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CONTRACTUALISM AND COMPENSATION FOR RISK IMPOSITIONS

Richard Endörfer

MANY ORDINARY, everyday activities we engage in create risks for others. When we take a car to work, there is always a small risk that the brakes malfunction and we cause an accident; when we use electronic appliances, there is always a small risk of a short circuit resulting in a fire; and so on. In this article, I am interested in the question of what Scanlonian contractualism can tell us about what we owe to those who foreseeably suffer severe harms that result from risky yet highly socially beneficial activities through no fault of their own. As I will argue in what follows, the answer depends directly on what risk-sensitive version of contractualism we subscribe to.

Over the past two decades, two camps of contractualist approaches to risk imposition have emerged: *ex ante* contractualism and *ex post* contractualism. The approaches primarily diverge on their view of the correct temporal perspective from which we ought to assess whether a risk imposition is wrong. The former insists that the correct temporal perspective is *before* the expected results of a risk imposition materialize; the latter insists that the correct temporal perspective is *after* the expected results would have materialized if the risk were permitted. My main point in this article is that *ex ante* contractualism suffers a significant drawback: it lacks the resources to explain why those who suffer from large-scale risk impositions resulting from socially beneficial activities must be compensated appropriately.

Very few authors have so far explicitly discussed the issue of compensation for risk impositions from a contractualist perspective. Compensation is typically mentioned only in passing as a crucial element of contractualist justification in some of the most important contributions to the contractualist risk debate.[1] This is regrettable because even though many of the everyday activities we pursue foreseeably result in grave harm to others, requiring us to give up on

1 For example, Scanlon states explicitly that compensation might be an important factor in some cases but that he takes "no stand" on the matter ("Reply to Serena Olsaretti," 487); he has not since that article either, to the best of my knowledge. See also Lenman, "Contractualism and Risk Imposition," 121n40; and Kumar, "Risking and Wronging," 49. Kumar explicitly mentions compensation as an important factor in justifying risk impositions. I

them would be extremely costly and is intuitively implausible. Straightforward prohibition is hence often not a defensible option. Instead, a compromise must be established. Requiring compensation for the harms that result from highly beneficial social activities is likely to play an immensely important role in producing such a compromise.

A rare exception in the contractualist literature that explicitly discusses compensation for harms resulting from risk impositions is from Yunmeng Cai.[2] Cai defends a compensation principle that requires that "a risk must be imposed with the guarantee that victims of risk materialization will be compensated in such a way that the harm they suffer is reasonably reduced."[3] I argue here that something like Cai's compensation principle is indeed required if we permit social activities that impose risks onto others. However, I also argue that *ex ante* contractualism lacks the resources to motivate such a principle in many relevant cases.

In this article, I am primarily interested in risky yet routine activities. These activities are pursued by a large number of people, carry fairly low risk of resulting in significant harm for each individual but affect a large number of people, and are intuitively permissible.[4] In particular, I focus on cases that Johann Frick refers to as "competitive at the *ex ante* stage."[5] In the simplest version of such cases, there are two wholly distinct groups affected by a risky social practice: one group that receives all the benefits and another that receives no benefits and is only exposed to risk.[6] I focus on these cases because even though they *prima facie* misrepresent how the benefits and burdens of socially risky activities are distributed over a population in the world we inhabit, many of the relevant real-world cases in fact include two wholly distinct groups: one of (*ex ante*) net beneficiaries and one of (*ex ante*) net losers. It is in these cases that the need for mutual justification is particularly evident, precisely because there is a group that is expected to become net losers due to a change in the status quo. Any plausible approach to contractualism should be able to tell us

return to Kumar's view in section II below. For a discussion of compensation and standard contractualism, see Alm, "Contractualism, Reciprocity, Compensation."

2 Cai, "Just Social Risk Imposition and the Demand for Fair Risk Sharing."

3 Cai, "Just Social Risk Imposition and the Demand for Fair Risk Sharing," 270.

4 The cases I am interested in are very similar to Frick's social risk cases. See Frick, "Contractualism and Social Risk," 178. The important difference is that I focus on routine cases, while Frick focusses on one-off, large-scale risk impositions.

5 Frick, "Contractualism and Social Risk," 213.

6 This entails that we cannot decompose the relevant cases into individual gambles with homogenous risks attached, as Frick does in the discussion of his mass vaccination cases in "Contractualism and Social Risk," 187.

under which conditions mutual justification of such socially risky yet beneficial activities is possible.

The article is structured as follows: in section I, I introduce both the standard version of contractualism and its two main risk-sensitive variants, *ex ante* contractualism and *ex post* contractualism. Section II is dedicated to illustrating the role of compensation in these approaches. I explain here how both *ex ante* and *ex post* contractualism can require compensation in a broad sense to feature in principles that permit risky social practices. In section III, I move on to my main argument regarding *ex ante* contractualism, which is that the approach cannot deliver the intuitive conclusion that those who foreseeably suffer harm due to risky activities are owed compensation for the harm they actually suffer, rather than merely compensation discounted by the unlikelihood of suffering harm. I call this result the *callousness objection*. In this section, I also discuss a number of responses to the callousness objection. Section IV explains why the callousness objection can be avoided by proponents of *ex post* contractualism and illustrates why *ex post* contractualism is less prohibitive than typically assumed by its critics, both in cases when compensation is feasible, as well as in cases in which it is not.

I

Scanlonian contractualism (which from here on, I will refer to simply as *contractualism*) is a theory that tells us under which conditions we can consider actions as wrong (and, vice versa, as right). Scanlon's original criterion of wrongfulness is given as follows:

> An action is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject.[7]

The notion of reasonable rejection is of particular importance here. Two constraints on the notion of reasonable rejection are important: the *individualist restriction* and the *greater burden principle*. According to contractualists, an action is wrong if any single individual can reject it for personal reasons, i.e., "reasons that are . . . tied to the well-being, claims, or status of individuals in [a] particular position."[8] Rahul Kumar explains that personal reasons for rejection can be grounded in two distinct types of considerations: first, instrumental considerations, which concern "a respect in which an individual stands to be benefited or burdened as a result of an activity being permitted"; and second,

7 Scanlon, *What We Owe to Each Other*, 153.

8 Scanlon, *What We Owe to Each Other*, 219.

intrinsic considerations, which concern "the significance of a certain type of conduct being permitted, quite apart from either the possible consequences of the permission being exercised or other indirect consequences of it."[9] Much of this article is primarily concerned with instrumental considerations, but I will return to this distinction in section IV.

