reasons and these explain what is wrong rather than intrinsic features of some action that explain why something is wrong. This account is like Thomas Scanlon's account. Some have accused his account of being explanatorily backwards. So, it is natural to see why it might be considered explanatorily circular.

To see the distinction consider that sometimes explanations that are backwards are also circular. For instance, in the case of one interpretation of Divine Command Theory it would be backwards to explain God's commanding x in terms of the rightness of x. Yet, on a different reading of Divine Command Theory one might accuse the Divine Command Theorist of begging the question. What is it exactly that explains the rightness of x if it isn't some standard external to God? Perhaps it is God's perfectly good nature. But isn't that assuming that we can understand what "good" means here and therefore assuming evaluative features from the outset? Isn't that a form of circularity, one might question? Although the Divine Command Theorist might have a good response to this, I use it only as an illustration for how something could be construed as being backwards and circular.

However, this is not always the case. Something could be backwards and not circular or circular and not backwards. It might be backwards to explain the cause of something in terms of its effect on certain accounts of causation. For instance, on Hume's theory of causation there had to be temporal priority: A had to come before B if A caused B. Here, I have to understand the effect of something in terms of its cause. However, in cases of Inference to the Best Explanation, I have to explain the cause in terms of the effect: the best explanation for the effect is the purported cause or initial hypothesis I began with. I could not get this effect without the purported cause. So we have a case here where an explanation could be backwards but it clearly is not circular.

What about something being circular but not explanatorily backwards? William Alston has argued that built into perception is an epistemic circularity. We can't use perception without relying on it. However, this is surely not explanatorily backwards. If this is right, then perception has to

Further, a theory of morality must include a fundamental explanation. It must hit explanatory rock bottom. For example, consider the divine command theorist who takes the side that the commands are good because God's nature is good and anything he commands will be good. What the divine command theorist is saying is that God's nature is the fundamental explanation of what counts as good.<sup>15</sup>

Or consider another example that might help illustrate the point. This is one that Southwood does not mention. Gideon Rosen argues that the dispute between the legal positivists and the antipositivists should be understood as a debate about grounding or about what is fundamental.<sup>16</sup> The legal positivists think that the legal facts supervene on the social facts while the antipositivists think the legal facts supervene on the social facts plus the moral facts. For the legal positivists, there is no difference in the legal facts without a difference in the social facts. For the antipositivist, there is no difference in the legal facts without a difference in the social and moral facts. However, the antipositivists can agree with the legal positivists as far as the supervenience claim goes. For there could be two worlds alike in all social respects and this need not be inconsistent with agreeing in all moral respects.<sup>17</sup> We could imagine two worlds alike in all habits, actions, and behaviors and the social facts and moral facts agree.<sup>18</sup> However, this says nothing about what makes the legal facts the way they are. For the antipositivist clearly thinks that the legal facts in some way depend on the moral facts plus the social facts while the positivist denies this. What is fundamental is what *depends* on what. The debate should be understood as what is it that *makes* the legal facts the way they are.

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come first in order to gain knowledge about the world. Even the very idea that we have perception needs to rely on perception. So it is circular but not backwards.

<sup>15</sup> There may be questions here about how we can understand God's goodness on this type of account. I'm not concerned with that type of discussion here.

<sup>16</sup> (2009).

<sup>17</sup> Ibid. p. 13

<sup>18</sup> Ibid. p. 13.

The implication I draw from Rosen's example is that there is a bottom level explanation, an explanatory stopping point that determines the non-fundamental legal facts.<sup>19</sup>

Now, any moral theory that fails to adequately capture morality's intensional and extensional character while also being explanatorily inadequate has not explained morality's foundations. The upshot is that any theory that does fail to present at least one of these features will be seen as explanatorily inadequate. If this is correct, then one way to rule out a theory is to show that it fails to meet one of these.

Indeed, that is Southwood's aim of the book. He first dispatches with Gauthier's version of Hobbesian Contractualism on the grounds that it fails to meet the moral accuracy criterion. Then, he demonstrates that Scanlon's Kantian Contractualism fails to meet the explanatory adequacy criterion. Southwood will argue that no current version of Contractualism gets morality right and does so in the right way. The intensional and extensional character should get morality right. But contractualism must also get morality right in the right way. It must adequately explain morality. According to Southwood, Hobbesian Contractualism gets "morality wrong in the right way."<sup>20</sup> It fails the moral accuracy criterion but may satisfy the moral adequacy criterion. And Kantian Contractualism may get "morality right in the wrong way."<sup>21</sup> It may satisfy the moral accuracy criterion but fail the moral adequacy criterion.<sup>22</sup>

## 2 Two Contractualist Accounts

### 2.1 Scanlon's Kantian Contractualism

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<sup>19</sup> However, Rosen is fine with infinitism within the explanation. That is, there is no real stopping point even though it can be said that one fact is explained in terms of a further fact. There is no fundamental level in this sense even though Rosen takes some facts to be fundamental. I don't agree with Rosen but won't discuss that here.

<sup>20</sup> p. 52, (2010).

<sup>21</sup> Ibid.

<sup>22</sup> Of course, Southwood takes it for granted that Hobbesian Contractualism is explanatorily adequate and Kantian Contractualism is morally accurate. He sets those worries aside that question these assumptions. p. 52, (2010).

Scanlon describes his account as one where an act is deemed morally impermissible because a “...performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed unforced general agreement.”<sup>23</sup> So, for Scanlon, a course of action is reasonable as long as it is best supported by the objective reasons that are relevant to that action.<sup>24</sup> These reasons are associated with the principles which no one can reasonably object. Scanlon also assumes a substantive conception of reason. This involves showing how the authority of the moral requirements stem from subjects justifying their reasons to others which includes the consideration of our relations to others and features of our own lives.<sup>25</sup>

Scanlon’s account is only Kantian in so far as it seeks to find objective principles each person can agree with from a common standpoint where each is free and equal and shares mutual concern for others. For the Kantian, it is paramount to his account that one transcend the personal and partial standpoint and consider other people’s reasons, not just his own. The consideration of other’s reasons has much “intrinsic normative significance” as Southwood puts it.<sup>26</sup> For example, if one person’s personal reasons to accept a principle outweigh my personal reasons to reject it, then I should not reasonably reject the other’s principle. I must show consideration and concern for the other person. It is not Kantian in that it does not rely on anything like the categorical imperative to gain acceptance of moral principles.

The objective reasons must also have some constraints. For example, they must be personal and non-aggregative reasons. Personal reasons are the reasons having to do with the effect that rejecting or accepting principles might have on other contractors. Impersonal reasons are based on impersonal values. These are those that have to do with, for example, reasons why it is wrong to

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<sup>23</sup> p. 153, (1998).

<sup>24</sup> p. 54, (2010).

<sup>25</sup> p. 6, (1998).

<sup>26</sup> p. 59, (2010).

pollute a national park or litter on the side of the road. Scanlon thinks that these kinds of reasons don't reflect concern for other contractors and belong to a wider scope of morality.

Non-aggregative reasons are those that are based on individuals' reasons and not based on an aggregative group's reasons. If a larger group of people would be made marginally better off, this is not a reason to reject a principle. Reasonably rejecting a principle is based on an individual's reason, not the sum of a group's particular reasons for some principle. This is what differs Scanlon's account from a utilitarian based ethic.

Scanlon analyzes his account in terms of justifying reasons. For him, the reason I take some action to be wrong is because "I could not justify [this action] to others on grounds I could expect them to accept."<sup>27</sup> Fundamental to his account is the feature of justification to others and reasonable rejection. Justifying reasons are not what reason one has in hand to justify a claim. That is, how one came to have a particular belief. These are one's *operative* reasons as Scanlon calls them. Scanlon is not concerned with these kinds of reasons. Rather, he is concerned with reasons for believing some proposition P, not for the *given* reason one has to believe P.<sup>28</sup> The difference is that a reason for P asks what it is that grounds P or explains P while operative reasons asks what given reason a subject took to believe that P.

Justifying reasons have a motivational component. Indeed, to justify a reason to another seems to imply that one wants to or is motivated to provide reasons that others could not reasonably reject. Scanlon's view is a substantive account of reasons whereby individuals justify reasons to others on grounds to which relevant others could not reasonably reject. The grounds are specific principles like promoting the value of friendship. Here is how Scanlon puts it:

The contractualist ideal of acting in accord with principles that others (similarly motivated) could not reasonably reject is meant to characterize the relation with others the value and appeal of which underlies our reasons to do what morality

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<sup>27</sup> Ibid. p. 4.

<sup>28</sup> p. 19, (1998).

requires...Standing in this relation to others is appealing in itself—worth seeking for its own sake. A moral person will refrain from lying to others, cheating, harming, or exploiting them, ‘because these things are wrong’. But for such a person these requirements are not just formal imperatives; they are aspects of the positive value of a way of living with others.<sup>29</sup>

According to Scanlon, we should be motivated to live positively with others. Part of the reason for this is that Scanlon thinks that promoting something like unity with other individuals is a worthwhile pursuit. To justify one’s reasons to another on grounds that they could not reasonably reject is like the idea of promoting unity among the contractualist subjects.<sup>30</sup>

Scanlon’s view is contractualist in so far as it demands willingness on the parties to justify their actions to others and reach agreement on the reasonableness of these actions. As Scanlon puts it, “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 is a central element in the social contract tradition going back to Rousseau.”<sup>31</sup> This emphasizes an important point for Kantian Contractualism. There seems to be a *conditional concern* for others.<sup>32</sup> If others are aiming at finding principles that no one could reasonably reject, as in the case of promoting unity, then there seems to be a concern for others. This is how Scanlon characterizes the requirements of *what we owe to each other* (hence, the title of his book). The value of recognizing concern for others or, for example, recognizing the value of friendship is to recognize the reasons we have “for treating others in ways that accord with principles that they could not reasonably reject.”<sup>33</sup>

How might one go about rejecting or accepting reasons in order to reach an agreement among the contractors? We know there has to be a mutual concern for others and a common standpoint from which to weigh reasons. One needs to transcend their personal standpoint and

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<sup>29</sup> Ibid. p. 162.

<sup>30</sup> Scanlon takes this idea of “unity” from Mill who wrote about the value of “the social feelings of mankind; the desire to be in unity with our fellow creatures.” See p. 154, (1998).

<sup>31</sup> Ibid. p. 5.

<sup>32</sup> This is Southwood’s terminology. See p. 57, (2010).

<sup>33</sup> p. 8, (1998).



incorporate the standpoints of others. But how do we select these reasons? To use an illustration from Southwood, imagine a contractor who wants to become wealthy by killing off one's wealthy relative. We would surely not reject any principle that made it impermissible to kill one's relative. The wealthy relative's reasons surely outweigh those of the contractor. It would be more reasonable to accept the wealthy relative's reason to remain alive and reasonable to reject the contractor's reason to allow him to kill his relative.<sup>34</sup> Here, one seems to take on the standpoint of another (the wealthy relative) and show mutual concern for that individual by reasonably rejecting a principle that made it permissible to kill one's wealthy relative.

Thus far, I have discussed KC. In the next section, I discuss DC and move onto the criticism of KC. My aim is to contrast these two accounts and show that DC shares the same explanatory deficiencies it accuses of KC.

## 2.2 Deliberative Contractualism

Deliberative Contractualism differs from Kantian Contractualism in the sense that the "the common code we are to live by," is the outcome of the agreements made in the deliberative process *if we were perfectly deliberatively rational*.<sup>35</sup> Morality, then, is not based on a substantive conception of reason where principles are either accepted or rejected based upon their reasonableness or justifiability to others. Morality is rather based on a deliberative conception of reason.

