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Kant on the Cheap

Thomas Scanlon Interviewed

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Thomas Scanlon is a philosopher's moral philosopher. His writing is like the Harvard Arts Centre by Le Corbusier that he points out as we walk to his office: without ornamentation, constructed with its purpose always in mind.

In this measured style, Scanlon addresses the basic questions of moral philosophy: When we call an action morally right or wrong, what kind of judgement are we making? What kind of reasoning do we employ to arrive at such judgements? Further, when we consider an action wrong, this gives us an important reason not to perform it, and to condemn ourselves if we do. But why should moral considerations carry such weight in our lives?

As a student at Princeton in the late 1950s and early 1960s, such questions held no attractions for Scanlon. In contrast with logic and the philosophy of mathematics, moral philosophy seemed hopelessly vague, an area in which there were no definite answers to be had, in which there was nothing to discover. Having been told that he must take such a course in order to graduate, however, he took a moral philosophy course from J. Howard Sobel, and found the subject fascinating. His interest was at first in technical approaches to ethics based on game theory and decision theory. However, during a year in Oxford, "more or less by accident", he bought Kant's *Groundwork of the Metaphysics of Morals*, a "perplexing and difficult" book, which he came to love. He continued work in logic, however, and it took until the early 1970s for moral and political philosophy to become his leading occupation.

Since that time, he has been motivated by two central questions. First, how do we assess the moral rightness of an action? Second, why should we give moral considerations priority in guiding our actions?

"Long before I first started studying philosophy, I discussed legal issues with my father, who was a lawyer. And I had been stopped dead by the question: 'if you could promote a better state of affairs by interfering with people's rights to freedom of expression, then why not do so?' I thought: well, you shouldn't do it, but why not? So what has occupied me from early on is what we would now describe as tensions between consequentialism, which judges an action to be morally right just in case it brings about a better state of affairs, and rights-based or deontological theories. The second question that motivates me is foundational. How do moral considerations get their distinctive importance? How do they differ from other considerations?"

Scanlon answers these questions in *What We Owe to Each Other*, a book begun in the late 1970s and completed in 1998. In it, Scanlon gives an account of the moral wrongness and rightness of our actions in terms of their justifiability to others. For Scanlon, an action is permissible if it conforms to a set of principles for the general regulation of behaviour that no one motivated to achieve agreement would reasonably reject, and wrong if someone could reasonably reject every principle that allowed it. He calls this view of morality 'contractualist' since it takes moral principles to be those to which everyone would agree if they were motivated by the aim of finding practical principles that others, similarly motivated, would not reject.

Thus, Scanlon believes, 'wrong' is the primary moral predicate, not 'right', the latter being defined as what is 'not wrong', that is, permitted by principles that could not reasonably be rejected. Scanlon focuses the idea of what others could not reasonably reject rather than what they reasonably accept.

"If morally permissible principles are those it would be reasonable to accept, well, then you think lots of things might be reasonable to accept. It wouldn't be unreasonable to accept a very demanding set of principles if you were so inclined. 'Principles that it would not be reasonable to reject', that seems to capture more adequately what it means to justify your actions to other people. So reasonable rejectability seems to capture the core of justifiability."

Scanlon's social contract is one that leaves no one out: each person wields a veto in the imaginary gathering in which principles for conduct are agreed upon. This means we cannot easily trade off one individual's benefits against that of others.

"The way I understand the idea of justifiability to others, it has an individualistic bias. I speak of the grounds of rejection considered from the perspective of each individual in and of him- or herself. (...) I came to it because it seems to me to be the way to explain the authority of deontological or rights-based principles. Why is it that one would be wrong to violate one person's rights for the benefit of others, for medical research or whatever? Well, the answer is: it is not justifiable to *that* person."

Still, each action-guiding principle will lead to a distribution of burdens and benefits to people, and some weighing is required. The requirement of unanimity, Scanlon holds, blocks simple solutions to this problem, such as maximising the sum of a value like pleasure or well-being. Rather, it directs our attention to the person or people most severely burdened by the principle we're considering, allowing tradeoffs only between people who face burdens of comparable seriousness. For example, if a serious accident occurs to someone in the control tower of a television station and aiding him requires ending the broadcast of a World Cup match, which millions of fans are watching, we must attend to the wounded person, since missing a football match is not comparable to severe pain or death (*What We Owe to Each Other*, 235).