The fact that only personal reasons can be appealed to within the contractualist framework is also known as the *individualist restriction*.[10] Contractualists, however, do not directly take personal reasons of actual people into consideration. Rather, they appeal to "standpoints," i.e., abstractions referring to "the reasons that persons in certain circumstances normally have for caring about or wanting certain things," including such things as bodily integrity, the freedom to pursue personal relationships, and avoiding discrimination.[11] Only personal reasons relevant to a particular standpoint are taken into consideration.

Contractualists also subscribe to the *greater burden principle*, which states that "it would be unreasonable . . . to reject a principle because it imposed a burden on you when every alternative principle would impose much greater burdens on others."[12] The individualist restriction and the greater burden principle together determine whether a principle can or cannot be reasonably rejected.

To see how, consider a simple case under certainty in which we could kill Bob to spare ten million people some slight discomfort. The contractualist invites us to compare a general principle that would permit us to kill Bob ("anyone is permitted to kill a person if the alternative is that a large number of people suffer slight discomfort") against a principle that would prohibit us from doing so ("no one is permitted to kill a person if the alternative is that a large number of people suffer slight discomfort"). Someone sharing Bob's standpoint clearly has a very strong reason to reject the former; but someone sharing the standpoint of a person who could be spared slight discomfort has a very weak reason against the latter. However, according to the individualist restriction, we are not permitted to aggregate the reasons for rejection by all those in slight discomfort—only personal reasons given by standpoints that represent single individuals but not groups of individuals are taken into consideration. Thus, the greater burden principle ultimately yields that the strongest personal reason for rejecting a principle permitting us to kill Bob is much weightier (death) than the strongest personal reason for rejecting a principle that would prohibit us from doing so (avoiding slight discomfort). It is thus wrong to kill Bob.

9 Kumar, "Risking and Wronging," 36–37.

10 Frick, "Contractualism and Social Risk," 221.

11 Kumar, "Contractualism and the Roots of Responsibility," 256.

12 Scanlon, "Contractualism and Utilitarianism," 111.

If contractualism were able to tell us only whether a course of action is wrong given that we know the consequences resulting from the action, the theory would be of little practical relevance. As Barbara Fried notes, "in the real world, no conduct, judged *ex ante*, is certain to harm others."[13] In order to adjust for this shortcoming, contractualists have developed two risk-sensitive variations of contractualism: *ex ante* contractualism and *ex post* contractualism. The difference between these two accounts boils down to which temporal standpoint they take to be relevant for assessing a principle. To see how these approaches operate, consider the following case.

> *Air Travel*: Traveling by airplane generates large mobility benefits for those able and willing to take advantage. However, there is an unavoidable yet small risk that every once in a while, parts of airplanes loosen midflight and cause severe injuries to those living beneath the flight paths. While the risk is small, our expectation is that some people will suffer severe injuries from falling airplane debris. Can the people at risk reasonably reject a principle that permits air travel in light of these risks?[14]

For simplicity, let us assume that beneficiaries of air travel and those at risk are two wholly distinct groups. Over the course of their lifetimes, beneficiaries of air travel merely stand to benefit from the permission of air travel, while those at risk (call them "victims") merely stand to lose from the permission of air travel. The case is thus competitive at the *ex ante* stage. The interests of beneficiaries and victims are at odds from the start.

How should we decide in this case? This depends on which temporal standpoint we take to be the correct one. On the one hand, if we take the standpoints into account that victims and beneficiaries occupy *before* air travel is permitted, we have reason to conclude that victims occupying this *ex ante* standpoint cannot reasonably reject air travel. They cannot do so because the burden imposed onto each of them amounts to only a very remote risk of severe injury. Most of us accept such small burdens every day in our lives—for example, when we drive our bikes to work through car traffic or when we sit across the table from clumsy people using cutlery. If we believe the correct standpoint for victims to voice their complaint against air travel is *ex ante*, we mean that the relevant kind of burden is the burden each of them faces *before the expected outcome materializes*. Thus, we should discount the burden of severe injury by the unlikelihood with which it will materialize—this is the *ex ante burden*. The discounted burden of severe harm, however, is easily outweighed by the certain

13 Fried, "Can Contractualism Save Us from Aggregation?" 50.

14 This case is borrowed from Ashford, "The Demandingness of Scanlon's Contractualism."

burden of foregoing the benefits of air travel that prospective passengers would have to accept if air travel were prohibited. Those contractualists who take the *ex ante* standpoint to be the correct one defend *ex ante* contractualism. *Ex ante* contractualism states that air travel ought to be permitted.[15]

On the other hand, if we take the standpoints into account that victims and beneficiaries occupy *after* air travel would be permitted, we will conclude that victims can reasonably reject air travel. This is so because even if we do not know precisely who or how many people will be injured if we permit air travel, we know that it is overwhelmingly likely that *someone* will occupy the standpoint of a person who is severely injured in the future. Proponents of *ex post* contractualism take the *ex post* perspective to be correct, i.e., the temporal perspective *after the expected outcome has materialized* and someone will have been injured by airplane debris. (Note that *ex post* in this case refers not to the temporal state of affairs that obtains after the *actual* outcome of permitting air travel occurs but rather to the *counterfactual* state of affairs that obtains after the expected outcome occurs!) From this perspective, there is no reason to discount this burden, since we expect with high confidence even before any planes are permitted to fly that someone will suffer those injuries—the undiscounted burden of injury that is to be expected is the *ex post burden*. If the correct perspective is *ex post*, then at least one as of yet unidentified person is very likely to bear a burden that outweighs any of the beneficiaries' burdens if air travel is prohibited. Whoever this person will turn out to be can reasonably reject a principle permitting air travel. As Sophia Reibetanz puts it,

> As long as we know that acceptance of a principle will affect someone in a certain way, we should assign that person a complaint that is based on the full magnitude of the harm or benefit, even if we cannot identify the person in advance.[16]

Contractualists who take the *ex post* standpoint to be the correct one defend *ex post* contractualism. *Ex post* contractualism states that air travel ought to be prohibited.[17]

But the result obtained from following *ex post* contractualism is counterintuitive. As Kumar explains, insofar as "the economic and personal opportunities made available to individuals by commercial aviation are ones individuals

15 See James, "Contractualism's (Not So) Slippery Slope"; Frick, "Contractualism and Social Risk"; Kumar, "Risking and Wronging"; and Cai, "Just Social Risk Imposition and the Demand for Fair Risk Sharing."

