

Kant and the trolley

Thomson's famous Trolley problem involves two thought experiments:

Trolley. A trolley is hurtling down a track, and if it continues it will run over five people who are on the track and have no means of escape. The trolley cannot be stopped, but you could throw a switch that would cause the trolley to change onto an alternate track. If the trolley changes onto the alternate track, it will run over one person who is on that track and has no means of escape. The question is: should/may you throw the switch?

Fat man. A trolley is hurtling down a track, and if it continues it will run over five people who are on the track and have no means of escape. You are on a bridge that goes over the track, and there is a fat man standing next to you. By shoving the man, you could cause him to fall down onto the track. He would die in the process, but his body would prevent the train from running over the five. The question is: should/may you shove the fat man?¹

As Thomson points out, when confronted with Trolley, most people have the intuition that it is permissible to throw the switch, whereas when confronted with Fat man, most people have the intuition that it is impermissible to shove the fat man.² The problem is then to give a principled explanation of these diverging intuitions: why is it permissible to save five by killing one in the first scenario but not in the second?

Thomson's original goal was to show that this divergence cannot be explained using the principle that killing is worse than letting die.³ But she also sought to show that it cannot be explained using the Kantian principle forbidding the use of people as mere means (henceforth: the Kantian prohibition). To accomplish the latter, Thomson introduced a third case, a slight modification of Trolley:

Loop. A trolley is hurtling down a track, and if it continues it will run over five people who are on the track and have no means of escape. The trolley cannot be stopped, but you could throw a switch that would cause the trolley to change onto an alternate track. The alternate track curves back around to the five. But if the trolley changes onto the alternate track, it will run over one person who is on that track and has no means of escape, and the person's body will prevent the track from completing the loop and running over the five. The question is: should/may you throw the switch?

¹ In order to avoid biases associated with weightism, Fat man is sometimes modified to involve someone on a large chair or with a heavy backpack.

² In her first articulations of the Trolley problem, the second case is not Fat Man but rather Transplant (1976, 1985). The latter involves a surgeon who is deliberating about whether to harvest organs from one healthy person in order to save the lives of five unhealthy patients. Thomson calls it the "trolley problem" because she is particularly interested in explaining the permissibility of turning the trolley, but she invites those who are more concerned with explaining the impermissibility of harvesting the organs to call it the "transplant problem" (1985, 1401). However, in both of these publications, the Fat man case shows up as virtually interchangeable with Transplant. I have taken the liberty of actually interchanging them because Thomson herself does so in a subsequent publication (2008).

³ In so doing, Thomson was responding to Foot. Foot's original version of Trolley queried whether the driver of the trolley may throw the switch. This was to illustrate the principle that killing five is worse than killing one. (Foot's larger goal was to show that the principle that killing is worse than letting die (as an instance of the more general principle that negative duties are more stringent than positive ones) can do more explanatory work than the Doctrine of Double Effect (Foot, 2002).) In switching the focus of the question from the driver to a bystander, because the deontic status of throwing the switch is supposed to remain constant, Thomson used this variant of Foot's example to evince a problem for Foot's own principle (the bystander, unlike the driver, would kill one or let five die). In Thomson's later work, however, she maintains that her original argument was based on a mistake: although it is permissible for the driver to turn the trolley, it is impermissible for a bystander to do so. She thus comes to embrace the principle that killing is worse than letting die (2008).

According to Thomson, it is permissible to throw the switch in Trolley if but only if it is permissible to throw the switch in Loop: "we cannot really suppose that the presence or absence of that extra bit of track makes a major moral difference as to what an agent may do in these cases."⁴ But in Loop, the agent who is run over is needed for the end of saving the five every bit as much as in Fat man: "the agent [in Loop] needs the one (fat) track workman on the right-hand track if he is to save his five."⁵ Thus, Fat man involves using someone as a mere means if but only if Loop does, whence it follows (because Fat man is impermissible whereas Loop is permissible) that the Kantian prohibition fails. In Thomson's words:

I should think that there is no plausible account of what is involved in, or what is necessary for, the application of the notions "treating a person as a means only," or "using one to save five," under which [the agent in Fat man] would be doing this whereas the agent in this [Loop] variant of [Trolley] would not be. If that is right, then appeals to these notions cannot do the work being required of them here.⁶