Deliberative rationality requires three key ingredients. First, prior to any decision made from the outcome of a deliberative process, deliberators must participate in the deliberative process with other deliberators. Second, deliberators must respect the deliberative norms. And third, the decision made regarding what common code to live by must be based on the process of deliberation.

To achieve these requirements it will be helpful to understand that deliberation is an *interpersonal* enterprise. Deliberators must reflect upon one's own interests, reasons, and desires for

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<sup>34</sup> p. 59-60, (2010).

<sup>35</sup> Ibid. p. 88.

what common code all could live by, but also must reflect on those with other deliberators. It is not intrapersonal but interpersonal.

According to Southwood, the interpersonal enterprise requires three essential aspects to deliberation. First, is the *communicative aspect*. In order to deliberate properly, it requires at minimum that each deliberator be free and open with an exchange of information. They must communicate in such a way that they achieve their desired goals. Southwood asks us to imagine a husband and wife deliberating over whether to see a film festival or go to the bowling alley on Saturday.<sup>36</sup> He points out that to reach a decision this could not happen without each communicating in such a way that they are being open with each other. They need to share with each other what they want to do.

Second, is the *discursive aspect*. This allows for the persuasion and argumentation of deliberators to come to a mutual consensus. Each deliberator attempts to persuade relevant others while being open to being persuaded themselves.<sup>37</sup> And third, there is a *reflective aspect*. This encompasses the reasons one has for and against a particular action. It is an internal process whereby one weighs such reasons for the action against one's own beliefs, desires, hopes and fears, goals and commitments.<sup>38</sup> It is a self-reflective process of self-transformation the goal of which is to have internal consistency to one's beliefs and reasons for an action. According to Southwood, just being reflective about such matters is not enough to be counted as engaging in deliberation. For one could be reflective but be neither communicative nor discursive. Yet, it is necessary for deliberation. For one to communicate with other deliberators requires being open to reexamine what one actually believes and reasons about such matters. Also, to be persuasive, one needs to weigh reasons for and against a particular action. This would require distilling these reasons with other deliberators.

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<sup>36</sup> Ibid. p. 90.

<sup>37</sup> It is worth mentioning that Southwood does not think it is a requirement that they must come to a consensus. See p. 91, fn. 11, (2010). You might wonder then whether deliberators will every come to a consensus given the vast majority of disagreement on the part of the human counterparts of the deliberators. This is a question Southwood never addresses in his book.

<sup>38</sup> See Goodin, (2000).

Deliberation itself has norms as part of the deliberative process. These norms are formal requirements of deliberation. As Southwood puts it, “They make demands on the form deliberation must take, not on the content or substance of its output.”<sup>39</sup> However, deliberative norms are different than norms such as procedural prudential or procedural moral norms. For, clearly individuals use such norms to also deliberate. But that is not what Southwood means by deliberation here. Rather, Southwood takes deliberation to be a *kind* of norm. The norm is internal to what deliberation is.

For something to be internal is for it to be essential to what that thing is about. So, for deliberation there are certain internal “aims” to what deliberation is. Deliberation, then, has normative aims that are internal to what deliberation is. Southwood doesn’t use the term “aim” but it is clear this is what he means since he compares his view to *epistemic norms*. And these are often referred to as “aims.”<sup>40</sup>

For example, there are certain epistemic norms that aim at what is true and what is based on evidence. One is not properly operating within these norms if their beliefs are not aiming at what is true or what the evidence shows. These kinds of norms are “role norms” that tell what it means to properly fulfill that role.<sup>41</sup> To use an example of Southwood’s, consider what it means to be a good teacher. It is to fulfill certain norms such as, “You ought to explain things clearly.”<sup>42</sup> Deliberators, therefore, *deliberate properly* when they fulfill the three above aspects of deliberation: communicative, discursive, and reflective. To deliberate properly, then, just is to fulfill the *communicative norms*,

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<sup>39</sup> p. 92, (2010).

<sup>40</sup> See Ralph Wedgwood’s “The Aim of Belief,” (2002).

<sup>41</sup> Here, I wonder if Southwood’s analogy between deliberative norms and epistemic norms sticks. I seem to have an intuitive grip on what it means, for example, when someone says, “The aim of belief is to believe what is true.” It doesn’t seem like most epistemologists think they are doing epistemology when they don’t aim at truth. Yet, deliberation is too wide of a concept to have the same structure as epistemic considerations. For instance, I surely could communicate, reason with others, and be reflective but appear to not to be aiming at anything. Thus, I’m deliberating but not even applying the norms of deliberation. I’m not even playing the “game” of deliberation.

<sup>42</sup> p. 92, (2010).

*discursive norms, and reflective norms* of deliberation. These are all internal to what it means to be a deliberator. One fulfills these norms when one aims at communicating properly, persuading properly, and reflecting properly. Southwood does not think these are the only norms of deliberation but clearly thinks these are the most important ones.

Let's take these norms in turn. Communicative norms apply to both communicators and communicatees. The communicators for instance are subject to the norms of sincerity and effective transmission. The former requires communicators to speak the truth about what they believe while the latter requires communicators to have good intentions "to make themselves understood" when communicating the truth about what they believe.<sup>43</sup> The communicatees are subject to such norms as openness and effective reception, which require them to be open to communication and to make a genuine and honest attempt to understand what communicators are saying. They are also subject to the norm of communicative rectification, which require communicatees to seek out communicators when such communicators may be unable or unwilling (but not terminally so) to communicate.<sup>44</sup>

Discursive norms have to do with fulfilling the persuasive requirements of deliberation. Thus, a norm of persuasion would require that deliberators seek to convince other deliberators of their views without recourse to flattery, threats, or bribery.<sup>45</sup> Similar to the norm of persuasion, a norm of reciprocity would require deliberators to present information that is normatively relevant to

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<sup>43</sup> Ibid. p. 92. As Southwood points out, these do not amount to the same thing. One could sincerely communicate a falsehood as long as one believed it to be the truth. But of course, deliberators may sincerely believe many falsehoods and communicate them. That is the point of deliberation. To have a back and forth dialogue to get at common principles each could adopt as a moral code to live by. The point, then, seems rather trivial. A better example is when a communicator speaks the truth and it is the truth but the communicator has illicit motives. For example, a parent might tell a child that if she picks up her toys off the floor, she will be rewarded with a cookie. Yet, the parent's real reason is impure. The parent wants the house to look good when company comes over. She spoke the truth in the sense that the conditional was true but her motives were impure.

<sup>44</sup> Ibid. p. 94.

<sup>45</sup> Ibid. p. 95.

both parties. And finally, the norm of adaptiveness, opposite that of persuasion, requires that deliberators be open to being persuaded.

Lastly, there are reflective norms. These come from the reflective aspect of deliberation. There were three parts to the reflective aspect: self-exploratory, self-interrogative, and self-transformation. For one to engage in self-exploration requires a norm of internal exploration while to engage in self-interrogation requires one to fulfill the norm of internal coherence. The former requires deliberators to settle on what they actually believe about the object of deliberation and bring the relevant considerations to the deliberative process. The latter requires deliberators to remove those inconsistent psychological attitudes and bring consistent ones that are relevant to deliberation.<sup>46</sup> Lastly, self-transformation recommends norms of internal persuasion and internal adaptability. For Southwood, these are comparable to the previous norms of persuasion.

Let's take stock. For something to count as being deliberatively rational one must first base her decision on the outcome of deliberation; second, relevant others who are affected by the deliberative process must engage in the process before any outcome is reached; and third, deliberators must satisfy the norms of communication, discursiveness, and reflection.

### **2.2.1 Some More Important Features of DC**

There are a few more components to DC that we need to understand. We need to make sense of what goes into the deliberative process and what comes out of it. Should we just factor in our interests, desires, and beliefs or do other attitudes go into the process? And what kind of common code should we expect to get out of the process? Lastly, how does DC give us normative reasons? It isn't an instrumental conception of reason nor is it substantive like Scanlon's. So, where do the agreements get their normative binding force?

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<sup>46</sup> Ibid.

Since DC is procedural, there are two important features of contractual theories that make it what it is. First, is the process itself and second is the outcome of the process. Southwood calls moral theories like these two-level theories. The first level is the process and the second level is the outcome of that process. This is similar to rule-consequentialism that sees subjects adopt a set of rules that have the best consequences for the collective good of all.

Two level theories will have inputs and outputs. The inputs are the relevant beliefs, desires, or interests of the subjects while the outputs are the principles or rules the subjects agree to live by. In the case of DC, the inputs are the range of attitudes such as desires, beliefs, interests, and even normative judgments.<sup>47</sup> For DC anything goes so to speak.

The second feature is the output, which is the common code to live by. As Southwood puts it, this means "...a relatively comprehensive set of common principles, permitting, forbidding, and requiring certain conduct in certain circumstances."<sup>48</sup> One question remains as to whether DC should say that subjects should *comply* with these principles or rather *accept* them. Compliance involves merely acting in accord with principles such as legal rules. Acceptance involves a disposition to comply and encourage others to do so. Brad Hooker writes about acceptance:

Acceptance of rules also involves the disposition to encourage others to comply with them, dispositions to form favourable attitudes toward others who comply with them, dispositions to feel guilt or shame when one breaks them and to resent others' breaking them, all of which dispositions and attitudes being supported by a belief that they are justified.<sup>49</sup>

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<sup>47</sup> Southwood thinks that moral judgments can be part of the inputs of deliberation. Yet, in order to avoid circularity, Southwood assumes that deliberators do not *know* they are tasked with the prospects of accounting for morality's foundations. And further DC is an account of morality's foundations not about *how* individuals are supposed to reason. This may not matter much in the end since he thinks these attitudes will not play much of a role in the process. See p. 100. This response strikes me as odd. How do perfectly deliberatively rational agents not *know* they are coming up with a common code to live by? That would seem to undermine what perfectly rational means.

<sup>48</sup> Ibid. p. 102.

<sup>49</sup> p. 76, (2000).

Southwood favors this latter view. He does not give much reason why. I assume the reason is that the deliberative process does not suggest compliance. Deliberators are engaging in a back and forth process with specific norms in place. Merely complying would undermine the idea that such a kind of process even occurs. It would be like deliberating with someone about what constitutes friendship and when you arrive a specific principles, you then say to that person she must comply with them. It doesn't make sense to say she would deliberate only to later comply. Rather, she accepts and may even internalize such principles and adopt the disposition to encourage others to do so. A further reason why Southwood may adopt acceptance is he endorses the idea that deliberators hold each other accountable for the responsibility of fulfilling the common code. Since there is no external authority like a Hobbesian sovereign, there needs to be something that ensures enforcement. If I hold you accountable, that implies you have already accepted a principle not that you have complied with one. People don't generally want to be held accountable when they have to comply with, for example, jury duty.

Deliberative rationality was said to be a kind of procedural process. Yet, it is not just any procedural process. Deliberative rationality involves occupying specific "role norms" that constitute what deliberation is. But this is quite different than other accounts of rationality. This is an important point since DC needs to account for normative reasons for acting. These are the kinds of reasons that are categorical and binding for each deliberator.

Take an instrumentalism conception of rationality, for example. If it were correct, the reasons for the agreements individuals reach as part of the deliberative contractual process would be based on their instrumental desires. Southwood thinks this is implausible because such reasons would not be universally accepted. This becomes a problem since part of accounting for morality's foundations is to explain the intensional character of morality like the normative character of morality.

Further, Southwood thinks that instrumentalism can't give us the kind of normative reasons for acting in accordance with the deliberative account of contractualism. For, on DC, it is supposed to explain key aspects of morality's normativity like its intensional character. One of these was that morality is categorical and binding. Instrumentalism clearly can't explain these since they are not supposed to depend on our interests or desires. Thus, instrumentalism fails to give us normative reasons for acting.