16 Reibetanz, "Contractualism and Aggregation," 304.

17 See Reibetanz, "Contractualism and Aggregation"; Rüger, "On *Ex Ante* Contractualism"; and Suikkanen, "*Ex Ante* and *Ex Post* Contractualism."

have good reasons to want, there are grounds for in some way permitting the activity's pursuit."[18] Intuitively, we do not wrong others (or contribute to wronging others) because we impose risks of harm onto them when flying above them to our vacation destination.[19] The more general worry here is, as Elizabeth Ashford points out, that many of the ordinary social activities we pursue entail remote risks of severe harm. She thus concludes that *ex post* contractualism would be overly prohibitive: "Avoiding all behavior that involved any risk of harm, however remote, to those who did not stand to be benefited by the form of behavior would be extremely burdensome."[20]

While I generally agree with Ashford's verdict, it is worth refining her point somewhat. Promoters of *ex post* contractualism need not be worried about all nonzero, "however remote" risks. Rather, the point of *ex post* contractualism is that if certain social risks impact very large populations, severe harm is the *foreseeable* result. Any plausible version of *ex post* contractualism will not be concerned with regard to minute risks that fall below the threshold of foreseeability because below this threshold there is insufficient reason to believe that any person will eventually suffer harm. We can hence be a bit more precise about the threshold of foreseeability above which *ex post* contractualism becomes more prohibitive than *ex ante* contractualism: I posit that a particular harm is foreseeable if it is an expected outcome of the permission of a particular type of conduct. In the simplest case in which the relevant risk is homogenously distributed over the affected population, a harm is expected if each member of a population of n faces a probability of roughly $1/n$ of suffering that harm. Put another way, a harm is foreseeable if the probability of at least one person suffering the harm is near one. If a harm is foreseeable, this means that given the evidence available at the time, it is expected that at least one person will suffer severe harm.[21] Still, if we were to follow *ex post* contractualism, many of the everyday activities we undertake, including air travel, would have to be prohibited because the benefits they yield to the many pale in comparison to the foreseeable burdens they impose on the few. All else equal, if we can expect

18 Kumar, "Risking and Wronging," 49.

19 At least at first glance, what makes traveling by plane wrong is not the risk of falling airplane debris but the fact that we produce emissions and thereby promote global warming.

20 Ashford, "The Demandingness of Scanlon's Contractualism," 298. James makes a similar point when he states that "complaints of death will always carry the day" under *ex post* contractualism ("Contractualism's (Not So) Slippery Slope," 272).

21 However, when no instance of harm is foreseeable in this sense, even *ex post* contractualism might permit us to discount the relevant burdens or benefits by their unlikelihood of occurring. How exactly we should discount in these cases is a matter of debate. For suggestions, see, for example, Reibetanz, "Contractualism and Aggregation"; Otsuka, "Risking Life and Limb"; and Horton, "Aggregation, Complaints, and Risk."

even one case of severe injury resulting from the permission of a socially beneficial activity, the activity must be prohibited.

Ex post contractualism thus seems fatally prohibitive, which is typically taken as an argument in favor of *ex ante* contractualism. (I return to this point later in section IV.) However, as I argue in the following sections, *ex ante* contractualism faces problems of its own. In the next section, I set up the discussion of these problems by illustrating how both *ex ante* and *ex post* contractualism motivate compensation for risky social practices that result in foreseeable harms.

II

Assume that we permit air travel. Consider now the case of an Amish farmer hit by airplane debris:

> *Air Travel (Jeb)*: Jeb is an Amish farmer who lives under a heavily used flight path. One day when he is out tilling his field, he is hit by a piece of airplane debris that has dislodged during a flight, and he sustains such severe injuries that he loses his left arm. Even though it happens seldomly that someone is injured due to falling airplane debris, it was foreseeable that someone would sooner or later suffer an injury comparable to Jeb's. This is so because the risk to each person living below a flight path (but unable to enjoy the benefits of air travel) of being hit by airplane debris over the course of her lifetime is one in a million, and ten million people are situated as such.[22]

The question at the heart of this article is what we owe Jeb once the risk from falling airplane debris materializes for him. I assume here that Jeb could not have anticipated that the debris would hit him, and there was no way for Jeb to evade the debris in time; he had no choice in whether he would be injured or not.[23] The central question now is: What do we owe Jeb once he is severely injured?

Let us consider this question first from the perspective of *ex ante* contractualism. In his discussion of the case, Kumar defends the result that air travel ought to be permitted according to *ex ante* contractualism as follows:

22 This case is borrowed from Kumar, "Risking and Wronging."

23 In *Moral Dimensions*, Scanlon argues that whether Jeb made a choice to be subjected to the risk of falling airplane debris will typically impact what we owe Jeb only insofar as his choice could have made it more likely that he would suffer harm (206). For further discussion, see Scanlon, *What We Owe to Each Other*, "Reply to Zofia Stemplowska," and "Reply to Serena Olsaretti"; Voorhoeve, "Scanlon on Substantive Responsibility"; and Williams, "Liberty, Liability, and Contractualism."

> The risk of harm that will be imposed on individuals by the activity is an important reason for objecting to it being permitted. But that concern is plausibly addressed by any principle permitting commercial aviation that, first, mandates certain standards of due care regulating the operation of commercial flights and, second, *invests any person who ends up being harmed as a result of the eventuation of the imposed risk with a claim to compensation*.[24]

Two points are noteworthy here. First, it is self-evident that Kumar does not mean to imply that by permitting air travel, we have *wronged* Jeb and therefore owe him compensation. According to *ex ante* contractualism, Jeb is not wronged because air travel is permitted. Kumar thus uses the term 'compensation' not in the narrow sense according to which duties of compensation arise if and only if a previous, related wrongdoing occurred.[25] Instead, what Kumar seems to refer to with the term is simply *whatever (presumably material) benefit we owe someone like Jeb if they eventually suffer harm due to a risky social practice*.[26] In what follows, I will discuss compensation in this broad sense, unless otherwise specified.