Moreover, Thomson is not alone in arriving at this negative assessment of the Kantian prohibition on the basis of the Trolley problem. For example, Friedman, like Thomson, concludes that in Loop, as in Fat man, "the one is also needed as a means for saving the five. So a Kantian solution doesn't seem to work."⁷

However, this assessment is unwarranted, and that is what this paper aims to show. The paper is divided into three sections. In the first, I introduce the Kantian prohibition on using persons as mere means. In the second, I explain where the Trolley problem gets onto the wrong track. To do so, I shall engage with Kleingeld's recent and ingenious contribution to the trolley problem literature from a Kantian point of view. In the third, I sketch some of what is needed for a Kantian solution to the Trolley problem.

1. The Kantian Prohibition

Kant opens part I of the *Groundwork to the Metaphysics of Morals* with a famous claim: "it is impossible to think of anything in the world, or indeed even anything outside it, which could be held for good without limitation, than alone a good will."⁸ This claim is often taken to be definitive of Kantian ethics in particular and of deontological ethics more generally. The idea is that, if a good will is the only thing that is good without limitation, then objective goodness is always conditioned on good willing. Good willing is understood in terms of principles or maxims. Thus, in order to determine the deontic status of an action, the principles on which it is performed, as opposed to the consequences of its performance or the virtues it exemplifies, must be assessed.

Kant gives us several tools to distinguish good principles from bad ones. The one that is most important for present purposes is the so-called Formula of Humanity (FH) formulation of the Categorical Imperative (CI). The FH is grounded on a distinction between two different kinds of value: price and dignity. Price is extrinsic, aggregative, and comparative, whereas dignity is intrinsic, non-aggregative, and non-comparative. Whereas objects of inclination have a price, rational beings have dignity and, thus, rational nature exists as an end in itself. On the basis of this, Kant asserts FH: "Act so that you use humanity, both in your person as in the person of any other, always at the same time as an end, never merely as a means."⁹

⁴ (Thomson, 1985, 1403).

⁵ (Thomson, 1985, 1403).

⁶ (Thomson, 1985, 1403).

⁷ (Friedman, 2002, 164).

⁸ GMS, AA 04: 393.05-07. All citations are in accordance with the standard Prussian Academy pagination. All translations are my own.

⁹ GMS, AA 04: 429.10-12, emphasis omitted.

The Kantian prohibition discussed in the introduction of this paper comes from the last clause of FH and may be written separately: never use humanity, in your person or in the person of any other, merely as a means. There are two important differences between this prohibition and the one referred to by Thomson: (i) Thomson talks of *treating* as a mere means whereas Kant talks of *using* as a mere means, and (ii) Thomson talks of persons whereas Kant talks of humanity in persons. Presumably I could treat someone as a mere means without using them as such.¹⁰ Similarly, if using the humanity of a person is a way of using a person, then there are presumably more ways of using a person than using the humanity of the person. This suggests that Thomson's prohibition is more expansive than Kant's own. To mark this distinction, I shall refer to the actual prohibition in FH as Kant's prohibition whereas I shall refer to Thomson's prohibition and others which are similarly Kant-inspired as Kantian prohibitions. My primary goal is to defend the explanatory role of Kant's prohibition. However, most of what I have to say applies to both Kant's and (plausibly) Kantian prohibitions.

2. How the Trolley gets on the Wrong Track

I want to begin my defense of Kant's prohibition by examining an alternate defense that recently has been advanced. In Kleingeld's "A Kantian Solution to the Trolley Problem," she begins with a novel conception of what it means to use someone merely as a means:

Using merely as a means: an agent uses another person 'merely as a means' if and only if (1) the agent *uses* another person *as a means* in the service of realizing her ends (2) without, as a matter of moral principle, making this use *conditional* on the person's *consent*, where (3) the required consent is *actual* genuine consent to being used by the agent in a particular manner, as a means to the agent's end.¹¹

Kleingeld argues that, in Trolley, diverting the trolley does not use the one as a means, *a fortiori* the one is not used as a *mere* means. In Fat man, by way of contrast, Kleingeld contends that the fat man is necessarily used as a means to stop the trolley, and the use of him is necessarily not conditional on his actual consent, whence it follows that the fat man is necessarily used *merely* as a means. This sets Kant's prohibition up to explain the divergence of intuitions in the Trolley problem. But now Kleingeld has to contend with Loop.

