

Of Metaethics and Motivation: The Appeal of Contractualism

—draft, comments welcome—

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January 5, 2009

In 1982, when T. M. Scanlon published “Contractualism and Utilitarianism,” he noted that, despite the widespread attention to Rawls’ *A Theory of Justice*, the appeal of contractualism as a moral theory had been under appreciated. In particular, the appeal of contractualism’s account of what he then called “moral motivation” had been under appreciated.¹

It seems to me that, in the intervening quarter century, despite the widespread discussion of Scanlon’s work, the appeal of contractualism, in precisely this regard, has still been under appreciated—even though Scanlon makes what he once called “moral motivation” central, throughout his work. My first aim, then, is to do my best to draw out and make vivid this appeal. I will do this by first considering two sets of issues that Scanlon thinks must be addressed by any moral theory, which he once called “the question of subject matter” and “the question of motivation.” I will spend some time first locating and explicating the second question, of motivation, and then displaying Scanlon’s answer to it—it is this answer which provides contractualism with its appeal.

I will then return to the question of subject matter—which will, by that point, have been revealed as not really distinct from the question of motivation, as Scanlon understands it. But it is as an answer to this question that Scanlon’s theory is most often

¹ “Despite the wide discussion which [*A Theory of Justice*] has received... the appeal of contractualism... has been underrated. In particular, it has not been appreciated that contractualism offers a particularly plausible account of moral motivation.” T. M. Scanlon, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), 125.

criticized. I will examine a few of the most popular criticisms and try to display why, once we have understood Scanlon's project, they do not find their target.

I will close by asking whether it is possible to wed Scanlon's attractive answer to the question of motivation to an alternative answer to the question of subject matter. Not without both difficulty and sacrifice, will be my answer.

I hope that the overall result is a greater understanding and appreciation of Scanlon's truly extraordinary accomplishment.²

LOCATING SCANLON'S QUESTIONS

In his early article Scanlon sets out to show the success of contractualism's answer to two questions that, he thinks, must be addressed by any moral theory: the first he calls "the question of subject matter," the second "the question of motivation."

The question of subject matter is familiar from standard discussions in metaethics.

He introduces it, saying

There is such a subject as moral philosophy for much the same reason that there is such a subject as the philosophy of mathematics. In moral judgments, as in mathematical ones, we have a set of putatively objective beliefs in which we are inclined to invest a certain degree of confidence and importance. Yet on reflection it is not at all obvious what, if anything, these judgments can be about, in virtue of which some can be said to be correct or defensible and others not. This question of subject matter, or the grounds of truth, is the first philosophical question in both morality and mathematics. (125)

² I had originally hoped to address, for this volume, Scanlon's recent work on permissibility and blame. But to do so, I felt it important first to explain the relation between Scanlon's account of wrongness and his "question of motivation"—which is really a question about reasons for acting—since it might seem puzzling to find Scanlon, who supports his contractualism in large by pointing to the appealing answer it gives to the question of motivation, now separating the question of whether an action is permissible from an examination of the individual agent's reasons for acting. However, this paper does not reach to Scanlon's recent work. I do hope, though, that this paper will provide some help to those who are puzzled by it, by allowing them to better understand Scanlon's question of motivation and its role in supporting contractualism.

I believe it would be a mistake to try to find a very precise formulation of this question. Rather, Scanlon here gestures, broadly, at a general and recognizable area of inquiry, which he identifies as “the question of subject matter.”

To expand: almost everyone believes, pre-theoretically, that murder and cruelty are wrong and that you ought not to gain through the deceit or exploitation of others. But if asked what grounds these judgments—if asked why murder and cruelty are wrong, or why you ought not to gain through the deceit or exploitation of others—people are often at a loss for an answer, and what answers they do provide vary widely. Some will appeal to the commands of God, some to the badness of pain, some to the dignity of persons or the excellences of the soul, some to the importance of autonomy, or to what they would want if in the other person’s shoes. Some might even think that these pre-theoretical judgments express basic moral facts, and that further explanation or unification is both unnecessary and impossible.

So, even though, pre-theoretically, we make certain judgments that we think both correct and important, it is not at all obvious, upon reflection, what, if anything, makes them correct. It is also not clear exactly what holds them together, in the class of “moral” judgments.

These problems are sharpened by the fact that, in addressing them, moral philosophy—arguably like mathematics, but unlike the physical or social sciences—does not seek to accurately describe or explain an observable world. It is one thing to accurately describe the moral beliefs and practices of a given group of people, or to explain how or why those beliefs and practices came to be accepted in a certain society. Both projects belong to social science. It is another thing altogether to explain why

people *ought* to live a certain way, or why the practices of a given society are, *in fact*, unjust or morally abhorrent. And it seems that no amount of information about what people actually believe; how they do, in fact, live; or how societies do, in fact, arrange themselves; will, by itself, allow us to draw conclusions about how people ought to live, or about the principles by which a society ought to govern itself.³ But if we are not asking about the rules people actually affirm when asked or by which they actually conduct themselves, it is hard to know what we are asking about, or how to conduct our inquiry.

And yet, at least pre-theoretically, we think certain moral judgments are correct and others are mistaken. Scanlon's first question, of subject-matter, asks what these judgments are about, such that some of them are correct and others incorrect. It is clear enough why one might think this "the first philosophical question in both morality and mathematics." We will return to it in the next section. For now, our focus will be on the question of motivation.

Scanlon's second type of question, unlike the first, is not a familiar part of standard metaethical discussion. However, appreciation of this fact may have been hindered by the fact that he can seem to present this topic as continuous with what I will call the "traditional" question of motivation. I will therefore start with this traditional question, to highlight the contrast.

³ This is a very deep point; one that I would like to address in a paper of its own. Some characterize it as a need for a premise that would connect a claim about what is the case with claims about what ought to be. Others think that any such premise would be subject to an "open question argument." This form of argument is taken by some to show that morality is a reflection of our sentiments. CITE. Something very much like it is taken by others to show that it must be part of the form of rationality (see, e.g., Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996). In a view like Scanlon's, such a premise would stand ever open to re-evaluation as reasonable or not. This seems to me another, very significant, attraction of the view.

As has been noted by others,⁴ much of twentieth-century philosophical ethics was occupied with attempting in some way to accommodate or appreciate what was widely taken to be an obvious truth about morality: that moral claims, or moral judgments, or moral demands, whatever else they are, must have some sort of foothold in the will or in the motivations or the psychology of either the person to whom they apply or the person who makes the judgment. They must be “essentially action guiding,” or “prescriptive” or “normative” in some special but obscure sense beyond that in which the instructions of a cookbook, the rules of a game, or the standards by which musical performances are evaluated are action-guiding, prescriptive, or normative.⁵

⁴ See, e.g. Stephen Darwall, Alan Gibbard, and Peter Railton, "Toward *Fin De Siècle* Ethics: Some Trends," *The Philosophical Review* 101, no. 1 (1992).

⁵How to motivate this thought? Perhaps one thinks that the instructions of a cookbook are action-guiding, prescriptive, or normative only to those who have the end of making a given dish, that the rules of a game are so only for those playing, and that the standards of musical performance are so only for those who care about music. One might think that moral judgments, in contrast, are to be action-guiding, prescriptive, or normative for everyone (or, for all rational creatures, or all humans).

So, e.g., C. L. Stevenson thought it a plain desideratum on any account of the meaning of “good” that “‘good’... must be ‘magnetic’,” that is, “a person who recognizes X to be ‘good’ must *ipso facto* acquire a stronger tendency to act in its favour than he otherwise would have.” Charles L. Stevenson, "The Emotive Meaning of Ethical Terms," *Mind* 46 (1937): 16. Korsgaard characterizes a more recent version of the thought this way: “If I judge that some action is right, it is implied that I have and acknowledge, some motive or reason for performing that action. It is part of the sense of the judgment that a motive is present: if someone agrees that an action is right, but cannot see any motive or reason for doing it, we must suppose, according to these views, that she does not quite know what she means when she agrees that the action is right.” Christine Korsgaard, "Skepticism About Practical Reason," *The Journal of Philosophy* 83, no. 1 (1986): 9. (She says, in her own voice, “Practical reason claims, if they are really to present us with reasons for action, must be capable of motivating rational persons” (11). And, of course, she takes moral claims to be practical reasons claims.) Thomas Nagel says, “a normative requirement on action must have correspondingly strict motivational backing. If ethics is to contain practical requirements, motivation theory, specifically the theory of rational motivation, must contain results that are similarly inescapable... A satisfactory explanation [of the basic principles of ethics] must account for the motivational force appropriate to requirements on action.” Thomas Nagel, *The Possibility of Altruism* (Princeton: Princeton University Press, 1970), 4–5. To read this as a statement of the thought at hand, I am assuming that the “practical requirements” of morality apply to all, and that, similarly, the motivational force must appear in all. See also J. L. Mackie, *Ethics: Inventing Right and Wrong* (Penguin Books, 1977), Michael Smith, *The Moral Problem* (Oxford: Blackwell, 1994). For the seminal argument in favor of internalism about practical reasons, generally, see Bernard Williams, "Internal and External Reasons," in *Moral Luck* (1981).