Second, the principle that Kumar believes to be justifiable even to Jeb is not a principle that would simply permit us to engage in air travel if the discounted burden of someone sharing Jeb's standpoint is outweighed by the full burden of someone who stands to forego the benefits of air travel. Instead, Kumar proposes that the principle that is ultimately justifiable to each will be a principle that also includes due care and compensation. This is puzzling, since it follows straightforwardly from *ex ante* contractualism that even if neither due care nor compensation can be provided, the permission of air travel is still justifiable to each. Why does Kumar maintain that air travel is most plausibly justifiable to each conditional upon due care and compensation? As Cai points out, the reason why someone like Jeb is owed both due care and compensation arguably follows from the fact that for any principle permitting a risky yet beneficial social practice, it is true that "when a similar benefit could be achieved with a lower level of risk, it is reasonably rejectable if the risk is not reduced to this level."[27]

24 Kumar, "Risking and Wronging," 49 (emphasis added).

25 For a seminal discussion of such cases, see Thomson, "Rights and Compensation."

26 Beyond compensation, we might also owe someone sharing Jeb's standpoint other things. For example, we might have a duty to apologize to Jeb or to demonstrate an otherwise appropriate attitude towards his plight. See, e.g., Hayenhjelm, "Compensation as Moral Repair and as Moral Justification for Risks."

27 Cai, "Just Social Risk Imposition and the Demand for Fair Risk Sharing," 269.

On the *ex ante* view, risk matters because it affects Jeb's *ex ante* prospect. We can reduce the impact of risk on Jeb's *ex ante* prospect in two ways: either we reduce the probability of harm, or we reduce the magnitude of harm that materializes once someone is harmed. The former can be achieved via precautionary measures (such as thorough inspections of airplanes before takeoff and redirection of flight paths), while the latter can be achieved via compensation. Assume that we have already exhausted all precautionary measures such that the probability of an accident is as low as it can possibly be. We are now facing a choice between the following three principles (which, by assumption, have roughly the same social costs attached):

1. Prohibit air travel.
2. Permit air travel without compensation.
3. Permit air travel with compensation for those living beneath flightpaths.

We have already seen that according to *ex ante* contractualism, principle 1 can be rejected in favor of 2. But from what has been stated above, it is also clear that if 3 is feasible, Jeb could reasonably reject 2 on the grounds that it yields a worse *ex ante* prospect for him than 3. All else equal, proponents of *ex ante* contractualism could argue that those at risk can generally reject principles that refuse compensation in favor of principles that offer compensation simply because compensation improves their *ex ante* prospect while also securing the benefit of risky social practices for others.

A similar line of reasoning applies to *ex post* contractualism, albeit with a caveat. It is clear that compensation improves not only the *ex ante* prospects of those at risk but also the *ex post* burdens of those who will eventually be harmed by a risky social practice.[28] Thus, if compensation is available, *ex post* contractualism will also generally favor principle 3. However, this result obtains only if whomever will be harmed receives sufficient compensation to ensure that their *ex post* burden is outweighed by the burden of those who would forego the benefits of air travel if we were to prohibit the practice—otherwise, the greater burden principle will entail that air travel ought to remain prohibited. Without sufficient compensation, 1 hence remains the principle justifiable to each. In

28 Additionally, it might be the case that Jeb is owed compensation in the narrow sense because he has been wronged according to *ex post* contractualism if air travel is permitted simpliciter. However, as I argue below, previous wrongdoing is not necessary for proponents of *ex post* contractualism to motivate why Jeb is owed compensation in the broad sense. In this article, I focus primarily on how *ex ante* and *ex post* contractualism motivate compensation in the broad sense. For a discussion of contractualism and compensation in the narrow sense, see Alm, "Contractualism, Reciprocity, Compensation."

the simplest case, what someone sharing Jeb's standpoint is hence owed is "full" compensation, which fully rectifies the harm she has suffered.[29]

The canonical formulation of full compensation is by Robert Nozick:

> Something fully compensates a person for a loss if and only if it makes him no worse off than he otherwise would have been; it compensates person *X* for person *Y*'s action *A* if *X* is no worse off receiving it, *Y* having done *A*, than *X* would have been without receiving it if *Y* had not done *A*.[30]

According to *ex post* contractualism, only the person who will suffer harm has a reason to reject air travel. Hence, only once a person has been harmed does she have a claim to compensation. I refer to compensation provided to a person conditional upon her actually suffering harm as *ex post compensation*.

Two points are worth expanding on here. First, as explained in section 1, *ex post* contractualism is standardly considered overly prohibitive because any miniscule risk leading to foreseeable, severe harm could serve as a decisive veto against an otherwise highly beneficial risky social practice. But once we allow for compensation to have an impact on *ex post* burdens, the veto is valid only insofar as no or insufficient *ex post* compensation is provided. All else equal, we can thus pursue even highly risky socially beneficial practices, insofar as the expected harms resulting from them are appropriately compensated. All else equal, a principle permitting people to travel by airplane could not be reasonably rejected by someone sharing Jeb's *ex post* standpoint if this person is provided with *ex post* compensation.[31]

Second, *ex post* contractualism will standardly require high amounts of compensation (close to full compensation) for those who suffer severe harm in order to shift the result of the greater burden principle such that a socially risky practice can be justifiable to all. To reach ahead a bit, the main argument I present in the next section states that proponents of *ex ante* contractualism will standardly lack the resources to explain why high *ex post* compensation is required in order to render socially risky practices like air travel justifiable to each.

29 Alm, "Contractualism, Reciprocity, Compensation" also covers more complex cases for standard contractualism in which full compensation is not necessarily required.

30 Nozick, *Anarchy, State, and Utopia*, 57.

31 The idea that compensation can render otherwise morally problematic risk-imposing conduct permissible has often been proposed in rights-based approaches to risk ethics (albeit with varying success). For such proposals, see, for example, Nozick, *Anarchy, State, and Utopia*, ch. 4; and more recently, McCarthy, "Rights, Explanation, and Risks." For a critical discussion of McCarthy's proposal, see Holm, "A Right Against Risk-Imposition and the Problem of Paralysis."

In sum, both *ex ante* and *ex post* contractualism can explain why someone sharing Jeb's standpoint ought to receive compensation, insofar as compensation is available. This is simply because compensation can improve both *ex ante* prospects and *ex post* burdens and thereby render permitting a risky social practice justifiable to each on *ex ante* and *ex post* contractualism, respectively. Finally, it is worth pointing out that if *ex post* compensation is available (and insofar as the provision of *ex post* compensation does not entail any significant burdens on individuals other than Jeb—for example, because *ex post* compensation is extremely costly), it seems intuitively plausible that Jeb should receive high *ex post* compensation. In what follows, I move on to arguing that proponents of *ex ante* contractualism cannot motivate this plausible result on their account.