Next, consider a substantivism conception of rationality. This is the idea that contractors have substantive reasons for performing certain acts towards other contractors. If it were correct, the reasons for the agreements individuals reach as part of the deliberative contractual process would be based on some intrinsic value to be promoted. For instance, Scanlon's Kantian Contractualism requires substantive assumptions about what Scanlon calls the "mutual recognition" of other contractors. Recall what Scanlon said:

The contractualist ideal of acting in accord with principles that others (similarly motivated) could not reasonably reject is meant to characterize the relation with others the value and appeal of which underlies our reasons to do what morality requires...Standing in this relation to others is appealing in itself—worth seeking for its own sake. A moral person will refrain from lying to others, cheating, harming, or exploiting them, 'because these things are wrong'. But for such a person these requirements are not just formal imperatives; they are aspects of the positive value of a way of living with others.<sup>50</sup>

The formal requirements are more filled out, and unlike instrumentalism, substantivism could account for the normative reasons to act in accordance with deliberative contractualism. For instance, it could give an account of the categorical and binding nature of morality. It could explain why everyone would not reasonably reject certain principles: they are worth promoting for their own sake. This should be motivation enough to act towards others.

However, Southwood argues that a substantive view of the formal requirements can't explain the expectations *non-agents* should have toward *agents*. As I understand Southwood here, an

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<sup>50</sup> p. 162, (1998).



agent is one who recognizes the value to be promoted such as not lying or cheating and so recognizes these things are wrong. As such, the agent recognizes the reasons to act toward other contractors. These reasons are the ones which no other contractor could reasonably reject. I take the non-agents to be those who have not recognized the reasons for acting with others contractors. This is so because Southwood postulates that contractors don't stand in the relation of mutual recognition until "one acts in accordance with the relevant contractualist formula."<sup>51</sup> Southwood seems to take this to mean that contractors have to recognize the reasons to act and decide whether to so act. He says, "But to say that others are entitled to expect agents who have not yet made up their mind whether or not to do what is constitutive of mutual recognition (i.e. to act in accordance with the relevant contractualist formula) is surely bizarre."<sup>52</sup> Until one contractor makes the first move so to speak there isn't any relation of mutual recognition. It isn't contractual and therefore not mutual. In that case, why should non-agents have any *legitimate expectation* for agents to act in certain ways? They shouldn't. Southwood's point is that if agents fail to meet such an expectation it will have to be something that agents violate which is independent of the contractualist account itself. The expectation will have to be prior to any kind contractualist formula since in this case there is no contractualist agreement in place until an agent decides to act towards another contractor. Thus, this kind of formal requirement would not fit a deliberative account since agents expectations of how other deliberative agents act are not independent of the contractualist view itself.<sup>53</sup>

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<sup>51</sup> p. 123, (2010).

<sup>52</sup> Ibid.

<sup>53</sup> If I read Southwood correct here, I don't think he gets Scanlon's account right. I won't discuss the issue much here. I will say that I don't think Scanlon's view implies that non-agents need to have reasons to expect agents to act. Rather, I think that Scanlon's view implies that non-agents when they recognize the principles they could not reasonably reject will then see how agents can act accordingly and see the reasons that agents do act. Just because they have not recognized such principles is no reason to suggest they should expect agents to act a certain way.

The view that is supposed to give deliberators normative reasons for acting, and the one Southwood adopts, is called *relational formalism*. It is relational because it meets the interpersonal demand. Deliberators must engage with other deliberators in communication, persuasion, and reflection. Deliberation requires getting outside oneself and looking at other points of view.

Southwood writes:

Adopting the interpersonal point of view, like adopting the impersonal point of view, involves, as it were, an ascent from the personal point of view... The interpersonal point of view necessitates an expansion of one's private universe through openness and receptivity to the points of view of others and a willingness to engage discursively and reflectively with them.<sup>54</sup>

However, this differs from the impersonal point of view and implies an important feature of DC:

Unlike the situation with the impersonal point of view however, in ascending to the interpersonal point of view one does not ascend to the position of a detached spectator or observer. Rather, one ascends to the position of a participant within a process in which one exercises and is subject to exercise of a special kind of shared normative power. In adopting the interpersonal point of view one is simultaneously co-legislator and co-subject.<sup>55</sup>

How do we get normative reasons? From simply being a deliberator. It is in virtue of the capacity to deliberate (if we were perfectly rational) that such a common normative authority lies. Southwood is adopting Stephen Darwall's interpersonal standpoint, which Darwall calls the *second-person* standpoint. Southwood writes about this standpoint that, "What is special is its legislative dimension: it involves being in a position to render such claims valid by exercising a shared normative power to establish a common code to live by."<sup>56</sup> Just by being a deliberative agent with the capacity to deliberate and make demands on other deliberators, a shared normative power emerges. The idea behind the fact that when deliberators come together some kind of normative relation emerges comes to us from Darwall. However, I don't think Darwall would be comfortable with saying it

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<sup>54</sup> Ibid. p. 125.

<sup>55</sup> Ibid. p. 125-126.

<sup>56</sup> Ibid.

“emerges” or even more mysterious “emanates” as Southwood puts it at one point.<sup>57</sup> Darwall’s point is that the fact that we do enter into this second-person standpoint and make demands on others seems to assume that we already have this kind of shared normative authority. Whether this means it emerges for Darwall is a different matter.

But what kind of relation is it? For instance, I might stand in a relationship of friendship to others. But this is based on a shared history or sympathy I might have toward the friend.<sup>58</sup> For Southwood, being a co-deliberator does not require such features for the relation to obtain. Nor is this relation based on a shared creed or worldview or even religious affiliation, some other features Southwood mentions.<sup>59</sup> Rather, the relation is built upon a relation of mutual accountability and shared authority.<sup>60</sup> This means that what deliberators share in common is their standing in the deliberative process.

Southwood asks us to compare this to democratic citizens, who share no common history or worldview but do share a relationship of citizenship in virtue of being a citizen. They do so in virtue of shared authority each citizen has to hold each other accountable to the law, which is based on the common moral framework all have agreed to live by. This is like deliberative agents who in virtue of being deliberators have a shared authority to hold each deliberator accountable to the common code they have agreed to live by. Thus, Southwood likens deliberative agents to democratic citizens and dubs deliberators *deliberative citizens*. To be a deliberative citizen is to share in a common authority and mutual accountability with other fellow deliberators.

However, one might question how this gives us normative reasons. It doesn’t seem to follow from the fact that when we achieve interpersonal engagement we have a shared *normative* power. We

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<sup>57</sup> Ibid. p. 30.

<sup>58</sup> Ibid. p. 127.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

might have a shared power but it doesn't seem to follow that it is a normative one. So, we shouldn't get normative reasons for acting.

According to Southwood, DC gives us normative reasons because these are *reasons of deliberation*. These are reasons that express what it is to be a deliberator. To be a deliberator means holding others accountable to the common code deliberators have agreed to live by if they were perfectly deliberatively rational. This is a reason of deliberation because it tells us what it is to be a good or proper deliberator.

Recall, that deliberation has normative aims that are internal to what deliberation is. These normative aims give us normative reasons. Southwood gives the example of parenthood. There are *reasons to be parents*. These might be instrumental reasons or substantive reasons. But this is quite different than *reasons of parenthood*. These are reasons that express what it means to be a parent. These are an expression of what was termed early as "role norms." What it takes for one to fulfill the role of parenthood is for one to be a good parent or perform well as a parent. Good performance means one fulfills the norms internal to that role. Reasons of deliberation are those reasons that one fulfills simply in virtue of being a deliberator. Since deliberators are deliberative citizens like democratic citizens, Southwood explains that, "[I]t is in virtue of being a deliberative citizen we have reasons that are normative expressions of the relation of deliberative citizenship—reasons that express what it is to be a proper deliberative citizenship."<sup>61</sup> This is good performance of being a proper deliberative citizen.

I will save any criticisms I have of DC for the final section of this thesis. But one wonders whether deliberation is a flimsy kind of role-norm. It almost sounds like it is a catch-all term where one could stuff into it as many items as one wants. Furthermore, the idea that a relation emerges from sharing a capacity of deliberation with others is almost like the idea that intrinsic features of

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<sup>61</sup> Ibid. pp. 128-129.

pain emerge from arrangements of one's brain states. Emergentism of the mental is too much to handle for some philosophers of mind. I can't see why normative relations emerging from a suitable pattern of hypothetical deliberators would be any better.

### 3 Criticisms of Scanlon's Account

Southwood makes two arguments against Scanlon's account. First, Southwood argues that the substantive conception of reasonableness is explanatorily circular. This means that the argument includes within its premises the purported conclusion. It presupposes key aspects of morality from the outset. And second, Scanlon's view presupposes more fundamental normative considerations, so it is explanatorily non-fundamental.

Recall that explanatory adequacy has to do with explaining morality *itself*. This amounts to ensuring that any explanation of morality will not be circular, non-fundamental, epiphenomenal, superseded, or backwards. This is different than getting the shape of morality right or getting morality's intensional and extensional character right. For Southwood, any theory of morality will need to be both adequate and accurate. However, Southwood is only criticizing the explanatory adequacy of Kantian Contractualism at this point.

#### 3.1 The Explanatory Circularity Objection

The first objection argues that the substantive conception of reason within Kantian Contractualism can't be used to determine the content of morality without relying on moral considerations itself. In other words, the substantive conception of reason can't be used independently of moral considerations. Contractors must rely on moral content when considering those justifying reasons for principles that are for the general regulation of behavior.

To see this objection, recall that the kinds of reasons that are part of Scanlon's account need to be personal and non-aggregative. They need to be based on reasons of mutual concern for others and be based on an individual's reasons, not a group aggregate of reasons. Yet, Southwood maintains

that there is no way to decide against the relevant and non-relevant personal, non-aggregative reasons. Southwood gives an example of a cheap labor force that seeks to escape poverty and a CEO of a multinational corporation that seeks to keep labor costs down. The cheap labor force's reasons to escape poverty and lead autonomous lives seem to be relevant reasons while the CEO's economic reasons don't. However, on what basis can this decision be reached?

Using the Scanlon formula we could say that so long as the reasons are based on principles that others could not (similarly motivated) reject, they are relevant. But wouldn't the CEO think that his reasons are just as strong because of the great costs he would incur by not having a cheap labor force? Southwood thinks the only reason we think the CEO's reasons are irrelevant is that we are making a prior moral judgment. Southwood says, "It is our moral assessment of the situation that is guiding and providing the determinate content of our judgment about which reasons are relevant."<sup>62</sup>

Furthermore, according to Southwood, Scanlon also has trouble explaining how to *weigh up* those reasons that are relevant. Suppose Scanlon could account for determining the relevant from the irrelevant reasons. What about determining between relevant reasons? On Scanlon's view, this weighing up of reasons is based on the recognition of our human rational capacity to assess reasons. Scanlon doesn't think that we can give an account of all those reasons that make people's lives go well. We must select among those reasons. And the only way Scanlon thinks one can do this is to respect that value of humans. Scanlon writes that this requires,

...us to treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they, too, were seeking principles of mutual governance which other rational creatures could not reasonably reject. This responds to the problem of selecting among reasons in a way that recognizes our distinctive capacities as reason-assessing, self-governing creatures.<sup>63</sup>

This fits well with Scanlon's view that this particular value is worth pursuing for its own sake like the earlier example given of friendship. And it is the recognition of the reasons we have to not harm

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<sup>62</sup> Ibid. p. 63.

<sup>63</sup> p. 106, (1998).

human life but to protect it. Of course, there might be reasons for how someone wants their life to go such as in cases of euthanasia. Scanlon thinks we only have reason to protect a life in so far as that life wants to be protected.

