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Scanlon on Intention and Permissibility

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1. Permissibility, Meaning, Blame

The physical dimensions of a book are sometimes a misleading guide to its philosophical importance.¹ T. M. Scanlon's *Moral Dimensions* is one such book. Although it is modest in size and refreshingly brief, it manages to include serious proposals for how to rethink each of three different issues at the heart of ethical thought, namely the nature of blame, the grounds of permissibility and the moral relevance of facts about intention.

The book has two main parts. The first part (Chs. 1–3) is focused on the ethical significance of intention. In Chapter 1, Scanlon rejects the so-called 'doctrine of double effect' and offers a distinctive diagnosis of its illusory appeal (cf. Kamm 2007). According to Scanlon, the illusory appeal of double effect arises from confusing two different questions. The first is a 'deliberative' question about whether it is permissible for an agent to perform a certain action. On Scanlon's view, this depends on there being a principle permitting the action that no one could reasonably reject (cf. Scanlon 1998). The second is a 'critical' question about whether, in deciding to perform a certain action, the agent took the proper considerations into account (and in the right way). On Scanlon's view, this depends on what the agent in fact saw as their reasons for acting. According to Scanlon, the illusory appeal of double effect derives from treating the critical question as if it were part of the deliberative question, which it is not (and on a prior answer to which it depends). Thus, what makes it wrong to break a promise is normally the fact that I made it. If I break it for selfish reasons, that may count against me. Yet this would normally be a 'criticism of the way I went about deciding, not an explanation of why my action would be wrong' (Scanlon 2008: 24).

In Chapter 2, Scanlon discusses a number of different ways in which the permissibility of an action can be thought to depend on intention. He accepts that it sometimes does. In particular, an agent's intention can be relevant to permissibility in the following ways. First, an agent's intentions have 'predictive significance' as features relevant to the action's likely consequences. Thus, if my intention in breaking a promise is to harm you, this intention may affect the likely consequences of my action and raise legitimate concerns about future impermissible harms. Second, an agent's intentions affect what Scanlon calls the 'meaning' of actions, which he defines as 'the significance, for the agent and others, of the agent's willingness to perform the action for the reason he or she does' (4). According to Scanlon, the meaning of actions

1 *Moral Dimensions: Permissibility, Meaning, Blame*. By T.M. Scanlon. Harvard: Harvard University Press, 2008. xii + 247 pp.

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can vary independently of their permissibility (55). Yet, the meaning of actions can also affect their permissibility in at least two ways. In 'expression' cases, agents present themselves as being moved by certain reasons. Thus, a person may falsely present himself as concerned with the health of a wealthy relative in order to benefit from their will. In 'expectation' cases, agents enter into relations with others only because they assume that those others are moved by certain reasons. Thus, a wealthy relative may be generous to a potential beneficiary of their will only because they believe the potential beneficiary is genuinely concerned with their health. In each case, facts about intention are relevant to permissibility, but only in a 'derivative' way', and 'as a consequence of a more basic moral requirement to not mislead others or take advantage of their mistaken beliefs about one's intentions' (40).

In Chapter 3, Scanlon gives an account of what is wrong about treating another person as a mere means, and therefore not as an end in themselves. On one hand, the claim that we should treat others as ends in themselves can be interpreted as a claim about permissibility. Read in this way, to regard someone as an end in themselves is to regard them as a 'nonderivative source of reasons' and behave towards them only in ways that they 'could not reasonably refuse to authorize' (92, 98). In this sense, Scanlon agrees that an action is impermissible if its performance is incompatible with treating others as ends in themselves (99). On the other hand, the claim that we should treat others as ends in themselves can be interpreted as a claim about meaning. Read in this way, to regard others as ends in themselves is to 'take' this fact as 'giving me reasons to treat them in some ways rather than others' (99). Thus interpreted, it is possible to fail to treat someone as an end in themselves without doing anything impermissible on Scanlon's terms. Thus, a Mafioso may decide to pay for his meal on the odd occasion just because he feels like showing off, but without giving any consideration to his host's interests, needs or entitlements. In doing so, he could be acting permissibly, but without showing genuine respect for his host. To act permissibly, all he has to do is pay the host the money he owes him. He is not further required to show good will.