III

Consider the Air Travel scenario again. Assume that we have to decide on a principle that settles how much compensation those under the flight paths of airplanes are owed. We have two principles available:

> *Ex Post Compensation*: Every person harmed by falling airplane debris receives $500,000. Persons at risk of being hit by airplane debris (with a probability of one in a million) who are not harmed receive nothing. $500,000 is the required amount to fully rectify the harm to those who will be hit by airplane debris.
>
> *Ex Ante Compensation*: Every person at risk of being hit by airplane debris receives $0.50, the equivalent of full *ex post* compensation discounted by the unlikelihood of harm. Persons actually harmed by airplane debris received nothing more.[32]

Ex post compensation has an insurance-like payoff structure: if harm occurs, a large amount of money will be provided to those harmed.[33] If no harm occurs, no money will be provided. Contrarily, *ex ante* compensation is best thought

32 The distinction between *ex ante* and *ex post* compensation is commonplace in economics as well as philosophy of torts. See, for example, Wittman, "Prior Regulation Versus Post Liability"; Shavell, "Liability for Harm Versus Regulation of Safety"; and Robinson, "Probabilistic Causation and Compensation for Tortious Risk." For one of the few contributions discussing *ex ante* and *ex post* compensation in risk ethics, see McCarthy, "Liability and Risk."

33 To be precise, *ex post* compensation has the payoff structure of third-party insurance, where the policyholder paying the risk premium is someone other than the person who receives funds from the insurance pool. Not much hangs on whether *ex post* compensation is equivalent to third- or first-party insurance. What matters for our purposes is merely the payoff structure, which is equivalent in both cases.

of as unconditional compensation for the mere risk imposition rather than full compensation for the harm that eventually ensues. *Ex post* compensation seems to be the correct principle: it is implausible that we can simply provide Jeb with *ex ante* compensation of $0.50 and claim that we owe him nothing more after he is hit by airplane debris.

However, *ex ante* contractualism cannot endorse this principle because the expected value yielded by *ex ante* compensation and *ex post* compensation is equal: under both principles, it amounts to $0.50 for each individual at risk. There is no reason for any person represented by a rational, risk-neutral *ex ante* standpoint to reject one principle in favor of the other. Worse yet, any comparatively small increase in *ex ante* compensation (say from $0.50 to $1) would lead rational, risk-neutral agents to choose *ex ante* over *ex post* compensation. Thus, because *ex ante* contractualism assesses whether a principle can be rejected only from *ex ante* standpoints, *ex ante* contractualism is committed to the claim that no one can reasonably reject *ex ante* in favor of *ex post* compensation. But even if Jeb chose *ex ante* compensation before he knew he would end up harmed, we have good reason to consider *ex post* compensation the only principle justifiable to each: it would be callous to argue that once he receives *ex ante* compensation, we owe Jeb nothing more when he becomes the victim of severe harm. Because *ex ante* contractualism considers benefits and burdens from the *ex ante* perspective, *ex ante* contractualism cannot avoid this result. Call this the *callousness in compensation objection* against *ex ante* contractualism (for short, the *callousness objection*).[34]

An obvious response that proponents of *ex ante* contractualism could provide against the callousness objection is that beyond duties of compensation, we also have duties of aid towards someone like Jeb. These duties persist even when no one has been wronged, as is the case for Jeb according to *ex ante* contractualism.[35] Kumar makes a similar point when he writes the following about a case similar to Jeb's:

> I may still have a claim on others for assistance because we have a general duty to aid one another when we can do so at little cost to ourselves. But I can't claim that I am owed assistance because I've been wronged and am entitled to some form of compensation.[36]

34 The term 'callousness objection' is inspired by so-called harshness objections launched against luck egalitarianism, which draw on similar intuitions as my arguments here. See, for example, Fleurbaey, "Equal Opportunity or Equal Social Outcome?"; Anderson, "What Is the Point of Equality?"; and Segall, *Health, Luck, and Justice*.

35 Of course, proponents of *ex post* contractualism will insist that Jeb is wronged without a guarantee to *ex post* compensation. Under *ex post* contractualism, the plane that ultimately injured Jeb would have never been permitted to take off in the first place.

36 Kumar, "Contractualism and the Roots of Responsibility," 252.

If you find Jeb out in his field with his arm cut off, you have a duty to aid him to stop the bleeding and to transport him to the nearest emergency room, and so on. The role of compensation, i.e., improving the *ex ante* prospect of those at risk, is here supplemented by aid. The callousness objection is hence *prima facie* avoided. The underlying principle as it applies to the cases under consideration here could be formulated as follows:

> *Aid*: Those who can provide assistance at low cost to those who have suffered severe harm due to the permission of a risky social practice have a duty to do so.[37]

The problem with this response is that it forces *ex ante* contractualism into a dilemma: either the duty to aid is equally generous as *ex post* compensation (Jeb would be roughly as well-off with receiving aid as he would be receiving $500,000), or it is not.

The first horn entails that proponents of *ex ante* contractualism can no longer maintain that *ex post* contractualism is implausibly prohibitive in comparison. This is so because proponents of *ex post* contractualism could claim that a generous duty to aid would guarantee that Jeb's *ex post* burden would be offset just as much as it would be under *ex post* compensation. Given such a generous duty to aid, even proponents of *ex post* contractualism would agree that air travel ought to be permitted. If the decisive reason to promote *ex ante* contractualism over *ex post* contractualism is that *ex post* contractualism is standardly far more prohibitive than *ex ante* contractualism, a generous duty to aid will undermine this reason.

However, the proponent of *ex ante* contractualism could insist that our duty to aid might be far more limited, which leads us to the second horn of the dilemma. Even if we have a duty to aid, it is by no means clear that this duty is so exhaustive as to provide someone like Jeb with aid to the tune of $500,000. The duty to aid might require us to drive Jeb to the nearest hospital to receive emergency medical assistance, but it does not require us to offset his loss of income-generating capacity or to provide him with a functional prosthesis, and so on. If a duty to aid is limited in this manner, it will not lower the relevant *ex post* burdens sufficiently to permit air travel under *ex post* contractualism; the upshot is that proponents of *ex post* contractualism must again conclude that air travel is impermissible.[38]

37 In *What We Owe to Each Other*, Scanlon argues in favor of a similar principle, which he refers to as the *rescue principle* (224).

38 For a discussion of the extent to which we owe others aid according to contractualism, see, for example, Wenar, "What We Owe to Distant Others"; and Gilabert, "Contractualism and Poverty Relief."