Call the claim that moral judgments or demands must find a foothold in the will or psychology of each person to whom they apply *the internalist thought*. The traditional question of motivation takes this thought very seriously and asks how it could be realized: how does morality manages to secure a foothold in our will or psychology?

As noted, Scanlon can seem to introduce his “question of motivation” as in some way continuous with this traditional question. But, in fact, Scanlon simply sets the internalist thought aside. So, in “Contractualism and Utilitarianism” he says, bluntly but sensibly:

an adequate philosophical theory of morality... need not, I think, show that the moral truth gives anyone who knows it a reason to act which appeals to that person's present desires or the advancement of his or her interests. In find it entirely intelligible that a moral requirement might correctly apply to a person even though that person had no reason of either of these kinds of complying with it. Whether moral requirements give those to whom they apply reasons of some third kind is a disputed question which I shall set aside. But what an adequate moral philosophy must do... is to make clearer to us the nature of the reasons that morality does provide, at least to those who are concerned with it... It must make it understandable why moral reasons are ones that people can take seriously, and why they strike those who are moved by them as reasons of a special kind of stringency and inescapability. (127)

Scanlon thus dispenses with the question of how to accommodate the internalist thought, as something a minimal moral theory need not address. He replaces it with a much more fundamental question: What any moral theory must do, he says, is to help those who are concerned with morality understand why the reasons *it* provides are so very important, or what, exactly, their importance is. This more fundamental question remains central throughout Scanlon's work, though it appears in a number of different guises. Perhaps the most precise and illuminating, if not the most colloquial, formulation focuses on moral failing and asks “what reason the fact that an action is wrong provides [one] with not to do it” (PG). More colloquially: what is so bad about wrongful action? Or, better: why avoid morally wrongful action, *as such*?⁶

⁶ NOTE that this is put forward as the central question of WWO, on page 1.

To bring this question further into focus, consider what Scanlon calls “Pritchard’s dilemma.”⁷ H. A. Pritchard was an intuitionist, and, as such, he believed that the reason to do your duty is simply that it is your duty. No more can be said. He famously argued that moral philosophy rests on a mistake, insofar as moral philosophy tries looks for some *further* reason to do one’s duty. Any further reason would, according to Pritchard, be an extra-moral reason, and so would be (as I would put it) one reason too many. By providing an extra-moral reason, you would have failed to answer the question you meant to answer. Instead, you would have provided an ulterior motive, and so you would have changed the subject.⁸

The first horn of what Scanlon calls “Pritchard’s dilemma” is the mistake identified by Pritchard: by appealing to extra-moral reasons, one changes the subject. But Pritchard himself, by adopting intuitionism, falls afoul of the second horn of the dilemma Scanlon attaches to his name. Insisting, with Pritchard, that nothing more can be said about the reasons for doing your duty—that nothing more can be said about why doing one’s duty is so important— seems remarkably unsatisfying.

Moreover, digging one’s heels in, just here, draws certain skeptical concerns that seem to require some answer. More than one prominent philosopher in the last half-century has suggested that the particular sense of importance we attach to avoiding immorality, as such, is something of a humbug—a bit of psychological conditioning we bring with us from childhood or from religious training.⁹ And, of course, Thrasymachus

⁷ CITE “Pritchard’s dilemma” from WWO.

⁸ See H. A. Prichard, "Does Moral Philosophy Rest on a Mistake?," *Mind* 21 (1912)..

⁹ See, e.g., Phillipa Foot, "Morality as a System of Hypothetical Imperatives," *The Philosophical Review* 81, no. 3 (1972), G. E. M. Anscombe, "Modern Moral Philosophy," in *Ethics, Religion and Politics* (Minnesota: University of Minnesota, 1981), Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985). Note that the skeptical posture, too, drives one toward a

and Nietzsche have their own ideas about what gives such demands their special sense of stringency and inescapability.¹⁰ So one can feel that something more must be said about the importance or significance of morality, to avoid the charge that we are simply in the grip of a kind of taboo, superstition, or scheme of control arranged by those in or out of power.

Scanlon's "question of motivation" inquires between these horns. He wants to understand what more can be said about the reason to avoid wrong action, but he is not looking for a reason *in addition to* the wrongness of the action. Rather, he is looking to better understand the reason provided by the fact that an action is wrong—the reason provided by the wrongness *itself*, as such.

Consider this question, asked of imperatives of prudence: what reason to avoid an action is provided by the fact that the action is imprudent? Take, as a candidate prudential demand, that I ought to floss my teeth each night. Whatever force this flossing imperative carries seems to derive from the importance of avoiding gum disease: this particular prudential directive carries no more, and no less, significance than that of that bit of well-being it is meant to promote. (Fodder, this, for the consequentialist.) If we now ask about the reason-giving force of prudential imperatives, *as such*, we seem to arrive at the importance of one's well-being, *in general*. So, to follow Scanlon's formulation, the reason to avoid an action provided by the fact that the action is

psychological answer to the question of motivation. Scanlon instead looks for an answer that provides a reason in what he calls "the standard normative sense." (And so the questions of motivation and of subject matter will receive the same answer, for Scanlon, as we will see.)

¹⁰ CITE

imprudent is the fact that the action will, in some way, compromise one's own well-being.¹¹

We could continue to ask this question for different kinds of imperatives, and, in many cases, we can readily give plausible, candidate answers. It seems that the force of demands of strategy, as such, is given by the importance of achieving your aim; the force of demands of grammar, as such, by the importance of communicating; the force of aesthetic demands, by the importance of creating or living among things of beauty. In fact, it seems that we can, in each case, discover the force of an imperative by considering the significance of its violation. We discover the reason to avoid violation of a given kind of imperative by considering what is lost when such an imperative is transgressed, or what of importance such imperatives protect or promote or create. When we turn to morality, however, it seems surprisingly unclear what to say. What is the reason provided by the fact that an action is wrong? What is the importance of avoiding wrongful action, as such? What, exactly, is so bad about wrongdoing?

While Pritchard would say, simply, that such action is wrong, or contrary to duty, others have hoped to say more. Some claim that, by violating moral requirements, you are failing to live an excellent human life. Others claim that, by violating moral demands you are, in some way, frustrating your own good—perhaps you are failing to realize your potential, or marring your own perfection or the harmony possible in your soul. Still

¹¹ Thus, in asking the analog of Scanlon's question, about imperatives of prudence, it seems we arrive at that at which the imperatives, as a class, aim to promote in one or another way: one's own well-being. Some people will think that the importance of moral demands must follow this same pattern: they must aim to promote a certain (kind of) good, and the importance of moral demands, as such, will be found by investigating the good they promote, as a class. In fact, many people have a hard time believing that the importance or significance of any kind of demand or imperative could be understood in any other way. But this is not clear that they must all be so understood, and Scanlon will provide a very different account of the relation between the particular reasons to avoid particular actions and the reason provided by the larger class. I will return to this below.

others have it that you are violating the commands of the Creator, or the dignity of human life. Theories that Scanlon calls “formal” claim that, by violating a moral requirement, you are guilty of something like a contradiction, or of failing to make sense, and so it would seem, on such a theory, the importance of avoiding wrong action is the importance of making good sense. Scanlon takes his toughest opponent to be the utilitarian, on whose account the reason to avoid wrongdoing, as such, is that wrongdoing, as such, fails to bring about the most well-being (or violates rules that, if followed, bring about the most well-being).¹²

While each of these answers surely contains important truths, each also seems to Scanlon off-target, or at least incomplete, when considered as answers to his question of motivation. Each of these accounts, he thinks, fails to capture something of central importance to morality. And so he persists in asking his question: what is distinctively bad about wrong action, as such? What reason to avoid an action is given by the fact that the action is wrong? The question is basic, but the answer is far from obvious.

ANSWERING SCANLON’S QUESTION OF MOTIVATION

We can now turn to Scanlon’s answer (which will quickly return us to the question of subject-matter). Scanlon arrives at his answer largely by reflecting on his own sense of what is lost or violated, in moral failing, and attempting thereby to identify what is

¹² Not a bad answer, Scanlon thinks, until you add (as it seems, in our post-clan world, you must) the “over all.” Scanlon: “We must be moved in the same way by an aggregate gain of the same magnitude whether it is obtained by relieving the acute suffering of a few or by bringing a tiny benefit to a vast number... This is very different from sympathy of the familiar kind toward particular individuals, but a utilitarian may argue that this more abstract desire is what natural sympathy becomes when it is corrected by rational reflection.” (137) The latter strategy is famously pursued in Henry Sidgwick, *The Methods of Ethics* (Indianapolis, IN: Hackett Publishing Company, 1907). David Hume, of course, adds some further mechanisms for correction. CITE. (or, skip).

missing in the competing answers that seem to him off-target or incomplete.¹³ So, in “Contractualism and Utilitarianism” Scanlon considers Peter Singer’s article on famine and says

But when I feel convinced by Peter Singer’s article on famine, and find myself crushed by the recognition of what seems a clear moral requirement, there is something else at work. In addition to the thought of how much *good* I could do for people in draught-stricken lands, I am overwhelmed by the further, seemingly distinct thought that it would be *wrong* for me to fail to aid them when I could do so at so little cost to myself. (138, emphasis added) CITE WWO.