Southwood's point, however, is that there isn't a way to determine which are the relevant reasons. Take the cheap labor force case. Southwood thinks that there are two competing relevant reasons that only moral considerations could decide. For example, either it is impermissible to disrupt the autonomy of those in dire poverty even if such an action is the only way to get them out of that situation *or* it is permissible to get them out of poverty even if this disrupts other's autonomy.<sup>64</sup> For Southwood, both are relevant reasons that meet Scanlon's reasonable rejectability criteria. Both are reasons that treat rational creatures according to principles that they could not reasonably reject. Yet, Southwood thinks that the only way to weigh up the relevant reasons is to appeal to prior moral considerations. This makes Scanlon's account explanatorily circular.

However, Scanlon is well aware of this kind of objection. He writes:

If we were to appeal to a prior notion of rightness to tell us which cases of conflict, then the contractualist framework would be unnecessary, since all the work would already have been done by this prior notion. It may seem, then, that when we apply the contractualist test we need to set aside any claims of rights or entitlement, or to focus on cases in which no such claims exist. This appears to mean that the relative strength of various generic reasons for and against a principle must be a function of the effects that that principle, or its absence, on the well being of people in various situations.<sup>65</sup>

Scanlon first emphasizes that such a thought is misleading. We will always be presupposing certain kinds of principles when evaluating the claims and rights of others. Evaluating certain principles requires a context in which to understand these principles. Such a context may require relying on other principles as well. For example, in trying to understand how we should aid in say famine relief in other countries, we might need to presuppose other kinds of principles like how best to go into another country and give aid. There have to be ways to respect the countries we go into before we

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<sup>64</sup> p. 64, (2010).

<sup>65</sup> Ibid. pp. 213-214.

provide any kind of aid. This presupposes certain kinds of principles within a context of providing aid. Scanlon's point is that any good contractualist view will be holistic. When considering certain principles others may remain "fixed" in the background.<sup>66</sup> It isn't true then that we must set aside prior claims of entitlements when examining whether we can reasonably reject principles.

Still further, the contractualist framework Scanlon endorses does require a way to reasonably reject certain relevant principles. One way to do this is to rely on the effects of the principles on the contractors. Scanlon thinks we should not take the idea of well-being to be a master value or single value in which every other value can be reduced. Values do figure into Scanlon's account but they are only part of the story.

It is generic reasons that figure prominently into his account. These are the kinds of reasons that are based on the common standpoints of others. Since reasonable rejectability requires justifying one's reasons to others, it can't take into consideration just particular aims of individual's circumstances. It must take into consideration a common standpoint available to all. It doesn't have to be from the standpoint of the majority. A minority group of people could be affected by principles that no one could reasonably reject. They just have to have general characteristics. So, for example, we would all reasonably reject principles that allowed others to cause bodily harm to people. This is because we can view such actions from other's standpoint in general terms. There might be competing principles that need to be considered like whether this should be a "general prohibition" on not causing bodily harm.<sup>67</sup> But this is all supposed to express that we can deliberate about these matters in general terms.

However, it is here where Scanlon thinks the charge of circularity comes out. The charge of circularity sees generic reasons as unfit for the task of giving the contractors *enough to go on* when making assessments of whether a principle is reasonably rejectable or not. The charge, according to

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<sup>66</sup> Ibid. p. 214.

<sup>67</sup> Ibid. pp. 204-205.



Scanlon, assumes that reasonableness turns on whether the principles in question will effect the well-being of the contractors. At bottom, Scanlon thinks that well-being is the basic component in which all other values are being measured. This, according to the objection, is circular. It presupposes what it is trying to explain.

Scanlon, then, sees two challenges here. The first has to do with whether a generic reason is enough to even reasonably reject a principle. Perhaps people reasonably reject principles because it has to do with something they “care about” in Scanlon’s words. If so, this might turn on the notion of well-being.<sup>68</sup> And second, there is a question of whether generic reasons carry any real moral weight when certain judgments are made if well-being is not assumed. The idea is that if reasonably rejecting a principle doesn’t have to do with well-being then it surely has to do with relying on other substantive moral considerations. Thus, the two challenges argue that there isn’t an independent way to make sense of reasonableness apart from moral considerations.

Scanlon objects to both charges of circularity in two ways. First, Scanlon argues that we have reason to object to principles simply because they are unfair. They arbitrarily favor one person over that of another. Scanlon thinks that it would be circular to say that the reason to reject these principles is because they are wrong. However, showing that they are unfair is not they same as saying showing that they are wrong. For Scanlon asks us to consider cases of cooperative schemes where the free-rider problem arises. This is where individuals benefit from public resources without paying for them. Or cooperative cases where everyone who does benefit from the scheme does not have contribute to it.<sup>69</sup> This would be a case where people vote even if others don’t. Scanlon supposes that this might show we are not concerned if there are principles that favor others. However, the very fact that they select some over others is reason enough to be concerned. For Scanlon thinks the kind of exemption that takes place is unfairly arbitrary. As Scanlon says, “If one

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<sup>68</sup> Ibid. p. 214.

<sup>69</sup> Ibid. p. 212.

of these principles is made binding, with no further reason for it, then one person's reason for wanting to be favored is given precedence over others' similar reasons without justification."<sup>70</sup> In this respect it is arbitrary because there is no further justification for the principle.

Southwood thinks this just pushes the problem back further. Surely, to reasonably reject principles because they are arbitrary is to rely on a moral notion of what it is to treat others in an arbitrary manner. On this point, I am in agreement with Southwood. Scanlon needs to give a more specifiable way to reasonably reject principles that are unfair that doesn't rely on previous moral notions like what it means to be "fair." I do think this point will become telling against Southwood's account because, as I will argue, DC does the very same thing. The norms of deliberation presuppose moral considerations. I don't think DC can make sense of the norms apart from these considerations.

The second way Scanlon responds to the circularity challenge is to argue that any version of contractualism that takes well-being as the "fundamental" value that is the sole basis for making assessments that a principle is reasonably rejectable must also be circular. Scanlon writes:

"Here my response is that, as I have already mentioned, the judgment that *any* consideration constitutes a relevant, possibly conclusive, reason for rejecting a principle in the context of contractualist moral thinking as I am describing it is a judgment with moral content... This is made even clearer once it is realized that well-being is not a well-defined notion that moral thinking can simply take over from the outlook of a single rational individual. On the contrary, as I argued in Chapter 3, from an individual's own view the boundaries of his or her own well-being are inevitably vague. So substantive moral choices are involved not only in giving the notion moral significance but also in defining its boundaries."<sup>71</sup>

The idea is that any evaluative judgment that is contractualist along the lines of Scanlon's will have at least some moral content. Scanlon further reinforces this point by showing that well-being is a vague concept. Since it is vague, one must make substantive claims about the boundaries of what is moral in order to make sense of the judgments one is making. This requires too relying on moral content.

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<sup>70</sup> Ibid. p. 212.

<sup>71</sup> Ibid. p. 217.

Southwood is not impressed with this response. Southwood thinks Scanlon ignores the distinction between “reasonableness” and “well-being.” For Southwood, well-being has clear content that is not parasitic on moral considerations. We would all think that an athlete is better off if they do not break a limb or have serious injury in competition. Southwood does not think this is true for the notion of reasonableness. He thinks that there isn’t an independent way to understand reasonableness that doesn’t rely on moral content. To make sense of reasonableness, one must rely on moral considerations.

It is quite possible that Southwood misses the point of Scanlon’s response.<sup>72</sup> As we have seen, Scanlon thinks that well-being is not a suitable concept to play the role of “master value” in terms of which all other values can be understood. This is why Scanlon says things like from an individual’s moral point of view “his or her well-being is inevitably vague.” Well-being itself involves relying on substantive moral considerations. Scanlon could just respond by saying we don’t have a good grip on well-being and in fact we have to rely on moral choices to define its boundaries. Any consideration constitutes a relevant reason, whether it has to do with well-being or reasonableness, for rejecting a principle “is a judgement with moral content.”

Whether Southwood’s objection is a good one remains to be seen. For I think DC has the same problem. The notion of deliberation does not make sense without relying on moral content. There isn’t an independent way to make sense of deliberation apart from appealing to moral considerations.

### **3.2 The Explanatory Non-Fundamental Objection**

The second objection Southwood levels against Scanlon has to do with presupposing more fundamental considerations. These considerations are contract-independent. They give independent

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<sup>72</sup> I am thankful to Dr. Warren Herold for bringing out this point.

reasons as to why a principle might be reasonably rejectable. Southwood emphasizes the explanatory point by quoting the philosopher Philip Pettit: “It does not take us to [explanatory] rock bottom.”<sup>73</sup>

We can use the Euthyphro Dilemma to help understand this explanatory point. This objection goes all the way back to Plato. In a discussion about the nature of piety, Socrates asks Euthyphro a very pointed question, “Is the pious being loved by the gods because it is pious, or is it pious because it is being loved by the gods?”<sup>74</sup> To which both later agree that the former is true. The gods have reason to love piety *because* it is pious. The dilemma has been raised in a variety of ways against a Divine Command Theory of Ethics. God, not the gods, is said to either be the basis of what is pious, or in more contemporary usage, what is right.

The objection often goes that this would make the rightness of the commands arbitrary or make the rightness of the commands dependent on an external standard or reason for why x is right. So, to take the first horn of the dilemma, for x to be right simply because God commands x to be right makes the rightness of x exceedingly arbitrary. There is no reason given for why x was commanded. However, to take the other horn, for God to command x because x is right, seems to rely on more fundamental considerations like the standards or reason for why x is right. There is an independent way for God to decide why x is right. This could be for good reasons God has or simply because there are standards upon which x is good. These reasons or standards are, however, independent of God and based on something external to him. They are more fundamental in the explanation of what makes something right.

Southwood criticizes Scanlon’s view as falling prey to the latter horn of this objection. The reasons why contractors would reasonably reject principles are based not on contract-dependent reasons but contract-independent reasons. They are based on more fundamental normative considerations that are not part of the Kantian version of the contractual process. If an important

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<sup>73</sup> p. 79 (2010). See Philip Pettit’s (2006) “Can Contractualism Ground Morality,” p. 77.

<sup>74</sup> *The Five Dialogues*, p. 12, (2002).

component of explaining morality's foundations is to give an adequate explanation of morality, Kantian Contractualism has not done this. It hasn't gotten to the rock bottom explanation.

For example, consider the tax one owes for not having health insurance. Although it was argued that it is a tax and not a penalty, a good case could be made that we are usually taxed on activity that we perform like working or investing. We are not generally taxed on those activities that we don't perform. Any principle that endorsed this could be reasonably rejected on the basis that it puts an undue burden on the individuals since it comes down to either paying the tax or purchasing health insurance, which may end up costing more for some.

However, what is determining which principles are valid in the above example? It is not the *contractual process* that is determining the correct principles. Rather, it is the *reasons* contractors have for rejecting such principles like putting an undue burden on some members of society. Southwood is in effect arguing that it is contract-independent reasons that determine which principles are valid. Like the example of the divine command theory where what is right is determined by an independent standard, what determines the correct valid principles for KC here are independent reasons. The "Contractualism" in Kantian Contractualism is not determining what principles are valid. The independent reasons the contractors have are.

On this count, I'm not sure I see the force of Southwood's objection. It seems like reasons are fundamental to any contractualist account, unless one adopts an interests based account like Hobbesian contractualism where our instrumental desires and interests are what compel us to make agreements. Southwood will argue that reasons are internal to his account and not contract-independent. I will argue against this below. But it is worth considering if it is a problem to any contractualist account that it relies on independent reasons to make sense of contractual type agreements. Scanlon actually thinks that we bottom out at reasons in our explanations. We can't

reduce or explain reasons in terms of something else. So, he wouldn't think this was a really worry anyway. It is just worth considering if this is a real concern for contractualist accounts.