But if our duty to aid is limited in this manner, then *ex ante* contractualism is arguably again under threat of the callousness objection. The point here is that by assumption, *ex post* compensation could easily be provided to Jeb—we could provide him with $500,000 at low cost to anyone else. Yet by offering Jeb mere emergency assistance, he is left far worse-off than he could have been. A contractualist account that requires us to limit what we can do for Jeb to mere emergency assistance, especially when we could do much more for him at a low cost to ourselves, is callous.

In conclusion, on the one hand, a duty to aid cannot make those who are harmed as well-off as they would be under full compensation; otherwise, proponents of *ex ante* contractualism must give up on an important advantage of their account over *ex post* contractualism, namely, that the former is less prohibitive. This is so because if there is a generous duty to aid, risky social practices like air travel would also be permitted under *ex post* contractualism. On the other hand, if duties of assistance only incrementally improve the condition of those who suffer harm, insisting that someone who shares Jeb's fate is owed nothing more than emergency aid would be callous.

An argument in favor of providing *ex post* compensation under *ex ante* contractualism comes from fear. As Cai argues, "The guarantee of compensation would help to reduce fear and anxiety for all those who are subject to the risk in question."[39] The point here is that *ex ante* compensation can be rejected in favor of *ex post* compensation by any person at risk because each of them would fear becoming an uncompensated victim like Jeb under *ex ante* compensation. Only if *ex post* compensation is guaranteed is this fear overcome.[40]

The problem with this response is that it is implausible to believe that this fear could be sufficient to tip the balance in favor of *ex post* compensation. After all, the risk of becoming an uncompensated victim under *ex ante* compensation is dependent on the risk of being harmed in the first place. As has been established, this risk is miniscule. We all routinely live with miniscule risks of suffering severe harm without being overwhelmed by crippling fear of becoming uncompensated victims—so why should we assume that those living under flight paths are much different from us? In any case, the response from fear does not show that a rational agent would prefer *ex post* over *ex ante*

39 Cai, "Just Social Risk Imposition and the Demand for Fair Risk Sharing," 269.

40 For a similar point, see Alm, "Contractualism, Reciprocity, Compensation," 14. However, there is a kind of fear that can be appropriately addressed by neither *ex ante* nor *ex post* compensation, namely the fear of being harmed *despite* receiving full *ex post* compensation. Nozick calls this "free-floating fear" in *Anarchy, State, and Utopia* (68). I bracket the issue of free-floating fear because even if full compensation is provided, free-floating fear will by definition persist.

compensation. Rather, it merely shows that there is an additional burden we impose onto everyone at risk, i.e., the fear of becoming an uncompensated victim. We could simply offer to top off *ex ante* compensation with a small additional *ex ante* payment to offset this fear. There is hence no reason to insist on *ex post* compensation, at least not from the *ex ante* perspective of a rational agent. Hence, even if we take fear into account, *ex ante* contractualism again fails to explain why *ex ante* compensation cannot reasonably be rejected. The callousness objection stands.

A related response comes from risk aversion. Perhaps assuming risk neutrality mischaracterizes what those at risk have good reason to want. Instead, we should take into account that people are often risk averse. This should be reflected in the standpoints we take to be relevant. Persons occupying these standpoints would not accept a minor *ex ante* compensatory payment now if it meant foregoing a larger *ex post* payment in case they suffer harm. Therefore, they will have reason to reject a principle providing them with *ex ante* rather than *ex post* compensation.

I doubt this response succeeds in all relevant cases. First, if the risk of harm to each is sufficiently small, and risk aversion among those affected is within a normal range, we can again offer a small additional payment on top of *ex ante* compensation, which would tip the balance against *ex post* compensation. After all, a person within the normal range of risk aversion would at some point accept a lower but unconditional *ex ante* payment (for example, $10,000) over a higher but conditional *ex post* payment (in our case, $500,000, conditional upon ending up harmed). If the payment is sufficiently high, accepting it is the rational, *ex ante* payoff-maximizing move.

But the proponent of *ex ante* contractualism could object that while none of those at risk could reasonably reject *ex ante* compensation plus an additional payment for risk aversion, such an *ex ante* compensatory scheme (providing everyone at risk with $10,000 and nothing more even if harm ensues) would in many cases be far more expensive than *ex post* compensation. Thus, while those at risk have no reason to reject *ex ante* compensation plus additional payment for risk aversion, those who fund the compensatory scheme could reject *ex ante* compensation in favor of *ex post* compensation. In other words, if we care primarily about addressing the risk aversion of those at risk, *ex post* compensation is simply more cost efficient.

There are three issues with this response. First, the fact that *ex post* compensation is less costly to those who shoulder the burden of compensation is not likely to make a decisive difference in favor of *ex post* compensation. Due to the individualist restriction, the comparatively higher aggregate cost of *ex ante* compensation itself gives us no reason to reject *ex ante* in favor of *ex post*

compensation. What matters is only how high the burden is to each individual contributing to the compensatory effort. If we assume that the compensatory burden is distributed among a large number of individuals (which we can safely assume in the cases I focus on), it might often turn out that none of them will be significantly burdened by paying their small share of the aggregate difference in cost between *ex ante* and *ex post* compensation. Second, *ex post* compensation is at best efficient in expectation, but in some cases, it could turn out that we underestimated how many people will be severely harmed. In such cases, it might turn out that *ex ante* compensation would have been the less costly scheme. Third, it is not even necessarily the case that *ex post* compensation is less costly in expectation. Whether this is the case depends on various qualifications: How many people are at risk? How high is *ex post* compensation? Which amount of *ex ante* compensation would make those at risk indifferent between receiving *ex ante* or *ex post* compensation? And so on. The claim that *ex post* compensation is necessarily (or even only in all relevant cases) more cost efficient in expectation than *ex ante* compensation is not tenable. The upshot here is that if proponents of *ex ante* contractualism cannot robustly reject *ex ante* compensation in favor of *ex post* compensation in all relevant cases, the callousness objection stands.

A final response states that the choice I present between *ex ante* and *ex post* compensation is artificial. We could simply provide both *ex ante* and *ex post* compensation (The cost of doing so for each individual would be only marginally greater than merely providing one or the other.) and thus avoid the callousness objection. The resulting principle could be stated as follows:

> *Risk and Harm (RH) Compensation*: Every person living under a flight path receives $0.50. Additionally, every person injured by falling airplane debris receives $500,000.

At first sight, this objection successfully addresses the claim that *ex ante* contractualism is overly harsh towards persons like Jeb: in RH Compensation, Jeb receives $500,000.50. However, the problem is that we could again offer someone sharing Jeb's *ex ante* standpoint a slightly higher *ex ante* payment to forgo any *ex post* compensation. Consider the following principle:

> *Ex Ante Times Two*: Every person living under a flight path receives $1. Any person injured by falling airplane debris receives nothing.