It is this further, seemingly distinct thought about wrongness that Scanlon thinks remains unaccounted for by consequentialism, and, I suspect, by any view other than contractualism.¹⁴ If we could understand, or better characterize, this seemingly distinct thought about wrongness, we would have a better understanding of the reason provided by the fact that an action is wrong.

Unsurprisingly, Scanlon believes that this distinct thought is captured by his own account of the facts that constitute an action’s wrongfulness. Let us consider, then, his contractualism, according to which,

an action is wrong if and only if any principle that permitted it would be one that could be reasonably rejected by people [who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject]. (WWO, 4)

This contractualist formulation can be difficult to take in. I will try to illustrate it with a toy example: It would be wrong, I assume, for you to stomp on my foot for fun.¹⁵ Why

¹³ One of the more direct routes to his answer occurs in his discussion of guilt in Chapter Six of *What We Owe*. I believe that the entire theory could be well read through the lens of that chapter.

¹⁴ One might imagine a similar objection: “In addition to the thought of how much harm I would do to my own life or soul, I am overwhelmed by the further, seemingly distinct thought that it would be wrong.” Or, “In addition to the thought of how poor it would be, as a piece of human activity...” Or, “In addition to the thought of how impious it would be...” Or, “In addition to the thought that it would make no sense, as a piece of willing...”

¹⁵ (For less toy-like examples: it would also be wrong, typically, for you to say belittling things about me behind my back, or repeatedly draw attention to ways in which I fall short, or drag your feet and fail to cooperate with me whenever I openly disagree with you.)

Note that the “for” in these cases will now be interpreted by Scanlon as picking out features of one’s situation, not properties of the intention with which one acts. So, it would be impermissible for you to

is it wrong? One wants to say, with the utilitarian, “Because it causes me pain.” And surely, whatever else we say, this must not turn out to be *incorrect*—that much of the consequentialist position must be preserved.¹⁶ For Scanlon, “because it causes me pain” not an incorrect answer, but it is *incomplete*. And surely this, too, must be right. After all, my doctor causes me pain on a fairly routine basis, but does nothing wrong thereby. So the mere fact that you cause me pain does not account for the wrongfulness of your action, even though that fact about pain should show up somewhere in the story. The consequentialist thinks it shows up as one among many other facts about what the action causes, or tends to cause—filling in these other facts will justify my doctor, but not you. Scanlon thinks, though, that filling in the further story as the consequentialist does will not account for the distinctive importance of moral failing—it will not provide a satisfying answer to his question of motivation.

As I understand it, here is how the further story goes, for Scanlon: the fact that your action (or, better, actions such as yours in circumstances such as ours) causes me (someone in my position) pain provides me (anyone in my position) with grounds to reject any principle that would allow actions like yours, in circumstances like ours. Of course, you might think that the fact that your action would be fun provides those in your position with grounds for rejecting any principle that *forbids* actions like yours in circumstances like ours. However, if we assume that we are all committed to finding

stomp on my foot when you would stand to gain nothing from it but amusement. If you did so in such a circumstance, by accident, not in order to secure your own amusement, what you did would still be impermissible. However, you would not be blameworthy.

¹⁶ One might think this answer is mistaken: that your action is wrong, not because it causes me pain, but because it violates my bodily rights. I would take any such objection very seriously. Still, it seems that any account of the scope and limit of bodily rights will make reference, in some way, to goods and burdens such as pain. Yet another alternative would say that, in taking pleasure in my pain, you display highly objectionable attitudes. But again, we need to know why these attitudes are objectionable.

principles that everyone can agree to be governed by, so long as everyone is committed to finding and being governed by such principles, then (given the circumstances and given the various interests at stake) it will turn out that my rejection is reasonable while yours is not.

Why is this? What makes my rejection reasonable and yours unreasonable? For Scanlon, the reasonableness of rejection is measured against the aim of finding principles that we can all agree to be governed by, given that we are all committed to finding such principles. But this aim does not always yield a determinate answer. In determining the reasonableness of rejection, one makes what Scanlon sometimes calls a “substantive moral judgment.”

Importantly, this judgment is partly, but *only* partly, grounded on the fact that, in our circumstances, avoiding pain is somehow more important than being amused. It *also* depends on the consequences and social significance of adopting, as a principle for the general regulation of behavior, the principle disallowing foot-stomping. It depends, further, on whether some alternative, perhaps finer-grained, or differently-conditioned, principle would be preferable (e.g., your action is disallowed only if I told you in advance that I do not like my feet crushed), where its being preferable could turn on such facts as how burdensome the conditions are to discharge, or how much information it would require us to keep ready to hand. Finally, a reasonable rejection is grounded only in reasons that are, in Scanlon’s terms, both “personal”¹⁷ and “generic.”¹⁸

¹⁷ that is, reasons which “have to do with the claims and status of individuals in certain positions” Scanlon, *What We Owe*, 219.

¹⁸ “reasons we can see that people have in virtue of their situation, characterized in general terms, and such things as their aims and capabilities and the conditions in which they are placed” *Ibid.*, 204.

So, whether a rejection is reasonable does not merely turn on the relative weights of the immediate burdens and benefits to the immediately involved parties; it also depends also on the further effects of adopting a principle for the general regulation of behavior. So, thinking about whether to reject a principle, reasonably, requires both thinking as one subject to or protected by that principle—thinking, so to speak, as a citizen under it—and thinking about the significance and effects of adopting such a principle for the general regulation of behavior—thinking, so to speak, as a legislator—while restricting oneself to grounds that are personal and generic. And when Scanlon says the reasonableness of rejecting a principle is determined relative to the aim of finding and being governed by principles that are acceptable to each, he means that it requires thinking both as citizen and as legislator, while recognizing the need to come to agreement with others, each of whom have symmetric standing in determining the terms of our self-governance.

Beyond this largely structural account, however, Scanlon does not provide any further story about how to arrive at substantive judgments about when the rejection of a principle is reasonable. He simply admits that the idea of “reasonable” is one with “moral content.” He even allows, as grounds for rejection of a principle, robustly moral considerations, such as fairness.¹⁹ This open-ended appeal to reasonableness, at this central point in the theory, leaves many discomfited. I will return to worries about it.

For now, I want to finish our consideration of Scanlon’s answer to the question of motivation. I hope it can be granted, in the foot-stomping example, that your action violates a principle that no one could reasonably reject, given the aim of finding

¹⁹ CITE

principles that no one could reasonably reject, given that aim.²⁰ According to Scanlon, *that* is why your action is wrong. Thus, it turns out that whether an action is wrong depends on something like whether it can be willed in a Kingdom of Equals, each of whom recognizes certain general sorts of interests and each of whom is committed to living in a kind of harmony with the rest.²¹

So, for Scanlon, the wrongness of an action is not explained simply by appeal to its bad effects, and, accordingly, the reason to avoid wrongness, as such, is not simply that it has bad effects. Rather, the wrongness of an action must be explained by evoking a further fact: the action violates principles that must be accepted by anyone who is committed to living on terms acceptable to each. This further fact answers the question of motivation, as raised by the Singer article—it provides us with the distinctive reason to avoid wrongdoing, as such: by acting wrongly, you have violated the terms that must be accepted, if you are committed to living on terms acceptable to each. You have, that is, neglected not only the *interests* of those you have wronged, but you have also, in effect, denied their *standing* to (partly) determine the terms on which we each shall live.²²

So, according to Scanlon, wrongdoing has its own distinct significance, one that is importantly quite other than causing suffering, failing to achieve human excellence, violating the commands of God, or failing to avoid error or make good sense as a rational creature. The distinctive significance of wrongdoing is rather captured by the idea that one has governed oneself in a way that would not be permitted, if we allowed everyone

²⁰ “Seems” because whether a particular action in fact violates a given principle also requires judgment, according to Scanlon. He takes himself to be in good company, in failing to offer rules at this level. The action is wrong only if this appearance is veridical. CITE.

²¹ The harmony is achieved through living in accordance with mutually acceptable principles.

²² You have, he argues separately, violated their value as rational creatures. CITE.

the same say in determining the terms on which we will live together, and if we were all committed to finding such terms. You have, as Scanlon sometimes puts it, violated the terms of a relationship of mutual regard, the terms on which a kind of mutual recognition, or, perhaps better, mutual forbearance, is possible, and so you have put yourself in a very different relation to your fellows.²³

Like the views of Rawls, Kant, and Rousseau before him, Scanlon's view is meant (using Rawls' words) "to bring together into one scheme all individual perspectives [to] arrive... at regulative principles that can be affirmed by everyone as he lives by them, each from his own standpoint."²⁴ Scanlon takes the under appreciated appeal of contractualism to be that it identifies the importance of the morality with the importance of living with others on mutually acceptable terms, terms that not only protect the interests of each symmetrically, but which recognize each as having standing to determine what those terms shall be.²⁵

OF METAETHICS AND MOTIVATION

It will not have been missed that, in displaying Scanlon's answer to the question of motivation, we strayed into the territory of the question of subject matter. That is, in displaying Scanlon's account of the importance of avoiding wrongdoing, I had to provide his answer to the question of what it is for an action to be wrong, or what makes an action

²³ CITE each. ADD chp 6. One may think it not entirely clear that these are equivalent, though it is clear that Scanlon sees them as capturing a single notion. I will return to this in the final section. (You have also, Scanlon argues separately, offended against the value of a rational creature.) ADD guilt and the value of life. ADD note about the recent work, and how blame and permissibility part company.