The second part of the book (Ch. 4) is focused on the nature and ethical significance of blame. According to Scanlon, to consider an action as blameworthy is to consider it as having a particular meaning. To blame someone it is therefore not necessary to make a judgement about the permissibility of their action. To judge that someone is to blame for what they did is to judge that the reasons for which they acted reveal them to have attitudes that impair their relations with others, thereby making a modification of one's own attitudes towards them appropriate. On this view, to blame someone does not necessarily involve the idea of a sanction or punishment (cf. Strawson 1987). Nor does it necessarily involve the presence of reactive emotions, such as anger or resentment (cf. Strawson 1962). What it does require is drawing a conclusion that someone's action shows something about them that makes some otherwise desirable attitude towards them unreasonable. In this way, blaming someone goes beyond making a negative evaluation of their character (cf. Hume 1978). It also involves a decision to adopt the attitudes towards the person blamed that one's judgement deems reasonable. In this way, what started as a friendship may evolve into a strategic relationship of mutual convenience. According to Scanlon, one attractive consequence of this way of thinking about blame is that it has no implications for the metaphysics of freedom (cf. Kant 1983). I can decide that friendship is no longer an option in light of your duplicity even if you could not possibly have

acted otherwise. In this way, Scanlon claims to disentangle the practice of blame from a number of old philosophical mysteries and domesticate it as part of the ethics of meaningful relationships.

5 In the following sections, I critically explore Scanlon's account of the ethical significance of intention. I make no critical comments about his discussion of blame.

a. Permissibility and choice

At the end of Chapter 2, Scanlon raises the question whether meaning and permissibility can really be separated in the way required by his account (Scanlon 2008: 88). There is at least one class of actions that presents a serious challenge to this distinction. These are actions where the intention behind the action is inseparably bound up with the kind of action it is. It is a well-known fact that all actions fall under more than one true description. It is also a well-known fact that which of these descriptions are 'essential' or 'constitutive' of a given action can be a matter of controversy, some of it possibly ethical (cf. Bennett 1995; Quinn 1993). Scanlon does not offer a theory of act identity in this book. So it is unclear what he would say about this category of actions in general. He does, however, agree that there are such actions (Scanlon 2008, 75), in which case it is only fair to ask whether the question of such an act's permissibility can always be separated from the question of its meaning.

20 Consider a simple act of deliberate humiliation. Suppose I tell your friends, in your presence, that you recently entered a talent competition but were thrown out in the preliminary round, the judges having turned away from your performance in disgust. Suppose it is true. Suppose the truth will eventually come out and that you know this. Suppose also that you would admit to the truth if someone were to ask or point it out to you, but you would strongly prefer if it were not exposed in a cruel or mocking way. So I expose you, just in order to humiliate you in front of your friends. You may think that what I did reflects badly on my character in virtue of the reasons for which I did it. You may also think that what I did was wrong. So far, Scanlon's distinction between meaning and permissibility coheres with your description of the case. Yet if you think that what I did was wrong precisely because of the reasons for which I did it, then Scanlon will say that you are confusing the meaning of my action with its impermissibility. This consequence of Scanlon's account is worthy of further scrutiny.

35 Scanlon might agree that my reasons for action in this case are relevant to the impermissibility of my action, without being what really explains it. First, he might say that my reasons are predictively significant (e.g. by revealing the fact that I'm a bit of a bully). Second, he might say that my reasons for action are 'derivatively' significant insofar as they point to a more basic moral requirement that does not rest on facts about intention (e.g. a prohibition against taking advantage of other people's vulnerability). Third, he might say that even if my intention to humiliate you makes my action 'worse', it does not explain why it is impermissible, because the goodness of an action is not a simple function of its deontic status. None of these responses strikes me as fully capturing what is going in this case. First, my operative reasons for action in this case are inextricably bound up with the nature of the act itself. They are not separable features of the action, the presence or absence of which somehow makes 'it' better or worse. Second, the identification of the action as of the relevant kind (i.e. an act of humiliation) would normally be sufficient to explain what is wrong with it to

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anyone who understands what is going on. No more basic level of explanation is either wanted or required.