Of course, the scope of morality is broader than what is permissible from the perspective of other people. Moral criticism and human values extend to such things as personal development, sexual practices and the preservation of nature that do not always involve our duties to others. Nevertheless, Scanlon sees the morality of 'what we owe each other' as being the core.

In sum, Scanlon offers us a test with which to determine the rightness of our actions. But how useful is this test? Aren't there many different reasons that people can have to reject a principle? It seems that to get some determinate answers to questions of right and wrong we must first decide what counts as valid grounds for rejecting a principle. But this seems to make the procedure devoid of content: any moral principle Scanlon pulls out of the contractualist hat has to be put there at the outset, through the prior decision about which reasons for rejecting a principle are valid. Scanlon demurs: the very structure of the test, demanding universal agreement, *is* already a moral principle, and constrains the kind of norms that can pass it.

"It is already a moral principle in the theory that everybody counts, since we should be able to justify it to everyone. The reason for this idea is that we are all reasonable creatures, to whom it makes sense to want to justify one's actions.

Still, one can ask, what has to be presupposed to give this framework further content? Someone could of course say: 'well, I reject this principle because I wouldn't like to do what it makes me do'. We could say to such a person: 'this alone is not enough, for other people too might have to take certain burdens'. Given the fact that we all have to search for principles that we can agree on, this simply doesn't count, in itself, as a reason to reject a principle. We have to compare the grounds that someone has to reasonably reject a principle with that of other people to reject it. This requires substantive judgements. Is it a more serious objection that I would be inconvenienced in a certain way, or that I would lose my finger, or that I would lose the opportunity to engage in some activity that was valuable to me? One appeals to substantive judgements about which of these claims are more important than others.

So you can't avoid questions of judgement, and this could lead to the charge that the contractualist reaches conclusions only because he has helped himself to lots and lots of substantive ideas along the way. So the theory really doesn't give you new answers. It may be that this criticism is justified. There are different desiderata of a moral theory. I am inclined to think that providing a way of cranking out novel principles is overrated. I do not think many theories do that, and of those that do, I do not necessarily consider these to be the most enlightening aspects of the theory. 'Take Rawls' difference principle [that inequalities are only permitted insofar as they are to the benefit of the least advantaged]. I doubt whether Rawls' theory stands or falls with the difference principle. Rather, it offers us a way of thinking about what the question of justice is. What I mean to do is offer a way of understanding what moral thinking is. This is a more important theoretical objective, in my view, than any specific answers to moral questions."

Still, the scope for actual disagreement between people with different ideas of what constitute good reasons for rejecting a principle seems large. Because of their different views of what constitutes a valid reason, one might accept a given principle, while the other might reject it. Is this a problem for contractualism?

"First, we must see that this problem is not particular to contractualism. Take utilitarianism. We also can have different ideas about what will maximise utility, or about the relative importance of the different components of utility. This does not in itself invalidate utilitarianism as a theory.

On the other hand, you might say: 'well, even though it's not peculiar, it hits you harder, because, after all, yours is a theory of hypothetical agreement. If people aren't going to agree, that is more of a problem for you than for a utilitarian, who doesn't have anything to say about agreement or disagreement.' This objection is, I think, based on a natural, but nonetheless mistaken reading of the theory. To describe it as a 'hypothetical agreement' is already mistaken. That would be 'what people *would* agree to under certain specified conditions'. Rather, what matters is what it would be *reasonable* for them to reject, under certain conditions, that is, if they were trying also to find principles that others could not reasonably reject. It is not what people *would* do under such-and-such conditions, but rather what it would be reasonable or unreasonable to do under such-and-such conditions."

So what is required is an act of the imagination?

“Not quite. Imagination would be, again, imagining what they *would* do under certain conditions. Rather, it is an act of *judgement* about what it would be reasonable for them to do under those circumstances. And that is where the idea is not really an idea of agreement.

Now, I can see what you’re going to say here: since my theory of moral motivation depends on being able to justify oneself to others, then of course, ideally, you will want to be able to reach actual agreement, to be able to justify yourself to others in a way that they will actually accept. But, everybody knows we aren’t always going to get that. What one tries for is justification that can’t reasonably be rejected. You just hope that they’ll not actually reject it, but if they do -if they are unreasonable- then getting their agreement is an extra distance you can’t expect to go.