²⁴ Rawls' next sentence finishes his book: "Purity of heart, if one could attain it, would be to see clearly and to act with grace and self-command from this point of view." John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971), 587.

²⁵ Its attractiveness, then, lies in its continuity with broadly liberal political theory, and all that one might find attractive about that.

wrong. We thus strayed because, understood as Scanlon understands it, the question of motivation is not a merely psychological question: it does not ask what impulses, dispositions, desires, or sentiments can be relied upon to motivate moral action. Rather, it asks what important and distinctive reasons to avoid an action appear among the facts that constitute its wrongfulness. He does not expect an account of wrongness to be later *augmented* by a purely psychological account of our motives to moral action; he expects the true account of what constitutes an action as wrong to provide the distinctive reason for avoiding such actions.²⁶ Scanlon has thus connected his question of motivation with the question of subject matter.²⁷ In fact, he tends to support his own answer to the question of subject matter largely by appeal to the attractive answer it provides to the question of motivation.²⁸

Return, then, to the question of subject matter as I originally explicated it. Most of us have certain pre-theoretical moral convictions, about, say, murder, cruelty, exploitation, and deceit, in which we have a high degree of confidence. However, if asked why, e.g., killing people in certain circumstances is wrong, or why cruelty is objectionable, people

²⁶ For a famous strategy of this kind, see J. S. Mill, *Utilitarianism*, ed. Roger Crisp (Oxford: Oxford University Press, 1998).

²⁷ Many thinkers prefer to separate the facts that make an action wrong from the motives of the moral person. They provide a purely psychological account about our motives for moral action, one which does not necessarily rely on the facts that make an action wrong, and may part company with it. Such accounts seem objectionable in two ways. First, they strike some as generating a kind of instability: once we notice that the reasons for which we are avoiding wrong action are not connected to the reasons that make the action wrong, we can start to wonder whether we really do have, in the end, good reason to avoid wrong action, as such. And this suggests the second objection: many will think that the subject matter of morality, whatever else it might turn out to be, must be something that provides us with strong reasons to act. So if, after grasping a purported answer to the question of subject matter, we have to ask whether, after all, we have strong reason to be moral, many will think that the subject matter described was not the subject matter they were after: we have learned about certain social mores or tendencies, perhaps, but we have not learned about morality.

²⁸ So he says, on the third page of *What We Owe*, “I begin by offering a characterization of the reason-giving force of such judgments [judgments of right and wrong], and then take that characterization as the basis for an account of their subject-matter” (3). (These projects are carried out in chapters four and five.)

give rather widely varying answers, appealing perhaps to the will of God or the sanctity of human life, or to one's own desires to avoid being hurt or killed. Given the wide variety of answers, it can seem puzzling what grounds these important pre-theoretical convictions, what makes some of them correct and others incorrect. It might also seem puzzling why they should be grouped together as a class.

Scanlon offers an account that both preserves a role for the answers people are inclined to give and groups these convictions into an understandable class.²⁹ Wrong actions, he says, are those that violate the principles that must be accepted by those committed to finding principles acceptable to everyone who shares this commitment. Many of the answers that people in fact give, when asked about the grounds of moral conviction, have a place in Scanlon's story: they will appear as *grounds* for the rejection of principles. One could, often should, appeal to such facts as pain or dignity when rejecting principles.

So we have encountered two more counts in favor of Scanlon's view: not only does it provide a satisfying portrayal of the importance of moral failing, it also unifies the subject matter of morality—or, at least, a very central part of it—and locates, within that subject matter, the role of many of the disparate considerations we pre-theoretically thought belonged within it.

Still, many people have been unhappy with Scanlon's account, especially when considered as an answer to the question of subject matter. We have already encountered one reason, in fact the most popular reason, for the unhappiness: Scanlon does not provide much guidance in determining whether a given rejection is reasonable. Rather,

²⁹ It is, no doubt, a slightly revised class from what our pre-theoretical convictions may have expected. But, as we will see later, this is not a problem, but rather an indication that the theory is doing some work.

he allows both that “reasonable” is a notion with moral content and that our judgments about what is reasonable can be based on other, obviously moral, judgments. He thus seems content to rest his theory on what seems to many an insufficiently articulated or structured base of moral intuitions. Some think that, once we fill in the needed story about reasonableness, it will turn out that the distinctively contractualist appeal to reasonable rejection does no real work. Others think that, because of this reliance on an open-ended account of what is reasonable, the view is in some way circular or empty.³⁰

Each of these objections seems to me mistaken, and considering how and why they are mistaken can help us to better understand Scanlon’s answer to the question of subject matter.

Consider, first, the objection that Scanlon has rested his theory on an admittedly moral base (of moral claims, facts, intuitions, or forms of reasoning). Call this objector *the reductionist*.³¹ The reductionist insists that we specify non- or pre-moral (perhaps “non-normative” or “natural”) facts and forms of reasoning, which will deliver the truths of morality.³² Though the reductionist might adopt some form of contractualism, if she does so she will insist that both the grounds for the rejection of principles and the account of when rejection is reasonable be explicable in non- or pre-moral terms. (Theories that might be thought to be of this form are on offer: Perhaps principles cannot be reasonably rejected if they lead to maximal utility, overall, or if these are the principles that maximize expected utility for each position, or if they are what it would be rational

³⁰ One might also have the shallower unhappiness, that Scanlon has not provided guidance in determining which actions are wrong. I hope it clear that this is simply not Scanlon’s ambition.

³¹ CITE.

³² Some might confusedly think that we must provide such a pre-moral base to avoid circularity. CITE. Scanlon will point out that avoiding circularity requires avoiding reliance on the notion of *wrongness*, but not on other moral notions. His account is holistic, but not viciously circular. I return to this point below.

choose given the aim of maximizing one's primary social goods from behind a veil of ignorance.)

Scanlon doubts that we will be able to reduce or explain moral judgments by appeal to purely “pre-moral,” “non-normative,” or “natural” facts. These doubts rest on his belief in what he calls the “holism” of moral judgments.³³ When considering the possibility of resting a contractualist theory on a pre-moral base, Scanlon takes welfare as the likeliest “pre-moral” candidate, and says,

...it is misleading to suggest that when we are assessing the “reasonable rejectability” of a principle we must, or even can, set aside assumptions about other rights and entitlements altogether... Suppose, for example, that we are considering a principle defining our obligations to those in need. This would seem to be a case in which considerations of welfare are most likely to be predominate. But in order to be in a position to aid someone, an agent must be entitled to dispose of the resources that are needed, and must be free from any obligation that would prevent him or her from acting in the way required to give aid.... So in order to understand the scope of the proposed principles (the range of action it might require) we need to presuppose a framework of entitlements. What this illustrates is that a sensible contractualism, like most other plausible views, will involve a holism about moral justification: in assessing one principle we must hold many others fixed. This does not mean that these other principles are beyond question, but just that they are not being questioned at the moment. (214)

Scanlon thus suggests that the supposedly “pre-moral” considerations on which the reductive attempts would rely are not really pre-moral at all. Rather, their place in moral argument already rests on moral assumptions. He hopes thus to undermine the motivation for the reductive ambition.³⁴

A second common charge is that the view is somehow empty, or circular.³⁵ Scanlon claims that an action is wrong if it is in violation of principles no one could reasonably reject, given the aim of finding principles that no one could reasonably reject, given that

³³ His point here is of a piece with a more general view, which one might characterize as a holism about reasons.

³⁴ Scanlon considers the distinct claim, that utilitarianism is a “theorem” of contractualism, in Scanlon, “Contractualism and Utilitarianism.” PGS. He again considers “welfarist contractualism” in ———, *What We Owe*, 217–18.

³⁵ CITE.

aim. But the idea of “reasonable” is left unspecified. Scanlon allows that it is constrained by appeal to the aim of finding principles that others, similarly motivated, could not reasonably reject—but that obviously makes reference to the very idea it was meant to constrain.³⁶ So it seems to some that the view is empty. If we think it has content, that must be because, when thinking about whether a given principle can be reasonably rejected, we are covertly importing our pre-theoretical intuitions about which actions are wrong. But now, the theory is simply serving as a conduit for our pre-theoretical views.

In charging emptiness or circularity, one has to be careful. Recall that Scanlon’s aim is not, first and foremost, to provide a theory that tells us which particular actions are wrong. Nor is his aim to provide a procedure for generating moral principles from non- or pre-moral facts. Importantly, it is not even his aim, first and foremost, to provide a theory that will specify the correct moral principles from admittedly moral facts. His aim is more “metaethical:” it is to provide an account of what wrongness is, or of the facts that constitute wrongfulness.

But if his aim is to specify the facts that constitute wrongfulness, then, if it turns out that our judgments about when an action violates a principle no one could reasonably reject, given the aim specified, *closely track* our judgments about when an action is wrong, this would not show the view empty or circular; it would show the view *correct*.