Scanlon does not discuss the example of deliberate humiliation in this book. He does, however, consider two examples of impermissible action that may give a clue to what he should say about the humiliation case. The first is an example of discrimination. Scanlon claims that some forms of discrimination, including racism, involve a kind of 'insult' in expressing the view that someone else is 'inferior or socially unacceptable' (72). What is 'crucial' in cases of racial discrimination, he suggests, is that the attitudes in question are widely shared, with the consequence that members of the vulnerable group 'are denied access to important goods and opportunities' (73). This may well be true. It does not, however, account for the perceived wrong in the kind of 'insult' that consists in a single act of discriminatory behaviour. Thus, there may be nothing wrong in principle about being asked to show one's papers. Yet if you are asked to show your papers by me for no other reason than that I enjoy the display of power and impunity, it would not be absurd for you to think that this would a wrong thing to do, at least partly because of the reason behind my doing it.

The second example concerns impermissible threats. In Scanlon's version, we are asked to imagine an employer who threatens to sack a member of staff unless they have sex with him. Scanlon claims that there are several factors that can explain the impermissibility of such an act of sexual harassment without invoking facts about intention (75-87). First, the fact of impermissibility could be explained by the impermissibility of inflicting the penalty. Scanlon concedes that this explanation will fail if the employer has independently good reasons to make the member of staff redundant. This explanation also fails in the humiliation case, where there is no threat and therefore no associated penalty. Second, the fact of impermissibility could be explained by saying that the victim of the threat has been 'unjustifiably subject to the agent's control' (86). This explanation arguably applies to both the discrimination and the sexual harassment case. How it fares in the humiliation case depends on whether what is wrong about being humiliated 'fundamentally' boils down to one person unacceptably exercising control over another. To insist that it must strike me as a bit of a stretch. Third, the fact of impermissibility could be explained by saying that the victim's situation is 'made worse' by the threat itself. This explanation might be thought to work better in the humiliation case on the assumption that being humiliated involves a negative attitude towards being humiliated. It fares less well if we imagine that you have become used to my previous attempts at bullying, harassment or discriminating behaviour. Being all too well acquainted with my social tactics, your response to exposure might be one of indifference. You may still, however, think that my attempt to humiliate you is impermissible. It is therefore open to question whether being a victim of this kind of behaviour necessarily makes the victim 'worse off' in anything more than a vacuous sense.

What is really at stake in this discussion is what to count as a 'basic', 'fundamental', or 'ultimate' explanation of something's being impermissible. The critic suggests that facts about intention can suffice to explain the impermissibility of deliberately humiliating, actively discriminating against, or unfairly threatening another person. Scanlon insists that we push on to more general considerations, such as facts about the loss of goods, what counts as acceptable forms of control over others and so on. But why does he dismiss out of hand the idea that facts about their constitutive intentions can make certain actions impermissible? His answer consists in appealing

to a problematic assumption about the relationship between intention, permissibility and choice.

5 According to Scanlon, questions of permissibility only apply to alternatives between which an agent can choose (58–60, 88, 230, n. 37). The reason he denies that facts about intention can make actions impermissible is that he thinks that intentions are not really objects of choice. True, I can decide to pursue one end rather than another, and thereby come to settle on one among a number of possible intentions. Yet I am not, according to Scanlon, able to ‘pick’ my ends in the way I can ‘pick’ one among a range of possible actions. Thus, he writes: ‘One can adopt an end only if
10 one sees some consideration as counting in favor of it, and it is at this most basic level that I do not think that we can choose what to see as reasons’ (60). In this sense, our choice of intentions is said to lack an essential element of ‘free play’. It follows that to alter one’s intentions necessarily involves an act of reasoned judgement, whereby the former intention is ‘downgraded’ relative to the latter with respect to the reasons that are said to count in its favour. Thus, there is no such thing as ‘choosing’, or ‘singling out’ one among a number of present intentions as ‘the’ reason for which one acts. It follows that, ‘since it is not open for us to choose which (ultimate) reasons to act on, a person who ‘does the right thing, but for the wrong reason’ will be doing something
15 permissible’ (88).