That worry is not my concern here. However, if I can show that DC doesn't get to explanatory rock bottom but also relies on reasons that are more fundamental, then I think Southwood's objection to Scanlon is rather moot. This is what I shall do in the following section. After having argued that DC is explanatorily circular, I will also argue that it is explanatorily non-fundamental.

#### **4 Two Criticisms of the DC Account**

Thus far, I have given a brief description of explanatory adequacy and contrasted Scanlon and Southwood's accounts. Now, I offer two criticisms of the DC account. My criticisms will be tied to the claims of explanatory adequacy that DC makes of itself. I will argue that it fails to meet its own requirements because it is explanatorily circular and explanatorily non-fundamental. It fails in the same way it accuses Scanlon's account of failing.

##### **4.1 The Explanatory Circularity Objection**

The first objection is that DC is explanatorily circular. It presupposes moral considerations within the deliberative contractualist situation. More specifically, it presupposes moral features within the deliberative norms.

Recall that deliberation had internal aims. The internal aims of deliberation were to fulfill the communicative, discursive, and reflective norms. There were also a range of attitudes that go into the deliberative process that constitute the common code to live by. And the reason giving force of why we should obey the code comes from the shared mutual authority as co-deliberators. This was likened to the relationship that deliberative citizens share as co-legislators. Southwood, thus, thinks this is like a co-legislative procedure. We can recognize such normative claims as being valid by the

shared normative power we have as deliberators. This is just like deliberative citizens who can recognize normative claims as being valid because of the shared normative power qua citizen.

My argument will focus on the communicative norms. Southwood has a response for this kind of objection. So, I will first present my argument and then lay out his response. This will set us up to evaluate his response.

As far as the communicative norms go, deliberators must have a free and open exchange of information. For example, the norm of sincerity requires deliberators to “make a good-faith attempt to make themselves understood.”<sup>75</sup> Also, the norm of communicative relevance requires deliberators to communicate all and only the relevant facts to the given circumstances. As for communicatees, there is the norm of openness, norm of effective reception, and norm of communicative rectification. All of these require the communicatee to be open to communication, make a good-faith attempt to communicate, and communicate even when the other party is shows an unwillingness to do the same.

However, the practice of communication, as I will argue, presupposes moral considerations. This is just like the objection Southwood leveled against Scanlon. Southwood criticized Scanlon on the basis that “reasonableness” could not be understood apart from assuming moral considerations. Here, I will do likewise. I will examine the communicative norms of deliberation and argue that they can’t be understood apart from assuming moral considerations.<sup>76</sup>

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<sup>75</sup> p. 37 (2010).

<sup>76</sup> I also think the discursive norms presuppose moral considerations. For example, consider the norm of persuading others and being open to being persuaded. I think this requires an appropriate normative expectation of humility. This is the ability to recognize when one is wrong and take a corrective attitude. But it is also a willingness to modify one’s position and recognize that another’s viewpoint may be better. It requires risking adjusting one’s attitude and entrusting yourself to another. These are appropriate normative expectations. For if I try to persuade another and that individual sticks to her guns, I may sense a lack of willingness on her part to modify her position. This perhaps explains why we are reluctant to deliberate with those who are driven by pure ideology and blind vision. We tend to think they are arrogant and will not be open to persuasion.

Take the terms sincere, open, and good-faith. In the context of Southwood's discussion, he understands them to mean a kind of forthrightness and honest transaction of information. I repeat here the communicative example he gives of a husband and wife:

If a husband and wife are deliberating about whether to spend Saturday afternoon at the Slovenian film festival or the bowling alley, this can hardly happen without at least minimally free and frank communication about their respective preferences, their expectations about the respective choices and so on.<sup>77</sup>

My contention is that transactions like these can't happen without a minimal level of *trust*. This is the ability to express oneself to another and rely on them to respond. The party receiving the information must hear the other party and respond. It is not enough to hear the party and be negligent in the response. This would be failing to fulfill the norm of effective reception.

My argument will be that trust requires being able to be free and open with another deliberator. One can't be free and open if one does not trust the other deliberator. For to be free and open requires that being able to express what he or she cares about that is relevant to the deliberative process. And to express what one cares about turns on the notion of how the outcome of a particular deliberative transaction affects each deliberator. These are morally salient features that are part of the deliberative process.

To begin consider the exchange between the husband and wife. The exchange taking place is more than mere reliance on one another. We do, of course, tend to rely on those people we trust. But we might also rely on people we don't trust. Here is an interesting example from Annette Baier: "Kant's neighbors who counted on his regular habits as a clock...might be disappointed with him if he slept in one day, but not let down by him, let alone had their trust betrayed."<sup>78</sup> Surely if the husband in the above example was merely reliable in the information he shared, the wife would not feel disappointed if the husband told her he'd rather stay home and read a book. Rather, the wife

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<sup>77</sup> p. 90, (2010).

<sup>78</sup> p. 235, (1986).



would feel irked. She is expecting more than mere reliance. She wants to know what he genuinely wants to do, what he cares about doing. She trusts him to tell her what he would like to do. She does not rely on him to tell her what he would like to do. In interpersonal relationships there is more of an investment we make in people. There is more to trust than mere reliance on people. This goes for the practice of deliberation as well. To deliberate properly, then, it is a necessary condition that one must trust the other deliberator. It doesn't seem like it is a sufficient condition for deliberation.

Trusting someone isn't a guarantee they will return the favor in the deliberative process.

Moreover, distrust is not mere non-reliance. Katherine Hawley argues that distrust is often associated with actions such as remorse, apology, and requests for forgiveness while non-reliance is not.<sup>79</sup> I may not rely on my supervisor to check on me every so often but it would not be right to say I distrust my supervisor because of this. Think of the husband and wife again. The wife may not rely on her husband to come home every evening at a certain time. But if the husband consistently comes home late, she might have reason to distrust his whereabouts. She might even feel a sense of betrayal because of this.

Hawley thinks this implies that our reactive attitudes expressed when trust is broken or distrust is displayed reveal normative expectations of interpersonal relations. Trust and distrust have normative dimensions that govern the kinds of reactive attitudes (betrayal, forgiveness) that are appropriate when expectations do not get met.

I will argue that DC presupposes these kinds of normative dimensions and therefore presupposes moral considerations like, for example, being able to express what we care about. One has violated one's expectation of effective reception if when one deliberator expresses what she cares about, the other displays a lack of empathy and understanding. In deliberation, we expect the

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<sup>79</sup> p. 3, (2014). Although, Hawley thinks that what needs to be added to a trust based account is commitment. To turn reliance into trust one needs to make a commitment to do something. I ignore this distinction here since I think all I need to get my objection going is trust.

other deliberator to act a certain way not just because of the norms of deliberation in place but because of further morally salient features like trusting other deliberators and being able to share what we truly care about. This explains why we feel rejected when deliberators do not effectively receive the information we share. It would not explain why we feel this way if we merely relied on other deliberators to effectively receive the information we share.

To further reinforce this point, recall that Southwood does not endorse a contractualist view where contractors comply with the outcome of the agreements when reached. For example, Carolyn McLeod points out about compliance that “the *trustor* in a relationship can introduce the constraints by requiring that the trustee sign a contract, for example. The constraint imposed could be the primary motivation for being trustworthy.”<sup>80</sup> Rather, DC views the contractors *accepting* the outcome of the agreements when reached. In order to accept the outcome, it makes more sense to say that one must trust the other contractors to fulfill the norms effectively rather than relying on them to do so. Deliberators, therefore, do not merely rely on other deliberators when fulfilling the communicative aims of deliberation.

To see this, imagine two deliberators discussing the practice of promise keeping. Both would be free and frank by giving forth the relevant information they believe about promise keeping. Something would be amiss, however, if every time the deliberators discussed the practice of promise keeping, the first deliberator said the same thing over and over like clockwork. This would be consistent with being open and frank. Yet, we would call into question the genuineness of the deliberator. For example, if the first deliberator deviated from this practice, the other deliberator would not feel betrayed. Rather, the second deliberator would think that the first deliberator is just not being reliable. Effective communication and transmission require both parties to be more than merely reliable.

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<sup>80</sup> See McLeod, *Stanford Encyclopedia* entry, (2015).

I propose an even further constraint. What makes for the genuineness of deliberators needs to be the vulnerability of deliberators. The deliberators need to be able to express what they really care about. To be vulnerable, then, is to open oneself up to criticism by taking a risk in telling others genuine information about yourself. It is to entrust others with information that could potentially be rejected. And if we were to imagine perfectly deliberatively rational agents incorporating a variety of attitudes in deliberation, then the feeling of rejection would not be out of place. The information doesn't have to be accepted. There just has to be a sense that the other deliberator realizes the power she or he has over the information shared.

This assumes as I have already stated that trust involves certain reactive attitudes. There are appropriate ways to trust and be vulnerable to each other. Karen Jones, for instance, describes trust as:

Trust is accepted vulnerability to another person's power over something one cares about, where (1) the truster foregoes searching (at the time) for ways to reduce such vulnerability, and (2) the truster maintains normative expectations of the one-trusted that they not use that power to harm what is entrusted.<sup>81</sup>

Another one of these reactive attitudes might be safety. Children often do not trust people they do not feel safe around. Of course, just because one feels safe around another person may not mean the person is safe. But the general idea is in place.

The important point is that trust implies a range of reactive attitudes and appropriate normative expectations. Deliberators are not immune to these expectations. Consider a deliberator who is a complete jerk yet always tells the truth about what he thinks about promise keeping. We might not like a deliberator like that but he has not violated a norm of deliberation. However, is it right to say we trust that deliberator? Doubtful. The deliberator hasn't let us down if he deviates from telling the truth once in a while. What we are missing is a sense of vulnerability where the deliberator is taking a risk in sharing the information with the other deliberator. It is putting oneself

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<sup>81</sup> p. 1, (1996).

out there to potentially be shot down. Someone is less likely to put him or herself out there if they do not trust the other person or feel safe around that person. To do that requires a level of vulnerability.

What I am arguing is there are normative expectations when conversing with other deliberators. Deliberators can't get at what other deliberators think, feel, or have interest in if there is not a level of vulnerability. Indeed, why would anyone want to live by a common code if people never truly expressed what they thought about the very process that is supposed to effect their lives. If effective communication and transmission are to happen, deliberators need to trust one another. This requires being vulnerable by taking risks to put out information one cares about in the open that may ultimately be rejected. As Jones puts it, there is a normative expectation that the one being trusted not use the power she has over what the trustee cares about. This is a normative kind of power.

It is these very normative expectations that contain morally salient features. For example, I might expect other deliberators to treat me a certain way once I have established a level of trust. For if a deliberator lets me down with information I have shared by failing to respond or ignoring my repeated attempts to rectify a situation, I may feel betrayed. This assumes treating another deliberator a certain way. The only way I can make sense of how to treat someone a certain way is to rely on moral considerations like respecting others.

As I said earlier, Southwood is prepared for this response. He thinks that we shouldn't assume that these norms are "parasitic" on morality just like we shouldn't think that prudential norms have to be "parasitic" on morality. It might be wrong to punch the pope in the face but it also is not very prudential. These can come apart and so can deliberative norms and moral considerations. As Southwood states:

And surely our ability to make assessments about whether people are deliberating properly are not dependent on our moral assessments. Two individuals may surely

disagree about the moral status of telling lies yet agree that one is not deliberating properly (or perhaps at all) with a would-be murderer when one tells him a fib. Two individuals may disagree about the moral status of vigorous disagreement with one's intimates yet agree that one is not deliberating properly (or perhaps at all) when one capitulates to one's wife's desires for purple sofa covers despite thinking that red would eminently more suitable.<sup>82</sup>

The thought is that we can understand deliberation apart from moral considerations. Southwood thinks that we can have an intuitive grasp of deliberation without making any reference to moral considerations. This is like my having an intuitive grasp that every even number when added to an odd number results in an odd number without relying on a mathematical theory to prove to me this is true of numbers beyond which I could not count. Or like my having an intuitive grip on what an electron is does not depend on my understanding of quantum mechanics.