To show the view empty in the way imagined, one would have to show, in addition, that we can only arrive at our judgments about when a principle can be reasonably rejected by considering whether the *actions it disallows* are themselves *wrong*.

³⁶ Thanks to Nishi Shah for helpful conversation on this point.

But this Scanlon denies. Even though he allows that the notion of reasonable has “moral content,” and even though he espouses a holism about the moral (indeed, about the “normative”) and eschews any reductive ambition, he does not leave the notion of “reasonable” as impoverished as it would have to be to vindicate the charge that he has left the view empty, or somehow reasoned in a circle. Rather, he believes that whether a principle can be reasonably rejected depends on a wide range of considerations—e.g., the burdens and benefits to those immediately affected and the consequences or significance of adopting a principle. Moreover, he believes that we can think about whether rejection of a principle is reasonable, by thinking about such considerations, *without* relying on our pre-theoretical intuitions about whether the actions disallowed by a candidate principle are wrong. This seems a possible, and substantive, form of reasoning. And it does seem to me that, when thinking about cases that one finds difficult, this form of reasoning can put pressure on pre-theoretical convictions. But if the form of thinking Scanlon specifies is able to put pressure on our pre-theoretical ideas about whether an action is wrong—pressure that might lead one to question, not the theory, but rather those intuitions—then it cannot be simply channeling our pre-theoretical convictions.

The above objections miss their mark by attributing to Scanlon ambitions that he does not harbor. He is not aiming for a reductive account, nor does he hope to fully specify a contractualist procedure that will allow us to generate principles, on analogy with Rawls’ principles of justice. His aim is more “metaethical:” he hopes to better understand wrongness, or what it is for an action to be wrong. He believes he has made progress on this question.

A final kind of objector takes issue with whether Scanlon has succeeded in his own ambition. This objector insists that Scanlon’s appeal to reasonable rejection, or justifiability to each, is not doing any real work; it is redundant. The objector notes, first, that it seems the hard work of determining which actions we have overriding reason to perform or avoid will be done by whatever facts will, on Scanlon’s picture, provide the grounds for rejection of the principles supposedly governing the action.³⁷ So it seems that wrongness turns out to be what Scanlon calls a “buck-passing” notion—one that simply indicates the presence of other reasons. Scanlon’s central idea of reasonable rejection is thus not what constitutes an action as wrong; it is rather otiose or redundant: whatever facts make a principle one that no one could reasonably reject will *also*, according to this objector, make the action wrong.³⁸

This final objector actually makes three different claims, calling for different replies. The objector claims, first, that claims about which principles must be accepted will not change what we have most reason to do. The view is, using a term of A. J. Julius’, “non-productive.”³⁹ Second, the objector claims that wrongness is a “buck-passing” notion. And, finally, the objector takes issue with Scanlon’s most central claim, by insisting that an action is constituted as wrongful, not by the fact that a principle prohibiting the action could not be reasonably rejected, but rather by the grounds, whatever they are, for the reasonable rejection of any principle permitting the action.

Consider, first, the claim about buck-passing. (Though some have used this term to characterize what I have identified as the third charge, above, this is not Scanlon’s

³⁷ This charge is not the same as the claim considered above, that Scanlon’s view relies covertly on our intuitions about which actions are wrong.

³⁸ CITE those who make this trio of claims.

³⁹ A. J. Julius, "A Lonelier Contractualism," (in progress).

usage.) A “buck-passing” notion, for Scanlon, is one that *provides no reason of its own*, but rather merely points out, indicates, or labels the presence of other reasons. So, Scanlon’s question of motivation, asked of a buck-passing notion, would return a null answer.⁴⁰ But, of course, Scanlon denies that wrongness is buck-passing; we have seen the reason he thinks is provided by the fact that an action is wrong: such actions violate terms we must all agree to, if we are all committed to finding mutually acceptable terms for our self-governance. Scanlon calls the fact that an action is wrong a “higher-order reason,” because it depends on other, “lower-order” reasons—namely, those that provide grounds for the rejection of any principle allowing the action. Nonetheless, the fact that an action is wrong, according to Scanlon, *adds* to the reasons to avoid it (in a way that saying something is valuable does not add to the reasons to pursue or promote or preserve it). So, to claim, with the objector, that wrongness is a buck-passing notion is to deny what Scanlon finds appealing about his view: it is to deny that fact that an action violates terms that no one could reasonably reject, given the aim of finding such terms, provides a significant and distinctive reason to avoid that action.

We can now see an initial answer to the claim that Scanlon’s view is non-productive: even if it *is*—even if its recommendations are extensionally equivalent to those of a view that did not appeal to agreement about principles—the appeal to agreement about principles still provides an additional, and distinctive, reason to avoid wrong action.⁴¹

⁴⁰ Scanlon claims that the notion of “value” is like this: in calling something valuable, one indicates the presence of other reasons without adding anything to the reasons that make it valuable. The fact that something is valuable, itself, as such, provides no particular reason to act in any particular way (it merely indicates that there are some such reasons). CITE Scanlon on value.

⁴¹ In fact, Scanlon hopes to use the fact that his view will generate the correct class of answers as evidence for it. If it turned out that his view was coextensional with others, he could not make use of that line of reasoning. I owe thanks to AJ Julius for helpful conversation on this matter.

But I doubt that the view will be non-productive. That is, I doubt that considerations about what principles can be reasonably rejected would leave unchanged our determination of which actions we have most reason to perform. The thought that the view is non-productive is most tempting if one has not appreciated the remarkably “political” or, perhaps better, “public,” character of Scanlon’s moral theory.⁴² Recall that, to arrive at the judgment that the principle cannot be reasonably rejected, we do not simply consider the benefits and burdens to the immediately involved parties; we also have to consider the effects and significance *of adopting that very principle*, and we have to consider whether a different principle might be superior—whether a different principle would better adjudicate the competing claims of everyone who will come under it. But these considerations might well change our verdict about whether we have most reason to perform a given action.⁴³

The final claim made by the final objector is the most pressing. This is the claim that the fact that an action violates principles that no one could reasonably reject, given the relevant aim, does not constitute the action as wrong. Rather, an action is made wrong in some other way. Of course, having been made wrong in some other way, an action might

⁴² Thanks to Barbara Herman for suggesting the term “public.” It is this character of this theory that, I believe, helps to alleviate the puzzlement referred to in footnote XX about permissibility and blame.

⁴³ Scanlon provides an example about a project, such as running television wire, which will provide some smallish benefit to a great many but which the actuaries can assure us will cost several lives to build. It may seem that those who would run the small but non-negligible risk of loosing their lives can reasonably reject any principle that allows the undertaking of such projects. But, of course, we are in the business of adopting *general* principles, for any relevantly similar project. But now, it seems, we all—including those who would be risking their lives, in some small way, in the construction—have much stronger reason to permit such projects. And so our verdict may be reversed, when we consider the wider implications of the adoption of a general principle. But, if these further facts about the significance and effects of adopting general principles can change the outcome of our deliberation, then it seems that view is productive.

One might think that the view is productive and yet buck-passing. That is, one might think that the reasons we have require us to act in accord with generally acceptable principles, without thinking that the importance of living in accord with such principles provides any additional reason to avoid actions that violate them.

also, therefore, be disallowed by principles that no one could reasonably reject, given the aim of finding such principles. And, the objector might also allow, this provides a distinctive reason to avoid it. But the objector denies that the fact that the action is disallowed by unrejectable principles is what *constitutes* the action's wrongfulness. As Judith Thomson puts the point:

For my own part, I cannot bring myself to believe that what makes it wrong to torture babies to death for fun (for example) is that doing this “would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis of informed, unforced, general agreement.” My impression is that the explanation goes in the opposite direction—that it is the patent wrongfulness of the conduct that explains why there would be general agreement not to allow it.⁴⁴

Scanlon considers this kind of objection, in some detail, both in “Contractualism and Utilitarianism” and in *What We Owe to Each Other*. I will focus on his direct response to Thomson, in a footnote, where he says,

The contractualist formula that Thomson quotes is intended as an account of what it is for an action to *be* wrong. What *makes* an action wrong are the properties that would make any principle that allow it one that it would be reasonable to reject (in this case, the needless suffering and death of the baby). (391, n. 21)

Scanlon here, in effect, draws attention to the fact that wrongness provides is a “higher-order” reason. For an action to *be* wrong, according to his view, is for it to be in violation of principles that no one could reasonably reject, etc. But, of course, for an action to be wrong, there must be other, strong, “lower-order” reasons that count against it—other reasons that provide winning grounds for rejecting any principle that would allow the action. And in Thomson's case there surely are.⁴⁵ So, Scanlon need not deny that the unspeakable horribleness of torturing babies is what, in an important way, *makes* the

⁴⁴ Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 30, n.19. Scanlon replies to this at Scanlon, *What We Owe*, 391.

⁴⁵ There is a further complication, in this case, about the fact that the baby is a baby—and so, one might think, not able to stand as party to the contract. Given the hypothetical nature of the agreement, this seems to me not a serious worry (though it does point out the need to specify the “scope” of the contract, and this is can be difficult).

torture wrong. He does, however, need to insist that the unspeakable horribleness, or the needless suffering and death, makes it wrong *by* providing grounds to reasonably reject any principle that would allow it. This, he says, is what it is for the action to *be* wrong.