There is something further to be said on the issue of disagreement. If two people find that there are arguments on both sides that are both very compelling, maybe that renders the answer to the question what is right and wrong indeterminate. Maybe there isn’t a clear answer. You might think that morality indeed admits of such unclear spots, particularly where the cases involve a gradation, such as abortion. But again, whether any given case is an unclear spot, where opposing reasons are equally balanced or whether it is not depends on a substantive judgement of the merits of the reasons in that case. This is again something about which people may disagree.”

But is justifiability really fundamental to morality? It seems that the fact that an act is not justifiable to others is something that follows from a deeper, prior fact about the action: that it causes pain, or betrays someone’s trust. That’s why an action is wrong, and you cannot justify it to others because it is wrong. Aren’t actions wrong to begin with, and therefore unjustifiable? Scanlon disagrees.

“Of course, you could say, the idea of justifiability is really derivative. This is downstream from the really fundamental idea that something is wrong. If something is wrong, then of course you could not justify it to others, because justifying it to others is a matter of showing that it is not wrong. So, the objection goes, you have to have a prior notion of wrongness in order to explain what justifiability is. That is certainly a criticism that many people have made, but I don’t accept it. What I want to say is this: the grip that the notion of wrongness has on us is *itself* tied up with the notion of justifiability. They go together. A notion of wrongness that is prior to or independent of justification I find hard to accept, for it does not explain its distinctive force in motivating us.”

Seeing moral rightness and wrongness as essentially tied to justification, argues Scanlon, gives us a handle on the problem of moral motivation. The reason to act morally, and what can motivate us to act in this way, is not just the bad or good our action would bring about. Rather, all wrong actions have an unappealing aspect: performing them estranges us from others, since we cannot reasonably justify ourselves to them. Thus, according to Scanlon, we shrink from acting in a way that is unjustifiable to others independently from shrinking from doing something cruel or unkind, or whatever other characteristic of the action that might make it unjustifiable. Thus, we can answer the question ‘why be moral’ by drawing attention to the kind of relationship to others that acting morally creates.

“Why be moral? You answer this question by thinking about how your relation with others is altered if you are behaving in ways that you could not reasonably expect them to accept. This puts you on a footing of revealed or concealed antagonism towards them.

You are, in a way, contending parties. The reason we have not to have our relationships to be on this footing is the reason why we can be motivated to be moral.”

So, like Mill in *Utilitarianism*, for Scanlon, a relationship of ‘unity with our fellow creatures’ is what gives us a reason to be moral. On his account, the experience of moral guilt is one of estrangement from others, of having violated the requirements of a valuable relationship with others (162). But this feeling of estrangement relates only to the demand others could reasonably place on you, and this may be very different from people’s actual demands. In situations where you acting on principles that you believe others could not reasonably reject, but which they do in fact reject, how can this motivation ‘to be at unity with our fellow creatures’ still be operative?

“Let us examine such cases. Let us suppose that you are dealing with people in a very bad situation, with low self-esteem, and you are [not] treating them in ways you believe they could [not] reasonably reject. However, their self-esteem is so low that they do not demand much of you, and are in fact quite happy that you are not treating them worse. So you might have very warm relations with them, but you know, in fact, that you are not treating them correctly. I think there is something very undesirable about being related to people in this way.

The opposite case is where you believe you must morally demand more of others than they are willing to do. You could be estranged from them and be considered a moralistic prig, or overly demanding or something like that. Nonetheless, there would be something false about your relations with them if, for the sake of getting along with them, you simply pretended that you think their behaviour and demands are alright.

In sum, consciously acting towards others in a way you believe to be wrong, or accepting that others not act correctly towards you, even if this leads you to be on apparently good terms with them, creates a tension. Even though you’re preserving good relations with others on the surface, there is something flawed in your relations with others.

So though it may seem that both actual and ideal agreement appeal to the same desire to ‘not feel estranged’ from others, it is *not* the same desire in both cases. The two desires are easily confused, but are not the same. It is one thing to have actual relations with others that express acceptance. This is sometimes something you can get on the cheap and sometimes something you can only get by being morally concessive and self-effacing. Those possibilities show you that there is a difference between the desire to act in ways that you can actually justify to others and the desire to treat them and being treated by them in ways that they nor you yourself could reasonably reject.”