Kleingeld maintains that Loop has similarities with both Trolley and Fat man. Because of this, Loop admits of alternate construals: one agent might adopt the impermissible maxim to "save more rather than fewer human lives, even if this involves my using others as means to this end without their actual consent," whereas another might adopt the permissible maxim to "save more rather than fewer human lives, provided I do not use anyone as a means to this end without their actual consent."¹² This then grounds a relevant difference between Fat man and Loop by appeal to two premises about the distinction between actions and maxims:

(1) A morally permissible action remains permissible even when it is performed on the basis of a morally impermissible action principle; and (2) if an action can be performed only on the basis of morally impermissible action principles, then the action is impermissible.¹³

From these two premises it follows that, because showing the fat man in Fat man necessarily violates Kant's prohibition, the action is impermissible. But it also follows that, because throwing the switch in Loop does

¹⁰ This point is made in (Kleingeld, 2020b, 8).

¹¹ (Kleingeld, 2020b, 7).

¹² (Kleingeld, 2020b, 15-16).

¹³ (Kleingeld, 2020b, 19).

not necessarily violate Kant's prohibition, the action can be permissible even when it is performed on the basis of an impermissible maxim. Therefore, Kant's prohibition is vindicated: it can ground a morally relevant difference between Fat man and Loop.

I would like to say three things about Kleingeld's argument. First, I think that her interpretation of what it means to use someone merely as a means is problematic. Consider, in particular, parts (2) and (3) of her interpretation, which I shall refer to collectively as the actual consent condition. The main textual evidence in favor of Kleingeld's actual consent condition comes from an example Kant uses in the *Groundwork to the Metaphysics of Morals*. Kant points out that it would be impermissible to tell someone a lying promise in order to get some ready money, "for he whom I will to use for my ends through such a promise cannot possibly agree to my way of proceeding with him and thus himself contain the end of this action."¹⁴ This passage suggests that, if X uses Y as a means to her end and Y cannot possibly consent to this, then this is sufficient to consider X to be using Y as a mere means. But giving someone the possibility to consent is considerably weaker than getting their actual consent. So Kant's appeal to possible consent does not ground Kleingeld's actual consent condition. Rather, Kleingeld thinks that Kant's claim about containing the end of someone's action should be interpreted in terms of actual consent: an agent contains the end of an action if but only if s/he actually consents to that action.¹⁵

However, Kant does not explain the notion of "containing the end of an action" in terms of actual consent (he does not explain it at all), and (*pace* Kleingeld) these two do not seem to be equivalent. To see why, note that, on the one hand, I can contain the ends of my own actions without actually consenting to them, suggesting that actual consent is not necessary for an agent to contain the end of an action, and, on the other hand, I can actually consent to being used as a mere means, suggesting that actual consent is not sufficient for an agent to contain the end of an action. This second point (namely: that I can consent to being used as a mere means) bears emphasis, for Kleingeld admits it. Kleingeld suggests that to consent to being used as a mere means is morally impermissible:

You should not consent to being used as an accomplice in a scheme of deception, for example, and you should not agree to sell yourself into slavery. Thus there is a set of normative conditions that should be met by anyone who is asked to serve as a means.¹⁶

But this admission is fatal: regardless of whether I *ought* not actually to consent to being used as a mere means (because to do so is to evince a failure of self-respect), the fact that I *can* actually consent to this entails immediately that one agent can use another as a mere means despite, "as a matter of moral principle, making this use *conditional* on the person's *consent*."¹⁷

Even overlooking these problems with Kleingeld's account of Kant's prohibition, however, the second thing I would like to say about her account is that, as an answer to Thomson, it is question-begging. This is because of the maxims she considers. That is, as noted above, Kleingeld considers two maxims in Loop: "save more rather than fewer human lives, even if this involves my using others as means to this end without their actual consent," and "save more rather than fewer human lives, provided I do not use anyone as a means to this end without their actual consent." But Thomson's point is, in essence, that the second maxim can be acted on in Loop if but only if it can be acted on in Fat man, and Kleingeld does not give a plausible explanation of why Thomson's point is mistaken. A plausible solution to the Trolley problem should not involve maxims that are normatively loaded.