One could easily feel this dissatisfying. One might think that the action has been displayed as *wrong*, in fact as *horribly* wrong, well before we arrive at the thought that the horribleness, or the needless suffering and death, provides grounds for the rejection of any principle that allows it. The appeal to (as I have put it) what could be willed in the Kingdom of Equals seems, in this case, quite beside the point—a perverse kind of overkill. Such appeal is simply not needed, one might think, to establish the wrongfulness of an action likely to induce a violent visceral reaction in the morally vital.

At this point, though, we must tread carefully. Everyone agrees that there are things that are so horrible that they mustn't be done.⁴⁸ Thomson has certainly put her unswerving finger on one of them. Scanlon has run into trouble, it seems, by denying that it is the horribleness, alone, that constitutes the action as wrong.⁴⁹ But, of course, to say that an action is unspeakably horrible, or that it causes pain to someone helpless, is not *yet* to say that it is morally wrong, or even that it mustn't be done (consider medical procedures performed in emergency circumstances).⁵⁰ Unless we are content to rest with some form of intuitionism, or with the thought that certain actions are simply taboo, we will want to know what it is that makes certain actions, not just unspeakably horrible, but

⁴⁸ CITE, here, Scanlon's discussion of the "widest" sense of "morally wrong": that which "mustn't be done."

⁴⁹ Sometimes it is thought that Scanlon's view makes the moral world overly flat: actions are wrong or not, and wrongness does not come in degrees. But I do not see why this should be more of a problem for Scanlon than for others. On Scanlon's view a wrong can be more or less serious, depending on the importance of the grounds for the rejection of any principle that allows it. That seems to me to make as much sense of the notion of being "a little bit wrong" as we could hope.

⁵⁰ Perhaps to say that an action causes *needless* pain is enough to show that it mustn't be done—but there are other things that mustn't be done, which do not cause needless pain, and we would like to understand the relation between these, as well as the content of "needless."

also wrong. But notice that *any* theory that attempts to give a more articulated account of what wrongness is will inevitably leave behind our initial sense that anything that mustn't be done, or that is unspeakably horrible, is also, for that reason alone, morally wrong. So this, by itself, cannot be a fair objection.

Perhaps the dissatisfaction stems from the thought that Scanlon's account provides, at least in cases like Thomson's, an unattractive picture of the motivations of the moral person. That person has now been given, one might think, one reason too many: the horribleness of the torture is merely an input into his concerns with something like good citizenship.

But this objection misunderstands the view. Scanlon's "question of motivation," as we have seen, is not a question about the psychology of moral agents. It is a question about the significance of moral failing—about the reason provided by the fact that an action is wrong. Further, and very importantly, although Scanlon does claim that the wrongfulness of an action is "normally decisive" reason to avoid it, he does not insist (in fact, he explicitly denies⁵¹) that its wrongfulness is always the most *salient* or *pressing* or, even (and here we are moving beyond psychology) the most *important* reason to avoid it.

To illustrate, it might help to consider how Scanlon's "question of motivation" would be answered, if asked of demands of etiquette (eat with your mouth closed, reply promptly to invitations, provide those whom you have just introduced with some bit of information about each other, hold the door for someone right behind you, and say "please" and "thank you"). What is the reason to avoid violations of etiquette, *as such*? Here is a candidate account: by violating a demand of etiquette, you will upset certain

⁵¹ T. M. Scanlon, "Wrongness and Reasons: A Reexamination," in *Oxford Studies in Metaethics*, ed. Russ Shafer-Landau (Oxford: Oxford University Press, 2007), 7–10.

conventionally established social expectations. Your transgression may, of course, also have other kinds of significance: you may also have shown ingratitude, been uncharitable, caused discomfort to those around you, shown disrespect, or drawn unnecessary attention to some awkward fact. However, what gives unity to the demands of etiquette, as a class (on this candidate account), is simply the fact that violating these demands upsets a certain range of conventionally established social expectations.⁵² So the reason to avoid a violation of etiquette, *as such*, is simply the importance of avoiding the upset of such expectations.

Note that, on this account, the importance of satisfying the demands of etiquette, as such, will typically not be nearly as great as the importance of satisfying a particular demand of etiquette (one whose violation would, say, also show ingratitude or disrespect or badly inconvenience someone). So, the reason to avoid transgressions of etiquette, as such, is typically not the most important reason to do that which a particular demand of etiquette prescribes. This would explain why demands of etiquette, thought of in a general way, seem relatively unimportant, even though particular violations of etiquette can be very important.⁵³

⁵² To make good on this claim, “certain” in “certain range” would have to be fleshed out in a way that did not simply enumerate the demands of etiquette. I am assuming it could be, and, in any case, so assuming will serve my merely illustrative purpose.

⁵³ Note that demands of etiquette, so understood, are quite different than demands of prudence, in that the avoidance of upset social expectations need not be understood to be what each demand or imperative in this class aims to promote. Arguably, the demands of etiquette aim or serve to promote a variety of goods: expressions of gratitude, ready topics of conversation, facilitation of event planning, etc. Arguably, there is no one (type of) thing that each member of the class can be said to aim at, in the way that each of the demands of prudence aim at one’s own well-being. (I am obviously denying that they each aim to promote something like social harmony. That seems to me to be something they produce, in fact, but not something they aim to promote in the way that the demands of prudence each aim to promote something that could be abstractly characterized as an aspect of well-being. This obviously requires elaboration.) If this is so, the demands of etiquette provide an alternative to the model provided by prudence: while the class of prudential demands all aim to promote one’s own well-being, the class of demands of etiquette does not achieve its unity in the same way.

Scanlon's account of wrongness can also take this form, in cases like Thomson's. While he insists that the reason provided by the fact that an action is wrong is an important reason, one that normally is normally decisive and normally takes priority over our other concerns, Scanlon does not claim it is always the *most* important, salient, or pressing reason, in a given case. In fact, he claims that someone who was moved, primarily, by the fact that torturing babies is wrong, in his narrow sense, would be monstrous—because that person, though concerned with wrongness, *per se*, would be completely out of touch with the reasons that make the action wrong.⁵⁴

So, if one finds Scanlon's account unsatisfying, in light of Thomson's case, it cannot be because one feels Scanlon's distinctive reason to avoid wrong action, as such, is not always the most important reason to act, or should sometimes take a back seat. Scanlon agrees with this.

It seems to me that, if one is still moved by Thomson's example, one must be thinking that Scanlon's account is somehow off-base or off-key as an account of the distinctive reason to avoid wrong action. One would then be raising, against Scanlon, exactly the objection he raised against Singer: With Thomson's case in mind, one might say, "when I recognize this clear moral requirement, there is something else at work... in addition to the thought that the action is in violation of principles that no one could

Those who resist the temptation to account for the force or importance of all imperatives on the model of prudence often appeal, not to demands of etiquette, but rather to a quite different kind of imperative, namely, the hypothetical imperative. I believe the temptation to focus on the hypothetical imperative, as an example of an imperative that does not follow the pattern of demands of prudence, is motivated in part by the internalist thought: this is a "formal" requirement of rationality, and so, one might think, one that all rational creatures are bound by. There is much interesting recent discussion as to whether this is, in effect, a buck-passing notion. See, e.g., Niko Kolodny, "Why Be Disposed to Be Coherent?," *Ethics* 118 (2008). and RAZ BRATMAN. However, I think that, for many purposes, etiquette would provide a more interesting contrast.

⁵⁴ CITE

reasonably reject, I am overwhelmed by the further, seemingly distinct thought that the action is *wrong*.”

This is, of course, a possible position. One simply fails to share Scanlon’s sense of the distinctive importance of morality.⁵⁵ I will call this *the flat disagreement*. Those who find themselves in the flat disagreement face the task of articulating their own answers to Scanlon’s questions. In voicing the flat disagreement, one is invited to propose or defend an alternative moral theory.

HIJACKING THE APPEAL OF CONTRACTUALISM?

Interestingly, those drawn by Thomson’s example often find Scanlon’s account of moral motivation attractive—they are not fully, flatly, disagree—but they hope to wed it to an alternative answer to the question of subject matter. So I would like to close by considering something Scanlon does not consider explicitly (to my knowledge)⁵⁷: What would it take to hijack Scanlon’s attractive answer to the question of motivation, without accepting his answer to the question of subject matter?

Suppose one thought that the significance of wrongdoing is, at least *in part*, captured by the fact that one has acted in a way that one could not justify to others. Could one append this appealing answer to the question of motivation to an alternative answer to the question of subject matter? It might seem one could. It might seem that one could claim that, while wrongness—what it is for an action to be wrong—is something prior to and independent of being unjustifiable to others, nonetheless, any action that is wrongful is

⁵⁵ ADD: Scanlon has ways of addressing. Cf. contours and developments.