The kind moral motivation Scanlon proposes may seem best suited to a people with a bourgeois sense of civility, concerned about their conduct not being objectionable to their fellow citizens. But, Scanlon maintains, this impression would be mistaken: everyone has reason to become members of a community of people that are prepared to offer good reasons to each other for their behaviour. Therefore, the moral motivation based on this valuable way of relating to others is universal in scope.

“I think this [kind of relation to others] is something that people in all cultures and all times have reason to care about. Whether people have implicitly recognised it in all places in all times is another matter. Nevertheless, I think we find it in many places. The Golden Rule, for example, is one that in some form or another is advanced by many religions. One way of understanding this rule is that it is an attempt to capture this idea of

justifiability to others. Insofar as something like it is put forward as a theorem or a lemma in various religious structures, then it is recognised as a non-fundamental value. I am saying it is really the fundamental value.”

But could someone in, for example, a hunter-gatherer culture, that has an ethic of allegiance to family and perhaps the tribe, and prizes qualities like bravery and ruthlessness in exploits against others that are not members of these groups, understand the abstract way of speaking of right and wrong in terms of ‘principles that no one could reasonably reject’? My suggestion that he or she might not understand meets with a stern reply.

“I am inclined to think that human beings in general are capable of understanding the kind of justifiability that I propose. This ability is almost always very widely evidenced in some of their interactions with other people, with the people to whom they are close and with whom they have daily interaction. That shows that people can understand this concept of justifiability, although they may not apply it as widely as I propose. All of us, historically, have been or are selective in our application of the necessity for justification to all people. It is not a lack of understanding, it is a failure to live up to what this would require of us.

More generally, I am suspicious of this pressure towards a more relativistic stance, that is, a stance in which we reign in categories of appraisal that we would apply to ourselves when we confront other cultures. There is a common idea that it shows a lack of respect for those people to apply our categories to them, since it doesn’t take into account how different they really are. I have two responses to this. First, I think it shows a lack of respect to think that they are not the kind of creatures who can understand this. I am not inclined to take such a charge seriously. Also, we must not only show respect towards the people who we are judging as perpetrators, whom we might argue with and tell ‘well, you shouldn’t do this’, but also towards the victims. For refraining from criticism means that we also disallow the complaints of the victims against the perpetrators. This of course does not mean that we cannot see that there are circumstances where, even though what people are doing is wrong, it is understandable, or even excusable, that they do not think it is wrong. But such extenuating circumstances do not make what they are doing right, or shield it from moral criticism.”

Thus, Scanlon maintains that the contractualist structure of morality is universal in scope. This does not mean that moral prescriptions that emerge from contractualism are the same in all times and places. What individuals can reasonably demand of each other will depend on what is necessary for them to lead valuable lives, and this differs historically and between different cultures. For example, it seems plausible that people have a need for privacy. But in different societies, people have different reasons to protect parts of their lives from other people’s scrutiny. What is considered shameful to reveal in one society will not be so in another. Therefore, the principles specifying the boundaries between the public and the private will differ.

Nevertheless, the space for difference is circumscribed by the demand that no individual, whether within the group that maintains certain practices or beyond its boundaries, can reasonably object to it. Against those that would maintain that this shows insufficient respect for the fundamental differences between cultures’ moral codes, Scanlon responds that the contractualist respects people by taking seriously the most fundamental aspects of human life: each individual’s capacity to select and assess the various ways he may want to live, and to assess reasons and justifications.

“Fundamentally, being able to justify one’s conduct to others by acting on principles that others could not reasonably reject is a way of responding to the value of humanity. Recognising the value of a rational creature is recognising the importance of its ability to respond to reasons for believing something or acting in a certain way. I think behaving towards it in a way that would be allowed by principles that it could not reasonably reject is that way, is the way of relating to others that is most appropriate to their status as rational creatures.”

Here we feel the weight of a philosophical tradition that considers people’s rational capacities the fundamental source of what is valuable about being human. But why should this capacity for reason be privileged over other human capacities, such as to play, to love or to make great discoveries?