But the third problem with Kleingeld's account is, I think, the most important for current purposes. It has to do with Kleingeld's account of the distinction between actions and maxims (reproduced in the block quotation above containing the two premises).

¹⁴ GMS, AA 04: 429.34-430.01.

¹⁵ (Kleingeld, 2020a, 402).

¹⁶ (Kleingeld, 2020a, 404).

¹⁷ A further problem arises for Kleingeld's account because she, like Thomson, speaks of using persons as mere means: as noted in section 1 of this paper, Kant's FH is in terms of using the humanity in persons as a mere means.

Kleingeld's action/maxim distinction seems to be in the background of Thomson's remarks, and it is also well accepted in Kantian ethics. For example, according to Pogge, "An act token is wrong (contrary to duty) just in case any maxim on which it might be performed is impermissible."¹⁸ Nyholm advances a formally equivalent account in terms of permissibility: an act token is permissible if but only if it can be performed on a permissible maxim.¹⁹ The problem, however, is that these accounts render the category of impermissibility impracticable. There are infinitely many maxims on which any given action is performable on such accounts, and because no human is in a position to assess infinitely many maxims, there would be no way to determine whether any action is impermissible. Thus, if Kleingeld's account of the distinction between actions and maxims is accepted, there is no way to determine that the action, shoving the fat man, is impermissible in Fat man, undermining her own pronouncement about the case and, thereby, her attempt to vindicate the explanatory role of Kant's prohibition in the Trolley problem.²⁰

Notwithstanding its prevalence in Kantian ethics, Kant does not accept this distinction between actions and maxims. On Kant's account, act tokens and maxims cannot be separated; an act token is impermissible if but only if it is performed on the basis of an impermissible maxim. This is evident when we consider other versions of the CI, such as the so-called Formula of Universal Law (FUL):

Act only according to a maxim through which you at the same time can will that it become a universal law.²¹

The FUL makes explicit that an act token is assessed on the basis of the particular maxim it instantiates. That is, the FUL tells us that an action is impermissible if it is performed on the basis of a maxim that cannot be willed at the same time as a universal law. This is less evident in FH, which does not use the word 'maxim'. Nonetheless, general exegetical considerations make it very difficult to make sense of the FH, taken in context, unless we understand it in a similar way. That is, Kant's prohibition must be telling us that an action is impermissible if it is performed on the basis of a maxim that involves using some person's humanity as a mere means; otherwise it would be difficult to square with his claim, reproduced in section 1 above, about the value of a good will.

Evidence for this account of the way maxims and act tokens fit together comes not only from the *Groundwork for a Metaphysics of Morals* but also from the second half of Kant's *Metaphysics of Morals*, the Doctrine of Virtue. In the Doctrine of Virtue, Kant derives various general duties, usually from the FH, including prohibitions on things like suicide and defiling oneself through lust. Importantly for current purposes, immediately after setting out these duties, he articulates casuistical questions. For example, after arguing that suicide is generally impermissible, Kant asks, "Is it allowed to anticipate, through killing oneself, the unjust death sentence of one's ruler?"²² The reason this is important is that Kant seems to take the answers to the casuistical questions to be genuinely open, notwithstanding the fact that he has just argued that the actions in question are impermissible. This suggests, first, that an impermissible action can be performed on the basis of a permissible maxim and, second, that we can know that an action is impermissible without knowing whether every maxim on which it can be performed is permissible. What is going on?

Briefly, Kant operates with a tripartite division between act tokens, act types, and maxims. Act tokens, as we have seen, are individuated and assessed by the maxims on which they are performed (we must determine whether the maxims can be willed at the same time as universal laws, or whether they involve treating the humanity

¹⁸ (Pogge, 2004, 55).