What I think Southwood is saying is that our conceptual understanding of deliberation is not in any way dependent on moral considerations like a deliberator having an honest character or one that is known for truth telling. Or in the case I gave that deliberators show concern for the information other deliberators reveal. These kinds of evaluative dimensions do not figure into our conceptual understanding of what deliberation is. Indeed, no such features figure into our conceptual understanding of what deliberation is. If this is right, then my argument against DC fails. We can understand deliberation apart from any kind of moral considerations. Even if care or trust are important, we don't need those to get an intuitive grip on what deliberation is.

Consider some other cases where it looks like deliberation is not dependent on any morally salient features. A criminal defense attorney can deliberate with his client even if the attorney can never determine whether his clients are telling the truth about their innocence. After all, don't all defendants think they are innocent? Or a very insensitive parent can deliberate with his child's teacher over the behavior of the child in class even though the parent doesn't agree with the

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<sup>82</sup> p. 183 (2010).

teacher's assessment. After all, aren't all children great in their parent's eyes? Therefore, it doesn't require us to depend on any morally salient features to make sense of our practice of deliberation.

However, consider some alternative cases where the opposite seems to be true. Imagine there is a race of android type robots who are perfectly deliberatively rational. They are in every respect like humans. Now consider the existence of another race of android like robots. These kinds of robots are less advanced than our first race but nevertheless perfectly deliberatively rational. Suppose the two parties want to decide a way to live peaceably together. As the two parties engage in deliberation of this matter, they come away with a proposal. If the less advanced race allows to be kept as the servants of the more advanced race, the more advanced race will take care of all of the needs of the less advanced race (i.e. food, shelter, maintenance on robot parts). Both parties are receptive in this proposal, are communicating effectively, and reflective on the matter. It can't be argued that the less advanced race is not reflective simply because they are less advanced. For it was stipulated that they are perfectly deliberatively rational. Less advanced does not mean less rational. Thus, I take it that they meet the deliberative norms. The outcome is also from the process of deliberation and the process affects all the relevant deliberators.

It might be thought why the less advanced race would want to be servants. Isn't that irrational to concede to such a thing. It would only be irrational if there were some prior consideration to make it so. There is nothing in the deliberative process that states that kind of move is irrational. Or, I don't see any. You might still say that is not in the less advanced race's best interest to concede to becoming servants. They may be taken advantage of or not be granted any other rights under the laws of the robot society. But self-interest is only one attitude that goes into the deliberative process. It is not the sole defining attitude of what comes out of deliberation.

As far as I can see the deliberative process is respected and yet, I am inclined to think that the less advanced race is getting an unfair treatment. But on the deliberative account, I can't say why

I am inclined to think this. The norms of deliberation are being respected. The whole process of deliberation is being respected. The only way I see how unfairness is at play is if I assume some other morally salient features like respect or even trust. For the less advanced race could reason that if they trusted the more advanced race then they know they would not mistreat their positions of authority. You might even think something is fishy about this example because who would concede to such conditions unless they did trust the more advanced robots and knew the reasons why this needed to be an outcome of the deliberative process. In that case, trust is paramount to understanding the intentions of the robots.

This example still might not satisfy the ardent DC advocate. In that case, I will provide two counterexamples to the conception of deliberation itself. These will challenge the idea that we can identify what a proper deliberator is by challenging the necessary conditions for the practice of deliberation. This would call into question whether we really do have an intuitive grip on deliberation after all. Yet, it doesn't follow from this that the account is assuming morally salient features. It would only follow that that is one way to account for what makes sense of deliberation. So, this would be a bit of a weaker response than what I said about deliberation requiring trust.

The first example challenges the norms of deliberation. This is one necessary condition for being a good deliberator. Consider the bumbling Mr. Magoo who goes through life nearsighted but does not admit he has a problem. He talks to animals as if they were human beings and even becomes an actor despite his visual impairment. Through all these life circumstances it happens by sheer luck that things seem to work out for him. Now, one could argue that he is less than competent. However, he communicates well and is well-adjusted despite not being able to see that well. He reasons with the animals quite well and is rather reflective about the events of his day. On the outside, he looks crazy. Yet, internally, he is maintaining consistent beliefs about his intentions in communicating and reasoning with others. He properly fulfills the norms of deliberation but we

would not want to count him as the kind of deliberator that Southwood has in mind. Other deliberators would not think they could communicate with him properly. He is not seeing the world properly even though he can communicate, persuade, and reflect with others.

Consider one more example that challenges the two other conditions of deliberation: any outcome must be a process of deliberation and other relevant deliberators must be affected by the outcome. Imagine two perfectly rational deliberators. However, one is a sociopath. Sociopaths can reason quite well, communicate with others, and even be open to being persuaded. However, it is all a guise to accomplish the sociopath's own purposes. To accomplish his ends, the sociopath regards reflection, communication, and discursiveness as appropriate means to an end. The sociopath fulfills all the norms of deliberation. But we would clearly not call this person a proper deliberator. The point is that one does not have as firm of an intuitive grip on deliberation. Any outcome of deliberation could result from a sociopathic deliberator and it could affect other relevant deliberators.

On this last example, it is true that sociopaths lack empathy and the ability to feel guilty. A pivotal piece of Southwood's account is that deliberators have the ability to put themselves in other deliberator's shoes. It is the ability to rise above one's own standpoint and adopt the standpoints of others. Sociopaths lack this ability.

However, I'm not sure this is too much of a problem for this example. Sociopaths can have families, be volunteers, and even keep up jobs.<sup>83</sup> They are the perfect actors so to speak. Yet, all of these things are stereotypical of those who have empathy and the ability to be a part of something larger than themselves. So, even if it is questionable that sociopaths lack empathy and even a conscience, the kind of show that sociopaths put on would still make it more difficult to get a clear enough grip on the conception of deliberation as Southwood claims we can.

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<sup>83</sup> See Martha Stout's fascinating book, *The Sociopath Next Door*, New York: Broadway Books, (2005).



## 4.2 The Explanatory Non-Fundamental Objection

The second objection I want to press against DC is that it is explanatorily non-fundamental. This is the same objection Southwood levels against Scanlon's view. Recall, that Southwood accused Scanlon of presupposing more fundamental normative considerations. These were independent reasons that contractors were using to evaluate principles on the basis of whether they could reasonably reject them. Because they were independent, they were supposed to be more fundamental.

This is different than the explanatorily circular objection. It is different in two ways. First, I am not going to claim that DC presupposes moral features that are more fundamental. This could be one way to argue against DC. But I've already done that. Rather, I will argue that DC claims a particular feature *x* is fundamental. It hits explanatory rock bottom. Another feature *y* is more fundamental than *x*. Therefore, *x* is non-fundamental and DC is explanatorily non-fundamental.

I will adapt a point made by Kevin Vallier to make this argument. He stresses that there are many roles I occupy as parent, friend, son, etc. And if all of these have internal aims, then it is quite likely each one will have a different conception of oneself. Vallier points out that it is not unreasonable to hold that people might choose one over the other. In that case, might people prioritize, rationally speaking, these conceptions over that of being a deliberative citizen?<sup>84</sup> If so, then in what way are we supposed to take the obligations of deliberative citizenship seriously if they could be "too easily overridden"?<sup>85</sup>

This is a substantial worry. For if people have different conceptions of themselves, it is not clear how we get the categorical nature and bindingness of morality. Remember, the categorical nature of morality has to do with normative judgments not depending on our desires. And the bindingness of morality has to do with the particular way moral norms have a grip on us. It is not as

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<sup>84</sup> <<http://ndpr.nd.edu/news/34356-contractualism-and-the-foundations-of-morality>>

<sup>85</sup> Ibid.

if we can somehow evade the demands made on us by morality. If we have different conceptions of ourselves given the different roles we occupy (i.e. friend, parent) and we have no reasonable way to prioritize the deliberative conception over these others, then how could we get normative judgments to not depend on our desires. The only recourse Southwood has here is to say that deliberative citizenship is a fundamental aspect of my identity whereas these other role norms I occupy are not. In that way, it is rationally prioritized over the others and we would get the categorical bindingness piece.

I think Southwood assumes such a view. Here, I restate the same point Southwood made about the interpersonal point of view. He writes:

Adopting the interpersonal point of view, like adopting the impersonal point of view, involves, as it were, an ascent from the personal point of view...The interpersonal point of view is a special instance of what Stephen Darwall has called the *second-person standpoint*, namely, 'the perspective you and I take up when we make and acknowledge claims on one another's conduct and will'...And, as Darwall notes, in order for it to be possible for us to exercise this shared normative power, clearly we must already stand in a certain normatively privileged relation to others; we must already have the power in the first place...**What this means is that simply in virtue of being a creature that possesses the capacities required in order to be a deliberative agent, our relation to others is relevantly transformed** [Bolding added].

I see this as a claim that we already possess the capacities to enter into the interpersonal point of view in virtue of being a deliberative agent. It is a short step from there in saying that we essentially possess these capacities. Although, I don't think Southwood would endorse the language of having essential capacities. I think he would be more comfortable with one simply having fundamental capacities. I will adopt the latter usage. Thus, it is in virtue of these capacities qua deliberative agent that we can transform our relationship to others. If I read Southwood correctly, he is making a specific claim about the constitution of agents in the deliberative contractualist situation. Of course, if we are anything like the hypothetical agents, then we too ought to be able to understand what it means to have these kinds of capacities.

If this is right, then we could construe Southwood's account as one where deliberation is fundamental to an agent's identity. Vallier's point, then, doesn't stick. Yet, I think we can pose another objection to Southwood's account.

We should realize that this is a non-exercised capacity. We don't actually exercise this capacity since it is a hypothetical idealized account of deliberation. Nonetheless, if we were to just reflect for a moment, we should be able to see that we could have this capacity.<sup>86</sup> Southwood even points out that it shouldn't be that odd that non-exercised capacities could entail such a relation of deliberative citizenship.<sup>87</sup> Having such capacities means that they at least have the ability to enter into a relation of deliberative citizenship. So, simply being able to reflect on it shouldn't be that difficult.

Now, the DC account states that it is in virtue of the capacity *qua* deliberator that I can enter into an interpersonal relation with another deliberator. However, this explains the relation, which in

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<sup>86</sup> We might wonder how modality is being construed here. The DC account employs several modal notions. The coveted hypothetical scenario of the DC account is in fact a counterfactual: the facts about morality's foundations are to be located in what common code we *would* agree to live by if we *were* perfectly deliberatively rational. We could think of this as saying that if there is a world in which myself and everyone else were perfectly deliberatively rational, then in that world, I could imagine developing a common code with other deliberators that we would agree to live by. We might then wonder what the truth conditions are for such a statement. It seems that I could conceive of this without actually being perfectly deliberatively rational. But then I would wonder how relevant this is to an account of morality. I could also conceive of there being a quite different common code at several possible worlds. But clearly none of these would be the most feasible world in constructing morality. The furthest possible world would have wildly irrelevant conceptions of morality. In that case, what is the most feasible world in which I could conceive of a conception of myself as being perfectly deliberatively rational but agree to a common code to live by? These are vexing questions. I won't be concerned with addressing these questions. But it is a concern if one can't come up with truth-conditions for these modal statements. Surely, it is not that every account that employs modal statements needs to come up with truth-conditions for those statements. However, central to Southwood's account is a counterfactual statement. It would do him well to at least fill us in on what this means. Yet, if the conception of myself as a deliberative agent is fundamental to my identity in some way, then I couldn't help but imagine myself being part of a contractualist process that results in a common code I would agree to live by with others as part of being a deliberative citizen.