⁵⁷ Or, perhaps, has not considered since the original article, where he was content to rest “on a qualified skepticism”?

also, therefore, unjustifiable to others, and that this fact about justifiability does, as Scanlon claims, provide the (or at least, a) distinctive reason to avoid wrongdoing. If such an account were possible, then the appeal of contractualism could be had by another, perhaps less difficult, less abstract, or more determinate account of the subject matter. This would be a considerable blow to contractualism.

To consider how alternative accounts might attempt the heist, we need a candidate alternative. So suppose initially, to keep matters simple, that an action is wrong because it is in violation of the requirements laid down by our benevolent and just Creator, and that one such requirement is that thou shalt not give false testimony. Thus, doing so is wrong. It might then seem to follow that doing so is *also*, and therefore, *unjustifiable to others*. Thus, it might seem, if you give false testimony, you have not only offended against the commands of God, but you have also done something that does not, in Scanlon's phrase, show due regard to others as ones to whom justification is owed. Thus it might seem that this simplistic theistic view can help itself to Scanlon's attractive answer to the question of motivation.⁵⁸

Notice that hijacker here moves from "this action fails to meet some independently specified standard" to "this action is wrong" to "this action is unjustifiable to others." Moreover, the standard is proposed as what constitutes the action as wrong. And being wrong, it is assumed, will ensure that the action is unjustifiable to others.

What is unclear is why, exactly, an action that violates this or that independently specified standard will be, for *that* reason, unjustifiable to *others*.

⁵⁸ Or, for another account, suppose we were to adopt a simplistic Hedonic Utilitarianism, according to which an action is wrong if it fails to produce the greater balance of pleasure over pain. If it is true that this is what makes an action wrong, then it is also true that, when you perform an action that fails to produce the greater balance of pleasure over pain, you have also, in so doing, done something wrong, and so, it would seem, you have done something that cannot be justified to others.

Of course, it must be granted that any action that violates a standard (theistic or consequentialist or pragmatic or etiquette-based) will be “unjustified” *with respect to that standard*. Further, if someone cares about that standard, and asks you to justify your action with respect to it, you may not be able to satisfy him or her. But to say that an action is unjustified with respect to a correct standard about which someone might (even reasonably) care is not yet to secure Scanlon’s attractive answer the question of motivation: it is not yet to say why, in failing to live up to that standard, we have failed to recognize others as ones to whom justification is owed—because it is not yet to say why *we owe it to one another* to live up to that particular standard. Nor is it to make clear why it would be unreasonable to reject the principles provided by that standard as the principles by which we will agree to govern ourselves.⁵⁹

To elaborate: Though there are standards of good mathematical reasoning, of good hygiene and personal health, of musical accomplishment and of athletic performance, we do not, it seems, owe it to one another to live up to these standards. While a poor performance with respect to such a standard might cause upset to someone who cares deeply about it, the poor performance does not plausibly wrong him or her. And, even granting that such a standard is correct in its domain, it seems someone could, nonetheless, reasonably reject a principle requiring that we each live up to it (on grounds of taste, ability, priorities, or liberty).⁶⁰ Of course, we often owe it to others to *do* what a

⁵⁹ It will not do, at this point, to say, “Because it is the moral standard.” See below. MOVE: Nor, I think, would it do to argue that one’s account yields the right extension—that it classes as permissible and impermissible the actions we expect so classed—and therefore it should be believed to be the correct moral theory, and, therefore, its violation must be unjustifiable to others. Again, this would be to rely, brutally, on the claim that immoral action is, for being immoral, therefore unjustifiable to others, and this is just what we need to elucidate.

⁶⁰ So Scanlon’s notion of justification, that which he takes as basic, is not, I think, the very broad one suggested by AJ Julius. Julius suggests, quite plausibly, that an action is justified if it is supported by the balance of reasons, and unjustified otherwise. CITE. But this notion of justification is wider and weaker

given standard prescribes, for other sorts of reasons—e.g., we owe it to those who depend upon us to look after our health. But we do not owe it to one another to live up to these standards, *as such*. And, of course, a poor performance with respect to one of these standards could be *made* wrongful, by making a promise or commitment to a person or group, to live up to the standards (if you are a member of a community of faith, perhaps, or of a team). But absent such overlay of additional commitment, a poor performance with regard to any of these correct and laudable standards is not, itself, plausibly wrongful, nor something that we each owe to one another.⁶¹ We do not plausibly owe it to one another to do everything well. So one cannot, I think, plausibly wed Scanlon's attractive answer to just any (even correct and important) standard of behavior.

At this point, one might be tempted to reply, bluntly, that a poor performance with respect to one of these other standards (musical, grammatical, etc.) does not wrong another, does not violate what we owe to one another, because these are not the *moral* standards. But, once we locate the correct moral standards, then we *will* owe it to one another to live up to them, and it would also be unreasonable to reject them as the basis for mutual self-governance. Thus, one might conclude, once we find the true moral standards, Scanlon's attractive answer to the question of motivation is sure to follow.⁶²

To say this is to miss the force of the point just made. It seems intuitive and uncontroversial to claim that, if an action is morally wrong, then we owe it to one another to avoid that action, and, further, it would be unreasonable to reject any principle

than Scanlon's account of the justification that we owe to each other: we do not owe it to one another to always act in accord with the balance of reasons. As we just considered, I can fail to do what the balance of reasons recommends, in completing my logic homework, choosing my attire, or cooking my dinner, but I do not thereby plausibly commit a wrong, or do anything unjustifiable *to others*.

⁶¹ Note that the appeal to such a mutual commitment is the foundation of, rather than an overlay upon, Scanlon's account of the standards.

⁶² Thanks to Mark Greenberg for helpful conversation on this point.

prohibiting such an action as the basis for our mutual self-governance. (Likewise, if an action is required, if we owe it to one another to perform certain actions, it is unreasonable to reject any principle requiring such action.) So, once we grant that some prior, independent standard is the *correct* moral standard, then it will seem intuitive and uncontroversial to claim both that we owe it to one another to live up to that standard and that it would be unreasonable to reject that standard as the basis for our mutual self-governance. Thus we are assured that that the true moral theory, whatever it is, *will* hijack Scanlon’s attractive answer to the question of motivation.⁶³

However, the strong and uncontroversial connections between wrongness and unjustifiability to others do not always work in the hijacker’s favor. As we have seen, we have a reasonably strong, pre-theoretical sense of what we can plausibly be said to owe to one another, or what it would be plausible to accept or reject as the principles that guide our self-governance. Thus, the very strong intuitive connection between the fact that something is morally wrong and that fact that it is unjustifiable to others does not simply provide a rope by which to hijack Scanlon’s attractive answer to the question of motivation. It rather provides a desiderata on the correct moral theory: for any proposed standard, it must be plausible both that, in failing with respect to that standard, you have failed to treat others as ones to whom justification is owed, and that it would be unreasonable to reject the standard as a basis for our mutual self-governance.⁶⁴ If these claims are not independently plausible, for a proposed theory, one must work to show

⁶³ [not all, because “reasonable” is being filled out differently, by Scanlon and the hijacker, as discussed below]

⁶⁴ It is not enough that the standard prescribe *actions* that we think we owe to one another. It must be that we owe it to one another to live up to that standard. Note that proponents of competing moral theories might agree that we owe it to one another to do what the opponent’s theory prescribes. They nonetheless reject the competition’s standard as something we owe to one another to live up to.

them plausible.⁶⁵ What we have seen, then, is not so much that the correct moral theory *will* hijack Scanlon’s attractive answer to the question of subject matter, but that it *must*. This is a task it must complete.

Notice, next, how differently Scanlon and the hijacker will complete this task. Scanlon, I take it, simply finds it plausible that we owe it to one another to constrain our actions and attitudes in accord with the terms we must each agree to, if we were to accord each one symmetric standing to determine those terms on personal and generic grounds. That is, he finds it plausible that we owe it to each other to grant each other standing to partially determine the terms of our mutual self-governance, so long as such standing is exercised consistently with one’s own standing to do the same.

Further, and crucially, Scanlon thinks we owe *only* this to one another. That is to say, we do not, in constructing the principles that will constrain our self-governance, appeal to any prior or independent moral truth (though we may appeal to moral principles established in some other iteration of the holistic contractualist method). Rather, as he puts it, “justifiability is basic.”⁶⁶

Thus, Scanlon simply finds it plausible that we owe it to one another to constrain our actions and attitudes, not by any other, prior standard, but simply by whatever principles we would have to agree upon, on personal and generic grounds, given a commitment to

⁶⁵ This is perhaps why Scanlon one said that his account rests on a qualified skepticism: he says that any other account would have to appeal to something with intrinsic “to-be-doneness.” Perhaps he meant that any other account would have to presume that there are standards that we intrinsically owe it to each other to satisfy. In contrast, Scanlon thinks that we owe it to each other to satisfy the moral standard simply because that is the standard set by principles that we agree to if we are trying to find a way to live that we can justify to others.

⁶⁶ CITE. This is a confusing thing to say. ELABORATE.

finding such principles. Consistency with this commitment, alone, provides the constraint on our choice. His is, so to speak, a minimalist account.⁶⁷

The hijacker, of course, advocates some specific, alternative account of what makes an action wrong. So either the hijacker's alternative standard must also be, on the face of it, something we also plausibly owe it to one another to live in accord with, or else the hijacker must provide an argument to make this plausible.