20 This argument raises a number of interesting questions. First, suppose I consider a number of ends but make no overall judgement about which one has most speaking in its favour. I may think all the ends in question are equally reasonable. Alternatively, I may think that they all pass muster to roughly the same extent. Why can’t I then freely choose between them? Consider, once more, the example of humiliation.
25 Suppose I consider whether to humiliate you for my own perverse gratification or to teach you a lesson, and that I (erroneously, as it happens) have no view as to which is the more reasonable aim. Why is it then supposed to be impossible for me to freely choose to humiliate you for my own perverse gratification? On reflection, it is possible that Scanlon would be willing to accept this restriction of his ‘no choice’ assumption,
30 as in one place he appears to suggest that we may be able to choose between reasons we regard as ‘sufficient’ (60).

Let us therefore suppose that I cannot choose an end except by judging that it is sufficiently reasonable to merit being chosen. If so, it is natural to think this inability will also affect the means to my ends. After all, the means to my ends are also ends in
35 the trivial sense of being objects of possible desire. Furthermore, deciding on a set of means to my ends normally involves me in the task of judging which, among an indefinite range of possible means, there is sufficient reason to choose. Yet, the means to my ends are the actions I can perform to realize my intentions. So if I am unable to choose the means to my ends, I am thereby unable to choose which actions
40 to perform to realize my intentions. In which case, no actions taken as a means to an end can ever be impermissible, as they are not really ‘alternatives between which an agent can choose’. Perhaps this is the reason why Scanlon writes that we are unable to freely choose what to take as our ‘ultimate’ reasons (Scanlon 2008: 60, 88). He does not, however, explain what this restriction amounts to, or why it is imposed. It is
45 therefore unclear how it is supposed to help.

Why should we assume that questions of permissibility only apply to alternatives between which agents can freely choose? On the face of it, this assumption appears rule out from the range of permissible and impermissible options any upshot of

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practical reasoning. Yet why should we think that no upshot of practical reasoning, apart from being poor or unreasonable, can ever be permissible or impermissible? Suppose I am forced, by the sheer power of my (unreasonable) judgement, to adopt as my ultimate aim your public humiliation. Why think that you are thereby prevented from judging that either my acquisition of this aim or my action to pursue it is impermissible? A traditional philosopher of Kantian bent might reply that only that which can be freely chosen can be impermissible because only that which is freely chosen can be blameworthy. Yet as we have seen, Scanlon denies that there is any necessary connection between impermissibility and blame. It is therefore obscure why he insists that questions of permissibility only apply to options between which we can freely choose.

b. Intention and double effect

At the start of the book, Scanlon describes the defender of double effect as committed to the claim that ‘an action that aims at the death of an innocent person, either as an end or as a means to its end, is always wrong’ (1). Thus understood, double effect is a principle about the sufficient conditions for an action aiming at death to be morally impermissible. Standard definitions of the principle do generally not take this form. As traditionally conceived, double effect postulates four individually necessary and jointly sufficient conditions for certain acts that have both good and bad effects to be permissible. The necessary conditions in question are (i) that the act itself is either morally good or at least indifferent, (ii) that the bad effect not be directly intended, (iii) that the bad effect not be a direct cause of the good effect and (iv) that the good effect is proportionate to excuse the bad effect. In this formulation, double effect has historically been invoked to explain how, even if it is normally impermissible to kill another person, it can still be permissible to kill in self-defence. On the plausible assumption that an action done in self-defence need not be aimed not only at a guilty aggressor but also at an innocent aggressor created by either a guilty aggressor or a tragic accident, defenders of double effect should therefore not be read as committed to the claim identified as defining this principle by Scanlon at the start of this book. It is not my intention here to defend the doctrine of double effect against the many formidable objections to it (cf. Kamm 2007). What I shall do is make one simple point to suggest that Scanlon’s discussion of the doctrine fails to capture its full ethical significance.