<sup>87</sup> p. 128, (2010).

turn explains the shared normative authority, which in turn explains the normative reasons I have to live by a common code.

On this view, two problems emerge. First, it does not seem right that just because I have a specific capacity to deliberate I automatically share a relation with another deliberator. This is true even if I can reflect on having the capacity. For instance, suppose I have the capacity of friendship and so does another stranger. It does not follow that I automatically enter into a relationship of friendship with this other person. Yet, this won't do because choosing to be a friend is different than being a deliberator. We don't choose to enter into deliberative relationships like we do friendships. We simply stand in the deliberative relation in virtue of just have the capacity. We need another example where it looks like my relation to another is not by choice.

Consider the story of the Good Samaritan. The beaten down man was left half dead on the side of the road. Two strangers passed by and ignored the man. Yet, the Samaritan passing by felt compassion for him and aided the man. I take it that we all think the two strangers had some obligation to help the man. However, it was the Samaritan who leapt into action and helped the man. The Samaritan was compelled out of compassion and felt an obligation to help the man. These kinds of spontaneous cases of altruism raise the question of why we think we have an obligation in the first place. I think the best answer is that a previous normative relation exists such that we think the person *ought* to be treated a certain way. These kinds of rights are previous to any capacity (or non-exercised capacity) I have as a deliberator. These are also the kinds of obligations that we don't seem to choose or relinquish.

Thus, I don't relate to other deliberators in virtue of having the capacity. Rather, I think I have the capacity and relate to other deliberators in virtue of being human. What does seem to follow, then, is that I already bare a responsibility to the person, not because of any capacity of deliberation

that I might have, but because of the normative relationship I already stand in to them as a human being. This is what explains the Samaritan case.

Now, as I read Southwood, it looks like I automatically enter into this normative significant relation simply because I have the capacity to deliberate. But that just isn't so. Rather, I have the capacity to deliberate in virtue of being a human (exercised capacity or not) and this is why I enter into a normatively significant relation with other deliberators. In fact, if entering into a relation with other deliberators was simply because I am a deliberator, I may never do so. This isn't because deliberators have to choose to enter into the relation of deliberative citizen. They don't. Simply in virtue of being a deliberative citizen one relates to others in a normatively significant way. It is thus not voluntary that I bear this relation to others. The relation of friendship is of course different. It is voluntarily entered into. The point, rather, is that simply having the capacity to deliberate doesn't *compel* me to deliberate. The reasons I have that come from being a deliberator do not motivate me to deliberate with others. I think rather I'm motivated to deliberate because of the reasons I have qua human being. These are the reasons I have towards to treat other human beings a certain way.

Similarly, my parents don't choose to enter into the parental relation with me once they have me. They can't give up their obligation to take care of me once I'm their child. But even if they weren't my parents, I would still think they have obligations towards me because I am a human being. Maybe they don't have certain obligation because they are not my parents but it seems like they have some civic kinds of obligations.

Those who think that we can choose to enter into voluntary obligations with others are called "voluntarists." In order for such obligations to have any moral force upon us they must be voluntarily accepted. DC assumes something like a non-voluntarist account. We enter into relations with others simply because we have a non-exercised capacity of being a deliberator.

For instance, Southwood makes several claims that being a deliberative agent is like being a democratic citizen. As he puts it:

Just as citizens within democratic states can fail to act in accordance with the democratically enacted law, without thereby ceasing to be democratic citizens, so too, according to our account deliberative citizens can fail to act in accordance with the deliberative contractualist formula without ceasing to be deliberative citizens.<sup>88</sup>

This is so not because of the way these individuals bear a relationship to the law or the DC formula. The law could have been very different or the common code very different but each democratic or deliberative citizen still bears a relationship to one another. They do so because of the prior relationship of being a democratic or deliberative agent. It is in virtue of these capacities that one is supposed to share a special relationship with other democratic and deliberative citizens.

However, if we take the democratic analogy seriously, then it can't be right that if I fail my obligation as a "democratic citizen" I have not ceased to become one. We could envision two democratic citizens arguing over what type of legislation will promote more access to healthcare. But just because they are engaged in a democratic process, it does not follow that they bear a special obligation to one another. I could argue with a British citizen about the religious persecution in Africa and the Middle East but I don't bear any special obligation to him even though we are engaged in a democratic type process. So too, with the deliberative process, there is nothing special about two deliberative citizens engaging in dialogue about how to lessen the income inequality gap in the United States. The special relation I share with a democratic citizen or deliberative citizen is because we are human beings and think there are certain claims on us for how we ought to treat each other. This is prior to any democratic process or deliberative process.

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<sup>88</sup> p. 133 (2010).

To reinforce this point, consider how the law treats familial obligations. Suppose a couple has protected sex and takes all the precautions necessary to ensure they do not get pregnant. However, the woman does conceive and chooses to have the child while the man chooses to not have anything to do with the child. Most courts think that the man has a special obligation to the child. Indeed, most order fathers to pay child support if they have not already been supporting the child. And this is not just because of the biological relationship. If it were, sperm donors would be held responsible for child support.<sup>89</sup> Furthermore, we think mothers who abandon children in bathrooms or trashcans are not morally praiseworthy even though they choose to leave their child. In each of these cases the law does not treat them a certain way because they are democratic citizens whether or not they have failed to live up to their democratic obligations. Rather, the law treats them a certain way because they have failed to live up to their obligations toward others qua human being.

This objection should sound very similar to Judith Jarvis Thompson's objection to Scanlon's account. Thompson writes:

I cannot bring myself to believe that what *makes* it wrong to torture babies to death for fun (for example) is that doing this 'would be disallowed by any system of rules for the general regulation of behavior which non one could reasonably reflect as the basis for informed, unforced general agreement.' My impression is that explanation goes in the opposite direction—that it is the patent wrongfulness of the conduct that explains why there would be general agreement to disallow it."<sup>90</sup>

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<sup>89</sup> See Francis Beckwith's "Personal Bodily Rights, Abortion, and Unplugging the Violinist" (1992) for a discussion of this.

<sup>90</sup> p. 30, n. 19 quoted in Scanlon p. 391 n. 21. Again, Thompson is critiquing an account of what *makes* acts wrong. Scanlon doesn't think this is the right way to characterize his account. However, it still makes sense to raise questions about explanatory priority. Just because they might differ about what makes acts wrong, it doesn't follow that this changes what comes first in the explanation. It would only follow if we understood what makes acts wrong as a kind of metaphysical grounding explanation where what comes first in the explanation is necessarily connected to what it is explaining. Neither Southwood, nor Thompson, nor Scanlon discuss this. So, I won't press it here.

I will just say why Scanlon thinks this. Scanlon is wary of this talk of offering an account of morality, which makes sense of what "makes something wrong." Scanlon thinks that his account is offering more general reasons for why something is wrong. He thinks that talk of "what makes something wrong" is trying to explain a further more specific property whereas his general reasons account is identifying a more general property. Scanlon also thinks that the property of "wrongness" is different than that of "goodness." Something being wrong provides us with reason not to perform

The issue here is explanatory priority. Which comes first in the explanation: the wrong making feature of the action or the reasons for general unforced agreement to disallow an action?

Southwood does mention this as a potential objection when he discusses explanatory adequacy and how a view can be inadequate if it is explanatorily backwards. However, my objection is different than Thompson's. I'm not claiming Southwood's view is backwards. I'm not claiming that his view says x explains y, whereas y should explain x. I'm claiming that his view says x is fundamental. It hits rock bottom. But y is more fundamental than x. So, x hits rock bottom.

There is similarity here. I could say because y is more fundamental it explains x. But it doesn't have to be this way. For example, one could explain why God's commands are wrong in terms of the wrong-making features of the world. This would be a perfectly good explanation. It is sensible and understandable even though a divine command theorist who wishes to protect the conception of God's goodness might object to it. However, one might think this gets things backwards. The wrong-making features should be explained in terms of something like God's nature. We could stop there in the explanation. But we could press along further and argue that what really explains the commands are reasons why some particular feature is wrong.

Now, suppose we did stop at the commands explaining the wrong-making features of the world. One way to make sense of this dialectic is to say that the explanation of what makes God's commands wrong was explanatorily backwards. We don't need a more fundamental feature to do this. We don't need reasons for why an action is wrong even though these could be more fundamental in the explanation. So, an explanation that is backwards need not be one that is non-

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that action. Goodness is different for Scanlon. Scanlon says, "[To call something good means it has other properties (different ones in different cases) which provide such reasons." He thinks wrongness has the same general reason to avoid doing actions. In that case, he thinks wrongness would be an unanalyzable property. He thinks this "leaves unexplained the reasons that we do have for avoiding actions." See p. 11 (1986).



fundamental. My objection won't hinge on whether we understand this distinction perfectly. It just should be made known that it bears a similarity to Thompson's objection against Scanlon's account.

To be clear, then, it might look like what I am claiming is that Southwood's view is explanatorily backwards. It would look something like this: the relation of deliberative citizen is explained in terms of a more fundamental relation which is our being humans and treating each other with respect. I am not claiming this. Rather, I am saying that the relation of deliberative citizen is just not fundamental to the explanation. Something further is. Whether this means it is explanatorily backwards is an all-together different objection.

Southwood has two responses to the non-fundamental objection. First, he argues that the objector needs to show that the more fundamental considerations are independent in such a way that these considerations are invariable across deliberative agents. For something to be invariable, agents must have the same reasons for agreeing to a principle when they deliberate. The deliberative agents are tracking more fundamental normative reasons. For example, explaining why treating someone a certain way requires reasons for treating them that way. These reasons are what are more fundamental.

Southwood, however, argues that two deliberators can agree to a principle for different reasons. And since DC has this kind of flexibility built within the account, there is enough variation to thwart this objection. Southwood writes, "[I]t is perfectly conceivable that a husband's and wife's reasons for reaching an agreement are importantly different without this compromising the deliberative rationality of the agreement."<sup>91</sup> The reasons how they arrived to the agreement may differ but the deliberative rationality built within being a deliberator remains the same.

Notice that my objection had to do with the fact that there is a more fundamental relation of how we relate to other deliberators. This is the relation of mutual respect. It has nothing to do with

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<sup>91</sup> p. 188, (2010).

more fundamental reasons. It has everything to do with a relation of mutual respect that we bear with other deliberators. Now, this relation might be explained in terms of reasons like why I treat someone a certain way or why I stand in this relation to them. However, I'm just claiming that there is a more fundamental consideration that doesn't have to do with reasons. It has to do with what is really doing the philosophical work on Southwood's account. So, his response won't work here.

Second, he argues that the norms of deliberation are internal to what deliberation is. In that case, we don't deliberate because there is a further relation of how I ought to treat people. In virtue of being deliberators we just naturally express the capacity to deliberate. Even though this capacity is non-exercised, we can imagine ourselves doing this. This expression is what explains our relationship to other deliberators. As Southwood says, "[I]t is precisely as a result of deliberation within the deliberative contractual situation that deliberative contractors arrive at the particular reasons they do."<sup>92</sup> Nothing is prior to or independent of the DC situation that informs the deliberators reason governed activities.