Ex Ante Times Two has precisely the same expected *ex ante* payoff as RH Compensation. A risk-neutral individual would have no reason *ex ante* to reject one in favor of the other. We are again back to where our discussion of *ex ante* and *ex post* compensation began. The only difference is that Jeb now receives $1

instead of $0.50. The conclusion that *ex ante* contractualism cannot deliver any decisive reason in favor of *ex post* insurance stands.

I conclude that none of the responses to the callousness objection discussed in this section succeed. The response from aid either threatens to undermine one of *ex ante* contractualism's most distinctive advantages over *ex post* contractualism—namely, that the latter is far more prohibitive than the former (if generous aid must be provided)—or fails to avoid the callousness objection (if only limited aid must be provided). The responses from fear, risk aversion, and combined *ex ante* and *ex post* compensation all suffer from the fact that rational agents will *ex ante* accept comparatively small additional yet unconditional *ex ante* payments and therefore reject conditional *ex post* compensation. The burden of proof that the callousness objection can be overcome thus remains with the proponent of *ex ante* contractualism. The central theme here is that because *ex ante* contractualism is committed to the idea that what matters with regard to compensation is its effect on the *ex ante* prospect of an agent, *ex ante* contractualism is unable to explain the intuitively plausible verdict that compensation primarily ought to serve to lower the *ex post* burden of those at risk.

IV

The callousness objection arises for *ex ante* contractualism primarily because of the account's exclusive focus on *ex ante* prospects. A straightforward way to avoid the objection is hence to shift focus to *ex post* burdens and embrace *ex post* contractualism. As I argued earlier, *ex post* contractualism can make sense of the idea that *ex post* compensation is required in order to alleviate the *ex post* burdens of prospective (but yet unidentified) victims. If this is done, the assessment of the greater burden principle in the relevant cases will reveal that permitting the risky social practice alongside *ex post* compensation is the justifiable principle. In what follows, I sketch out a full picture of *ex post* contractualism that accounts for both cases in which *ex post* compensation is feasible and cases in which it is not. The upshot here is that *ex post* contractualism is generally not as demanding as is often assumed by its critics.

To begin with, I have already explained why *ex post* contractualism is commonly taken to be an implausibly prohibitive view: many of the risky, everyday practices we pursue are expected to impose severe harms onto a few people over the course of their lifetimes, but the benefits others receive from pursuing these activities are typically taken to be of comparatively less moral weight to the individual beneficiary. The picture that results is that any reasonable expectation of someone suffering severe harm due to risky social practices will constitute a veto against the principled permission of such practices. Since

many (if not a majority) of the practices we pursue in the world we inhabit seem to result in severe harm to some few individuals, *ex post* contractualism would judge that they are not justifiable to the as of yet unidentified victims and should thus be prohibited. However, once we introduce the possibility that these unidentified victims could be compensated for the harm that they will suffer, the picture changes: as long as they receive sufficient *ex post* compensation, any risky social practice is permissible. Whatever *ex post* burden is initially imposed onto them will then be rectified. Victims hence assume a standpoint that no longer characterizes the weightiest *ex post* burden. Instead, the weightiest *ex post* burden is borne by those who would have to forego the significant benefits of a risky social practice such as air travel. Even according to *ex post* contractualism, the only course of action that is justifiable to each in such cases is to permit the risky practice.

While this picture of *ex post* contractualism sounds promising, it is incomplete. There are important cases in which we should not permit some to compensate others for the harms they imposed on others as a result of risky conduct. There are also cases in which compensation is not possible, either because it is too expensive or because the harms resulting from a risky practice will turn out to be incompensable.

Let me begin with the first set of cases. Consider a principle that would allow persons to aim a six-chambered gun loaded with five rounds at anyone else's legs, pull the trigger once, and then provide *ex post* compensation to their victims if a bullet is discharged. Even if the resulting harms would be fully rectified, such behavior is clearly wrong. Both *ex ante* and *ex post* contractualism can explain why: the behavior would be reasonably rejected by those who stand to be harmed for *intrinsic* (rather than purely instrumental) considerations. Examples of conduct that can reasonably rejected because of intrinsic considerations include stigmatizing, discriminating, unfair, or autonomy-threatening conduct.[41] Both proponents of *ex ante* contractualism and of *ex post* contractualism will agree that even if *ex post* compensation (in the broad sense that does not require previous wrongdoing) is provided, a principle permitting conduct that is rejected due to intrinsic considerations cannot be justifiable to each, irrespective of the magnitude of risks involved. Intrinsic considerations thus prevent compensation from becoming "nothing but a price attached to the pursuit of one's own ends, a toll one must pay in order to get on with it, a fee that frees one from the obligation of consulting others."[42] Risky social conduct that is wrong due to intrinsic considerations cannot be justifiable to each on

41 Kumar, "Risking and Wronging," 39.

42 Railton, *Locke, Stock, and Peril*, 215.

any plausible account of *ex post* contractualism, even if *ex post* compensation is provided.

The second point concerns cases in which *ex post* compensation is very expensive. This can happen in cases in which the burden of compensation is shouldered by very few, cases in which very many stand to suffer severe harm, cases in which harms affecting individual persons are in principle compensable but only at a very high cost, and so on. The point here is that according to *ex post* contractualism, a principle permitting risky social practices conditional upon the provision of *ex post* compensation can be rejected not only by those who stand to suffer harm but also by those who stand to shoulder the burden of compensation. If compensation is too expensive, this means that those who owe compensation also have a weighty reason to prefer prohibition to permission with compensation. Generally speaking, in cases in which compensation is excessively expensive in this sense, *ex post* contractualism will tend to judge that the practice in question ought to be prohibited.

Finally, there are cases in which the relevant harms can in principle not be compensated, i.e., are incompensable; death is such a harm. In these cases, *ex post* contractualism *prima facie* falls back on its supposedly excessively prohibitive position. However, it is worth spelling out the relevant implications fully. First, as I stated earlier, not every nonzero, positive probability of incompensable harm suffices for proponents of *ex post* contractualism to embrace the conclusion that a risky social practice ought to be prohibited. Rather, prohibition will be the principle justifiable to each only if the probability that someone will suffer incompensable harm is reasonably close to one.[43] Below this threshold, even proponents of *ex post* contractualism might endorse diverse proposals for discounting the relevant burdens by their unlikelihood of materializing.[44]

Second, even in cases in which incompensable harms might result from a risky social practice, proponents of *ex post* contractualism can insist that under specific conditions, any purported veto against a risky social practice can still be outweighed. To see this, consider Aaron James's example of exempting ambulances from ordinary traffic rules:

> Most of us find it acceptable to exempt ambulances from normal traffic rules. We find this acceptable despite the fact that we all thereby face increased risks of injury or death by ambulance accident, because each of us stands a good chance of needing expedited passage to a hospital at some point. The acceptability argument *need not cite the fact that overall*

43 We might of course still find considerable disagreement among proponents of *ex post* contractualism on how close to one this probability ought to be.