Like many other discussions of double effect, Scanlon’s book does not have much to say about the ethical significance of the distinction between aiming at something bad as a means (indirect intention) as opposed to aiming at it as an end (direct intention). His focus on the case of impermissible threats as opposed to my case of deliberate humiliation is one symptom of this fact. This narrowness of focus is potentially troublesome. Thus, the standard way of undermining double effect is to produce examples where it seems wrong to think that the difference between permissibility and impermissibility is explained by the difference between what the agent (indirectly) intends and what that agent merely foresees. This is the distinction targeted, for example, in the literature on terror bombing versus strategic bombing as permissible strategies of killing in war (cf. Bennett 1995). Suppose we agree that these cases show that we ought to give up on double effect as traditionally conceived. It does not follow that the presence of intention always fails to explain the difference

between permissible and impermissible action unless a parallel argument can be run against the distinction between direct intention on the one hand, and indirect intention and/or mere foresight on the other. Yet the claim that an action can be made permissible or impermissible depending on whether or not the agent was aiming directly at the bad effect is harder to dismiss than the parallel claim about (indirect) intention versus (mere) foresight. Consider the following variant of Bennett's case of the punitive bomber (another case that Scanlon does not discuss in this book). Imagine that a punitive bomber kills a number of innocent civilians, not as a means to win the war, nor as a foreseen consequence of destroying strategic military targets, but simply in order to exterminate them. It is not absurd to think that what the punitive bomber does is impermissible, even if strategic bombing and terror bombing with the same effect are ethically on a par, and both would be in principle permissible in the circumstances. Or consider the case of a business colleague who engages in a campaign of malicious slander against you, not in pursuit of a valuable business objective or as a foreseen side effect of this pursuit, but simply out of malice. True, such behaviour plausibly alters the kind of relationship it would be appropriate for you to have with your colleague, thereby acquiring a distinctive kind of meaning in Scanlon's sense. Yet there is an equally plausible sense in which malicious slander is a distinctive kind of wrong, and thereby impermissible partly because of its constitutive intention. Either way, the point remains that the ethical significance of intent is not determined by the difference between (indirect) intention and foresight alone. Nor should we be led by Scanlon's arguments to conclude that rejecting double effect as traditionally conceived leads directly into the arms of his contractualist alternative. It is a further question which moral principles it would be reasonable to reject, and how a contractualist account should be worked out to deal with the significance of direct intention or the hidden traps of complex trolleology (cf. Rakowski 1993; Scanlon 2008: 120).

c. Varieties of moral explanation

There is a plethora of different ways in which intention could be interestingly related to permissibility. You might think that intention *determines* permissibility (Scanlon 2008: 2, 24). You might think that intention is *basic*, or *fundamental*, to permissibility (26, 29). You might think that intention *explains* permissibility (24). You might think that intention *plays a role in explaining* permissibility (117). You might think that intention *affects* permissibility (52). You might think that intention is something on which permissibility *depends* (4, 38, 38). You might think that intention can be *part of what makes* something permissible or impermissible (118). You might think that intention is *directly relevant* to permissibility (13). You might think that intention is *derivatively relevant* to permissibility (40). You might think intention is *somehow relevant* to permissibility (39, 40). Or you might think that intention *makes a moral difference*, even if not necessarily to permissibility (13, 18). As Scanlon points out, which of these claims you end up endorsing is likely to depend on your underlying philosophical commitments. Thus, the distinction between permissibility and meaning may be easier to swallow on a contractualist account that takes the idea of a reasonable principle as its main theoretical focus than on a virtue ethical account that is focused on the idea of a good will or a virtuous agent. Be that as it may, Scanlon's refusal to grant facts about intention a basic role in explanations of permissibility is insufficiently motivated even on contractualist terms. For all he has

shown, it can be reasonable for you to reject a moral principle that fails to take account of what someone intends when treating you in a manner that is otherwise permissible.

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