Suppose the hijacker proposes, as the moral standard, respect for persons (or for rational nature, or humanity).⁶⁸ It seems very plausible that we owe it to each other to treat one another with respect and that we could not reasonably reject, as providing the principles of our mutual self-governance, the standards provided by respect. Thus, this alternative seems to be in a very good position to hijack Scanlon's attractive answer to the question of motivation. The question for such an account, it seems to me, is whether it is in fact a genuinely independent alternative to Scanlon's view. To make clear how this account will differ from Scanlon's, we need to know how or whether treating persons with respect *differs* from treating them as ones who have partial, symmetric standing to determine the terms of our mutual self-governance on the basis of generic and personal reasons. It seems to me an open question whether these differ, and one that could be answered only by first giving more content or specificity to the notion of respect for persons and then conducting a detailed examination of cases.⁶⁹

⁶⁷ To some, this may seem a "formal" account. Scanlon does not use this term this way.

⁶⁸ Thanks to Seana Shiffrin for this suggestion.

⁶⁹ These other accounts might be seen not wholly independent, but as providing a prior, underlying rationale for the features of Scanlon's account: the symmetric standing of each and the restriction to personal and generic reasons. Perhaps this underlying rationale will appeal to the kind of creature we are (persons, or embodiments of rational nature). I think there is reason to avoid being so explicit about the metaphysics of our morals, as I hope will become clear below.

In contrast, the simplistic theistic theory I started with does not seem to me to provide a standard that we plausibly owe it to one another to satisfy.⁷⁰ That is to say, even *granting* that we owe it to our benevolent and just Creator to live in accord with His decrees, it is not at all clear why I owe it to *you* to do so, or why I have wronged *you* in violating those decrees. More would need to be said to make this plausible.⁷¹

Much the same can be said about accounts that rely on the constraints or demands of rationality or rational agency (whether they be consequentialist views, like Sidgwick's, or Kantian views, like Korsgaard's): even if we grant the requirements of rationality or rational agency are as these accounts claim, it is not at all clear why *I owe it to you*, or to anyone, to live up to them.⁷² Again, we do not owe it to one another to do everything well. Nor, I think, do we owe it others to rightly respond to every reason, or even to live in accord with admittedly very important standards. So, even granting that the standards of rationality are very important—even that they are *inescapable* for creatures like us, or that they are generated by or generate the only real source of value in the universe (be that God, or pleasure and pain, or practical reason)—does not seem to secure the claim

⁷⁰ This claim is, of course, resting on pre-theoretical intuitions, which are, I am sure, culturally conditioned. It is well worth noting that exactly what we think we are owed varies from person to person and culture to culture. (Some, in our own culture, seem to think that others owe it to them to live up to almost any genuine and important standard—that others owe it to them to do almost everything well. I am assuming they are mistaken.) I am taking some pre-theoretical intuitions for granted. There is scope, here, for flat disagreement.

⁷¹ One might try to do so pointing out that we each bear the image of God, and so we owe it to one another, as bearers of God's image, for whatever reason we owe it to God. If this thought could be made out, it seems to me it could secure the claim that we owe something to one another. It is a version of the strategy I consider below.

⁷² This important point has been overlooked, I think, because of the preoccupation with the internalist thought: theorists have been wanting to secure the claim that you have a reason to act morally, and so have attempted to locate morality in rationality. They have thus secured "essential prescriptivity" but, I think, have lost what is distinctive about *moral* requirements.

that we *owe it to one another* to live in accord with them.⁷³ Nor does it secure the claim that they could not be reasonably rejected as a basis for our mutual self-governance, on grounds of, say, ability, or liberty, or priorities.⁷⁴

So, it seems to me that advocates of these other standards have work to do, to hijack Scanlon's attractive answer to the question of motivation: it must be shown how or why, in addition to being constrained by these standards, by our rational or creaturely nature, we plausibly owe it to one another to live up to them.

Notice though, that even if the hijacker is as successful as she could possibly be in hijacking Scanlon's answer to the question of motivation, she would not have captured *all* that is attractive about Scanlon's view.

What would be sacrificed? We have seen that Scanlon denies that there is any other prior and independent moral standard to which we together do or must commit, or which we must recognize as providing justification of other's actions to us. Rather, he claims, we arrive at the relevant standard by asking principles no one could reasonably reject, on personal and generic grounds, if we were committed to finding such principles. That is to say, Scanlon simply identifies, as his proposed standard, *whatever* principles we would

⁷³ This is another place at which focus on the internalist thought has distorted, I believe, our subject matter: it has identified morality with *inescapable* constraints, rather than with the constraints we owe it to one another to abide by. These seem to me different classes.

⁷⁴ If it could be argued that they could not be rejected due to personal or generic interests of someone or some class of people, then we would have generated a principle of Scanlon's sort.

all have to accept, if we were all committed to finding principles acceptable to each.⁷⁵

What we owe to each other is, and at bottom is *only*, justification by such principles.⁷⁶

Thus, possible alternative standards, ideals, and pictures of human flourishing and goodness are, for Scanlon, subordinated to (and incorporated into) the project of finding and abiding by these principles. These ideals or other kinds of value have a place in the account, but what place they have will be determined by asking what principles no one could reasonably reject, considering personal and generic grounds, given that we are committed to finding principles acceptable to everyone.⁷⁷

Some will find this very unattractive. In fact, anyone who is committed to a contrasting picture, not just of the good or ideal life for humans, but of the good or ideal and *therefore moral* life for humans, should not find Scanlon's view appealing. Anyone who believes, not only that some other standard provides a particular and appealing picture of the good, or of excellent living, which we would all do well to adopt, but also that we *owe it to one another* to live up to that standard or picture, will find themselves in the flat disagreement. Likewise for those who think that there is a prior and independently specifiable account of what is just or respectful.

But others may find this very feature one of the view's attractions. In fact, one might think it has two favorable results. The first, which Scanlon sometimes highlights, is what will seem to *some* (though certainly not to all) a kind of metaphysical minimalism—

⁷⁵ Where Korsgaard reads Kant claiming, of the content of the categorical imperative “the only thing it must be is law,” Scanlon says, in effect, “the only thing moral principles must be is acceptable to others with this commitment.” See Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996). FIND PAGES.

⁷⁶ IS THIS RIGHT? Or do we rather owe one another recognition as having standing to determine such principles?

⁷⁷ Scanlon suggests both that they will play an important role in shaping morality and that, for many (such as friendship) morality will play a role in shaping them. See, here, chapters four and five of Scanlon, *What We Owe*. NOTE the priority question, which has been largely ignored in this paper.

whatever degree of minimalism might be had by a non-reductive, constructivist theory.⁷⁸ Morality is, in some sense, a product of our capacity for rational self-governance and our need to get along, taking into account our various and competing interests. Second, and perhaps less often noticed, because the contractualist principles will have to take into account the personal, generic reasons arising from competing ideals and standards of human flourishing or a good human life—because even those who take such ideals very seriously will have to find the principles acceptable—the result, presumably, will be a set of principles that maximizes the liberty of each consistent with the liberty of others, and so preserves, to as great an extent as possible given the need to find mutually acceptable terms, freedom of conscience. Such liberty may be sacrificed in an account grounded on some prior and independent ideal or reason. What may be sacrificed, then, in even a successful hijacking Scanlon’s answer to the question of motivation, is the appeal of old-fashioned, modern, liberalism.⁷⁹⁸⁰

⁷⁸ CITE, again, the “qualified skepticism” from CU, and the openness of the open question. CITE the Locke lectures. NOTE a third favorable result: he leaves the open question largely open—we must ourselves determine, in each age and era, under constantly changing circumstances, what is reasonable.

⁷⁹ Conclusion: Scanlon’s view thus seems to share with Kant’s the result that moral facts are “practical:” they are facts about what people can reasonably choose. They are practical in another sense, as well: they are chosen with a view to what it would be like to live in accordance with them. They are, nonetheless, facts—there is a truth of the matter about what can be reasonably chosen—and they are facts we can easily invest with a great deal of importance. (Whether they are “natural” facts seems to me an unclear and so unhelpful question.) So, in the end, morality does, for Scanlon, have a connection to the will. But it is not to the will of each individual to whom it applies, as the internalist thought would have it. It is rather that the moral facts are facts about possible agreements between reasonable people who share the aim of living with one another on certain kinds of terms. These may after all be facts of a rather queer sort. But it is not hard to see why we give them the kind of importance we do.

⁸⁰ I owe thanks to many. First and foremost, I am in debt to T. M. Scanlon, not only for providing such rich material for the present reflection, but also for his help and support throughout my career. Further thanks for extensive help on this paper are due to Mark Greenberg, Barbara Herman, A. J. Julius, Rahul Kumar, and Seana Valentine Shiffrin. Helpful comments, criticism, and conversation were given by Alan Gibbard, Mark Johnson, Brent Kiou, Nishi Shah, Julie Tannenbaum, John Turri, the participants at the TITLE conference [in Dubrovnik], and audiences at University of Western Ontario, Arizona State University, and Princeton University. Finally, I am grateful to Stephen White for his research assistance.

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