However, as I previously stated, if the only way I share a relation with other deliberators is because I have the capacity to deliberate, it seems like there is nothing compelling me *to* deliberate other than coming up with a common code to live by. What is pulling me to deliberate seems to be that it is a good thing for me to do. It benefits me in some way. Again, I don't see how just having the capacity to deliberate (non-exercised or not) exemplifies a relation with other deliberators. For example, just because I'm rational and some animals might be considered rational, doesn't in any way tie me to those animals. What is it about deliberation that makes it so special that it ties me to other deliberations? The only answer seems to be a further relation of how I interact with other deliberators qua human beings. It is how I ought to treat other deliberators that explain why the relation of deliberation obtains. It also analogously explains why I enter into relations with other

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<sup>92</sup> Ibid.

democratic citizens. It is in virtue of the prior relation of mutual respect for others that I enter into a relation with them. This is true even if there is a minimal commitment of my obligations towards them.

I'm not saying that all of our relationships are like this. We do choose to enter into relationships that bring about obligations. For example, if I take out a loan at the bank, I am obligated to pay back the bank. Even if a woman chooses to have a child by going to a fertility clinic, her choosing brings about an obligation if she were to have a child. However, I still think that there are prior obligations in the background. I think the bank will not discriminate against me in getting a loan. The conditional, "If the woman were to have a baby, she could not give up her obligation to that baby," is true even if she doesn't have a baby. Whether all of our relationships are like this is too much to discuss here. I just think there are further considerations in the background.

DC could argue that I don't have to *actually* do anything. For we are considering a hypothetical account of deliberation. These are hypothetical deliberate counterparts. I'm not so sure that will do. In fact, our hypothetical counterparts may feel no reason to do anything since in such a scenario they would not encounter problems as trying to agree to live by a common code. If they are perfectly deliberatively rational, there is no need to do this. In a world in which everyone is perfectly deliberatively rational, you don't need a common code to live by. The ability to reason with another is all that is needed in decision making, not a common code to tell others what decisions are or are not reasonable to make.<sup>93</sup>

But let's suppose you can produce a common code with other hypothetical deliberators. I would argue that one other reason why you might think you enter into deliberation is because there is an assumption of how you are tracking the good-making features of deliberation. In fact, as we saw there are a number of constraints for DC when engaged in the deliberative process. For

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<sup>93</sup> See Suikkanen (2014) for a discussion of the conditional fallacy and contractualism.

example, there are *communicative and discursive norms*. A communicative norm relies on the openness, reception, and a “good faith attempt to understand what is being communicated to them.”<sup>94</sup>

Discursive norms rely on the ability to persuade other deliberators without guile or cheating and being open to being persuaded.

Now, suppose I can imagine myself as being perfectly deliberatively rational. Can it really be the case that what explains these norms is because qua communicator I play the role of communicator well and qua persuader I play the discursive role well? Or, do I play these roles well or practice good performance of the role because I’m doing something *good* that the role is tracking? Thus, what makes me a good communicator is because I *respect* the other deliberator when I listen to them. What makes me good at persuasion and being open to persuasion or bringing others to my side is because I *respect* the other deliberator when I offer reasons for my case. If this is right, then his account is explanatorily non-fundamental. There are further normative features that are explaining the moral facts. Like the normative expectation of what it is to be a *good* deliberator and the like.

I will offer one more response that I think Southwood could make in regards to my non-fundamental objection. My use of “human being” is ambiguous. The argument may go like this. Either I’m using that term in the genetic sense or some other sense like what counts as a human being is that we share certain characteristics (i.e. rationality, consciousness, etc.). If the former sense, then it looks like I’ve ruled out non-humans who have deliberative type capacities. For example, dolphins are said to be quite intelligent. I won’t find myself deliberating with them anytime soon. But, I can’t rule out the possibility that if they have enough rational capacity I shouldn’t count them among those creatures that are due respect when deliberation occurs. If latter sense, then I’ve just

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<sup>94</sup> p. 94 (2010).

put us right back where we started. The obligations we have are in virtue of the characteristics we share with each other. Perhaps one of these is being a deliberative agent.<sup>95</sup>

I don't see this as much of a problem. Southwood explicitly says that our hypothetical contractors have a non-exercised capacity of deliberation. It is in virtue of this non-exercised capacity that we share a relation of normative authority with other deliberators. However, I can imagine all sorts of things that have non-exercised capacities. For instance, fetuses can have non-exercised capacities. They are said not to be persons at a particular stage of development. But that does not rule out the fact that they have the ability to become persons. They must develop into this. They just haven't exercised their capacities yet because they haven't reached a stage of development to do so. Children have lots of non-exercised capacities too. Children can learn to speak multiple languages. Yet, many have not exercised this capacity.

I still think, however, that I have obligations towards others even if they have non-exercised capacities. My question is why Southwood thinks our shared relationship with other deliberators comes to us in virtue of this non-exercised capacity. I don't think it is because we simply have the capacity and haven't exercised it. I think it is because there is an assumption about how we treat others who have non-exercised capacities. We tend to treat coma patients a certain way even though they have many non-exercised capacities. What explains this? I think it has to do with what we think a human person is. Southwood clearly thinks that human person's can have non-exercised capacities. Our hypothetical counterparts can't be that different from us. I've just chosen to refrain from using the term "human person" to not stack the deck in my favor. But as I see it now, that is an apt description.

My response, then, is to challenge the second horn of the dilemma. I want there to remain obligations towards non-humans like dolphins. But I don't want there to be these obligations in

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<sup>95</sup> Again, thanks to Dr. Warren Herold for helpful feedback on this section.

virtue of the fact that they might share characteristics with human beings. It is odd to even construe Southwood's project that way. So, I will challenge the second horn. It is the characteristics that matter.

However, as I just showed, these characteristics can be non-exercised. So it is not about pointing to the characteristic like deliberation and saying it is in virtue of that that we share this normative relationship with other deliberators. Rather, it is to point out the fact that we share this relationship in virtue of the fact that we are human beings that have potential to exercise capacities just like our hypothetical counterparts. I just don't find it compelling that dolphins have the same non-exercised capacities that human beings do. In that case, there is something further beyond the fact that I am a deliberator that explains why I share this normative relationship with other deliberators. Just like there is something beyond the fact that I share a normative relationship with people who have never become my friends. We each have the non-exercised capacity to do so. But this is because we are human beings with a potential to exercise this capacity.

Whether this is a satisfying response is left up to the reader. I think Southwood needs to explain why deliberation is the one feature that binds us together when non-exercised. I don't find myself having obligations towards those in a coma because they have the non-exercised capacity to deliberate. I do so because they are human beings who have the potential to exercise a capacity to deliberate. These strike me as two different things that are not clear in Southwood's explanation of DC.

## **Conclusion**

The goal of this thesis was to compare DC with Kantian Contractualism and argue that DC fails the explanatory adequacy criteria in the same way it accuses Kantian Contractualism of failing. Kantian Contractualism was accused of being explanatorily circular and backwards. I argued that DC is both explanatorily circular and backwards.

But what should we conclude from this? All I have said is that DC is just as explanatorily inadequate as another contractualist view. That conclusion doesn't help explain the foundations of morality. It doesn't resolve the dispute between contractualists about what is more fundamental: reasons, facts, interest, or deliberation. The conclusion, then, might seem rather unsatisfactory to some.

Although my project was not aimed at giving a full account of morality's foundations, I am sympathetic to those who would want to see more established in this thesis. My only response is that I think any contractualist account will have to assume more fundamental moral considerations. I don't think we can reduce morality to things like deliberation, contractual accounts, the natural world, or even reasons (although this one might have something going for it). Space would not permit me to discuss all of these things. So, I leave the reader with a stalemate between two contractualist accounts. This may seem unsatisfactory but it does help us better understand what a contractualist view might need to succeed. It needs to explain morality without assuming moral features or further normative considerations. A tall task this might be.

## References

- Alston, William, In William Lane Craig (ed.), *Philosophy of Religion: A Reader and Guide*. Edinburgh: Edinburgh University Press 283-298 (2002).
- *Perceiving God*, New York: Cornell University Press, (1993).
- Ashford, Elizabeth and Mulgan, Tim, "Contractualism", *The Stanford Encyclopedia of Philosophy* (Fall 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2012/entries/contractualism/>.
- Audi, Paul, "A Clarification and Defense of the Notion of Grounding." In Fabrice Correia & Benjamin Schnieder (eds.), *Metaphysical Grounding: Understanding the Structure of Reality*. Cambridge University Press 101-121, (2012).
- Beckwith, Francis, *International Philosophical Quarterly*, Vol. XXXII, No. 1 Issue No. 125, (1992).
- Craver, C.F. "Constitutive Relevance," *Journal of Philosophical Research*. 32: 1-30, (2007).
- David Barnett "Is water necessarily identical to H<sub>2</sub>O?" *Philosophical Studies* 98 (1): 99-112 (2000)
- Correia, Fabrice, "Ontological Dependence," *Philosophy Compass* 3, issue 5, 1013-1032, (2008).
- Darwall, Stephen, *Philosophical Ethics*, Colorado: Westview Press, (1998).
- "Introduction," in *Contractarianism/Contractualism*, (ed.) Stephen Darwall. Oxford: Blackwell Publishing, pp. 1-8 (2003).
- Fine, Kit "Guide to Ground," In Fabrice Correia & Benjamin Schnieder (eds.), *Metaphysical Grounding*, Cambridge: Cambridge University Press 37--80 (2012).
- "The Question of Realism," *Philosophers' Imprint*, [www.philosophersimprint.org/001001/](http://www.philosophersimprint.org/001001/) Volume 1, No. 1, (June 2001).
- Fisher, Andrew, *Metaethics: An Introduction*, New York: Routledge, (2014).
- Gauthier, David, *Morals by Agreement*, Oxford: Oxford University Press, (1998).
- Hawley, Katherine, "Trust, Distrust, and Commitment," *Noûs* 48 (1): 1-20 (2014).
- Jones, Karen, "Trust as an Affective Attitude", *Ethics* 107: 4-25, (1996).
- McLeod, Carolyn, "Trust", *The Stanford Encyclopedia of Philosophy* (Fall 2015 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2015/entries/trust/>.
- Plato, *The Five Dialogues*, Tr. G.M.A. Grube, Ed. John M. Cooper, Indianapolis: Hackett Publishing, (2002).



- Rosen, Gideon, “Metaphysical Dependence: Grounding and Reduction” in *Modality: Metaphysics, Logic, and Epistemology*, (eds.) Bob Hale and Aviv Hoffman, 109–36. Oxford: Oxford University Press, (2010).
- Southwood, Nicholas, *Contractualism and the Foundations of Morality*, Oxford: Oxford University Press, (2010).
- Scanlon, T.M., *What We Owe To Each Other*, Cambridge, MA: Belknap Press of Harvard University Press, (1998).
- Schaffer, Jonathan, “On What Grounds What,” in *Metametaphysics*, (eds.) David J. Chalmers, David Manley, and Ryan Wasserman, 347-383. New York: Oxford University Press, (2009).
- ‘Grounding, Transitivity, and Contrastivity’. In Correia, F. and B. Schnieder (eds.), *Metaphysical Grounding*, Cambridge: Cambridge University Press (2012).
- Schroeder, Mark, Mark Schroder, “Normative Ethics and Metaethics,” in *Routledge Handbook of Metaethics*, (eds.) by David Plunkett and Tristram McPherson, (2015).
- Suikkanen, Jussi “Contractualism and the Conditional Fallacy”. *Oxford Studies in Normative Ethics* 4, 113-137, (2014).
- Trogon, Kelly, “An Introduction to Grounding,” in *Varieties of Dependence: Ontological Dependence, Grounding, Supervenience, Response Dependence*, (eds.) M. Hoeltje, B. Schnieder, and A. Steinberg Basic Philosophical Concepts, Munich: Philosophia Verlag, (2013).
- Vallier, Kevin, Notre Dame Philosophical Reviews of *Contractualism and the Foundations of Morality*, <<http://ndpr.nd.edu/news/34356-contractualism-and-the-foundations-of-morality>>