“Well, partly because it governs these other capacities. It is more general. I think we relate to others in many ways: as people who respond to poetry, as people who play soccer, or who do mathematics. Such relations with others are based on the recognition of the value of these pursuits. Now some people say: ‘when these diverse values come into conflict with the requirements of treating others in accordance with principles that they could not reasonably reject, why shouldn’t the value of poetry or chess or scientific discovery or love trump this value?’ I would answer: interacting with others *qua* chess players, *qua* lovers, or poets, is a special case of interacting with them *qua* rational creatures. If we didn’t think of them as having the status of rational creatures, we wouldn’t be able to relate to them in the way that we do. Therefore, I would say that a relationship to others that brings the moral requirements of ‘what we owe to each other’ in train is presupposed by the more specific forms of relationships. That is one of the reasons why moral requirements take precedence over other relationships.”

Just as the capacity to assess and act on reasons is foundational for all valuable human pursuits, so, Scanlon argues, caring about justifying oneself to others is fundamental to all valuable human relations. At the root of our relationships with others as colleagues, lovers or friends is a recognition of these others as people with separate moral standing, to whom justification is owed in their own right, not merely in virtue of the ties of commerce, love or friendship that bind us to them. There would, remarks Scanlon, be something unnerving about a ‘friend’ who would steal a kidney for you if you needed one, or, we might add, about a friend like the main character in Dominic Moll’s thriller *Harry, un ami que vous veut du bien*, who rids you of your parents because they make your life miserable. The attitude of such a ‘friend’ implies that the only reason you are not harmed is because he happens to like you (164).

This foundational place of morality explains its importance and its priority over other concerns and attachments in our lives. But beyond the everyday relationships that a moral attitude makes possible, Scanlon sees it as creating a community in which people live by principles to which all would reasonably agree. In the *Groundwork*, Kant describes this as the Kingdom of Ends, “the systematic union of different rational beings through common laws.” Though he rejects the basis of Kant’s Categorical Imperative, it is this ideal which underlies Scanlon’s contractualism.

“You can see Kant’s work as being about an ideal of a moral community. This is what is really appealing about it. He describes the Kingdom of Ends, and acting only on principles that one can will to be a universal law, as the only way of standing in a very appealing relation to other people. I think that no doubt Kant was moved by that, and I think that many of his readers, myself included, are moved by that.

However, this is not what is fundamental for Kant. What he takes to be fundamental is an idea of human agency and freedom. The Categorical Imperative is something that is a consequence of the question: how is it possible for us to be free rational agents at all? A rational agent, says Kant, cannot conceive of itself as being determined by outside considerations. The question then is: well, how can it think of itself as active, and he thinks that accepting the categorical imperative as the ultimate practical principle is the only way of coherently conceiving of yourself as a free rational agent at all.

Now, I don't find Kant's analysis of freedom convincing. In addition, I do not think that one can get as much out of a contradiction as Kant thought. The Categorical Imperative tells us to "act only according to that maxim by which you can at the same time will that it should become a universal law". Now, to determine what kinds of maxims conform to the Categorical Imperative, there is the contradiction in conception test [what you can think of as a universal law without contradiction] and the contradiction in the will test [what it is possible to will to be a universal law without contradiction]. My own way of understanding it is that the contradiction in conception test is not really a viable independent standard. This throws you back on the contradiction in the will test and when you get into the question of 'what you can or can't will', I think that in order to interpret that in a way that actually fits with the way we see morality, it is not really right to put that as a contradiction. My idea of 'could not reasonably reject' is an attempt to provide an alternative to that idea of a contradiction.

So to me, neither Kant's idea of freedom nor his idea of a contradiction seem to really work in the end, and when you give up these two ideas you've given up a lot of Kant. However, I *do* find the idea of moral community very appealing. So I try to develop a notion of morality which simply takes as basic that notion of moral community. When you ask 'why be moral?', I think we can just describe the appeal of that kind of community and the dis appeal of its alternative. Now, in Kant's view that's heteronomy. But not being a great believer in Kant's particular notion of autonomy, I do not see this as a problem. I have a different idea of freedom than Kant does, so it's Kant without the really fundamental bit (for him), without the difficult part."

"So" he says laughing, "you might say I'm Kant on the cheap."