44 See note 21 above.

> *deaths are minimized* when ambulances are exempted from normal traffic rules or that overall welfare is improved but only each person's own *ex ante* advantage.[45]

Ex ante prospects (as emphasized by James) matter primarily from the *ex ante* perspective and are thus primarily relevant to proponents of *ex ante* contractualism. Overall (expected) deaths matter primarily from the *ex post* perspective and are thus primarily relevant to proponents of *ex post* contractualism. But the fact that the acceptability argument "need not cite the fact that overall deaths are minimized" does in no way entail that a minimization of overall deaths is not a plausible reason for why ambulances are exempt from normal traffic rules. Consider the alternative: if it turned out that permitting ambulances to speed through traffic was expected to take more human lives than it saved, we surely ought to reconsider whether we should permit the practice.

Furthermore, it seems appropriate to permit ambulances to disregard normal traffic rules only in case of emergency. It is implausible that ambulances should be permitted to run red lights in order to deliver someone medicine for a cold. The comparability of the relevant harms under permission and prohibition, respectively, is of central importance in these cases: when harms resulting from permission are comparable to harms resulting from prohibition, and more people are expected to suffer such comparable harms under prohibition than under permission, promoters of *ex post* contractualism can rely on so-called tie-breaker arguments in order to explain why permission is justifiable to each.[46] For illustration, assume that we expect one person to die by being run over by an ambulance, but we expect two people to die if ambulances are required to obey normal traffic rules. The weightiest burdens under prohibition and permission of ambulance speeding balance each other out (death), and thus, the greater burden principle on its own provides no conclusive judgment regarding which principle should be adopted. However, if we were to prohibit ambulances from speeding, we effectively ignore the second person's weighty reason against prohibiting ambulances from disregarding traffic rules. This person could insist that her life has not been "given the same moral significance as anyone else's in this situation."[47] We could thus argue that this second person's prospective *ex post* burden provides us with a tie-breaking personal reason to opt for permission instead of prohibition.[48] Generally speaking, even in cases

45 James, "Contractualism's (Not So) Slippery Slope," 272 (emphasis added).

46 Scanlon, *What We Owe to Each Other*, 232.

47 Scanlon, *What We Owe to Each Other*, 232.

48 It is worth pointing out that tie-breaker arguments are not unanimously endorsed among contractualists. For discussion, see Otsuka, "Scanlon and the Claims of the Many Versus

in which harms resulting from risky social practices are expected to result in incompensable harm, proponents of *ex post* contractualism can insist that such practices ought to be permitted if they will lead to an overall lower number of expected burdens of comparable moral weight.

But what about cases in which the relevant incompensable harms are not comparable? Consider Jeb's case again. Assume that Jeb would not simply lose his arm if hit by falling airplane debris; rather, he would die. Assume also that none of the beneficiaries of air travel would bear a burden comparable to Jeb's if air travel was prohibited. Here, *ex post* contractualism can no longer rely on tie-breaker arguments. Thus, in the absence of special justification, *ex post* contractualism states that air travel ought to be prohibited. Again, *ex post* contractualism emerges as a demanding view.

However, allow me to defend the demandingness of *ex post* contractualism on a final note. As Ashford points out, "any plausible moral theory must hold that there are some situations in which agents face extreme moral demands."[49] Demandingness in itself is not a reason for rejecting a theory of wrongness; rather, it urges us to thoroughly motivate the demandingness of the theory. A view that is extremely demanding on us due to the fact that it requires us not to promote, contribute, or permit foreseeable harm seems to me to be well motivated. Perhaps the correct lesson to draw from *ex post* contractualism is that unless we can compensate people *ex post*, perhaps we should not draw flight paths over residential areas (especially not over areas occupied by those too poor or unwilling to benefit from air travel); and perhaps we should not propose speed regulations that are almost certain to take some lives; and perhaps we should provide building permits only if sufficient precautionary measures are in place to ensure that we cannot expect any construction workers to die from accidents on site; and so on. One essential difference between *ex ante* and *ex post* contractualism hence comes down to how many precautions were taken before we can securely state that we have "done enough" to protect others from harm.[50] If we cannot ensure that no one can be *expected* to die, become paralyzed, severely traumatized, or else in the relevant cases, we ought not pursue the practice in question. Some might find the resulting degree of precautionary discretion unacceptable. However, it should be stated explicitly that the alternative entails that we are generally permitted to place others in situations that we foresee to result in irreversible harm to them if this means that we can secure goods of comparatively minor moral significance for ourselves.

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the One"; and Kumar, "Contractualism on Saving the Many."

49 Ashford, "The Demandingness of Scanlon's Contractualism," 274.

50 Scanlon, *What We Owe to Each Other*, 237.

I believe this to be a callous conclusion to embrace for any nonaggregative, nonconsequentialist theory.

V

In this article, I have discussed what compensation we owe those who foreseeably suffer harm due to risky social practices. I have argued that both *ex post* and *ex ante* contractualism can explain why compensation might be justified in many cases, but ultimately *ex ante* contractualism cannot explain why we ought to provide those who foreseeably suffer harm due to risky social practices with *ex post* rather than *ex ante* compensation. I call this the *callousness objection*. *Ex ante* contractualism is unlikely to avoid the objection primarily because *ex ante* contractualism insists on assessing principles for compensation from the *ex ante* perspective. I have discussed a number of possible responses and concluded that none of them are successful. Finally, I have argued that the callousness objection can be avoided by embracing *ex post* contractualism. I have sketched out how *ex post* contractualism deals with a number of cases of routine risky social practices in which compensation is feasible, as well as cases in which it is not. I conclude that even though *ex post* contractualism still emerges as a demanding contractualist view, it is far less prohibitive than usually assumed by its critics in most cases, and its demandingness in the remaining cases is generally well motivated.[51]

University of Gothenburg
richard.endorfer@gu.se

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