¹⁹ (Nyholm, 2015, 87).

²⁰ Indeed, an action could be determined to be permissible if but only if an agent happened to test a permissible maxim, and this would be a matter of happenstance: because there is no fixed enumeration of maxims, there is not even a semi-decision procedure for the category of permissibility.

²¹ GMS, AA 04: 421.06-07, emphasis omitted.

²² MS, AA 06: 423.22-23.

in persons at the same time as an end, never merely as a means). Act types, by way of contrast, are assessed by making generalizations about the maxims on which tokens of the type are performed. Thus, an act type is permissible if but only if tokens of the type are generally permissible, and an act token is permissible if but only if it is performed on the basis of a permissible maxim.

The fact that the deontic status of act types is determined by generalizations entails that an impermissible act type can be performed on the basis of a permissible maxim, and it entails that a permissible act type can be performed on the basis of an impermissible maxim. However, if the former occurs, then the act token, performed on a permissible maxim, is itself permissible, notwithstanding the fact that it is a token of an impermissible type, and conversely if the latter occurs. This suggests that Thomson and Kleingeld are both on the wrong track.

3. Redirecting the Trolley

As noted in the previous section, Kant's ethics does not assess act types directly: it assesses act tokens by means of the maxims they manifest and then generalizes up to act types. Obviously there are infinitely many possible act tokens that instantiate the act types "throwing the switch" in Trolley or Loop and "shoving the fat man" in Fat man, and there are, correspondingly, infinitely maxims. Problematically, there is no obvious way of figuring out the deontic status of all such act tokens. We cannot do so one-by-one; quite apart from the fact that there is no fixed enumeration of such act tokens or of the maxims that could be acted on in these cases, to do so would take an infinite amount of time. There is no induction scheme for working with the morality of maxims as there is for proving properties of the natural numbers. And indeed, it is *prima facie* implausible that *every* maxim on which an agent might token the type "throwing the switch" is going to have the same deontic status (and the same can be said about "shoving the fat man").

The best we can do is make plausible generalizations about human nature that would lead us to plausible generalizations about the kinds of maxims that agents in these situations would adopt when engaged in throwing the switch or shoving the fat man. We then would have to make some reasonable generalizations about the deontic statuses of these kinds of maxims. And the work would not stop there: we would have to do the same thing about the kinds of maxims that agents in these situations would adopt when engaged in *not* throwing the switch or shoving the fat man. It might turn out that both options are generally performable on permissible maxims, or it might turn out that both are generally performable on impermissible maxims. In short, no philosopher to date has engaged in the justificatory work that would be needed to assert anything about the deontic status of the actions up for consideration in Trolley, Fat man, or Loop.²³

Some might balk at the suggestion I am making here, that we can use Kant's prohibition to determine the deontic status of an action type only by appeal to empirical information. But Kant himself says as much in the *Metaphysics of Morals*:

²³ The Trolley problem faces a similar problem when it comes to utilitarian ethics, at least when it comes to act utilitarianism. On at least one popular understanding of the difference between act and rule utilitarianism, the former assesses act tokens whereas the latter assesses act types. But obviously any act type can be instantiated in infinitely many scenarios, and again there is no inductive scheme that can be used here to move from the particular to the universal, nor is it possible to evaluate all of these infinitely many act tokens one-by-one. So the best one would be able to do on an act utilitarian theory to determine the deontic status of an act type would be to make plausible generalizations about the circumstances in which an agent would perform a token of this type and then, on the basis of these generalizations, to make further generalizations about whether these tokens, in the main, tend to promote aggregate utility. As with Kantian ethics, nobody has done anything like this kind of work to date. (If we accept Lyons' contention that act utilitarianism and rule utilitarianism are extensionally equivalent, then we wind up in the same boat regarding rule utilitarianism, for the theory of relevance that we have to accept would make it impossible to determine, in any given instance, whether we have typed our token correctly (Lyons, 1965).)

However, there is an added twist for Kant's ethics that does not, I think, arise for utilitarianism. Kant's ethics does not assess maxims in the abstract; indeed, it is unclear whether the idea of a maxim in the abstract is even coherent. A maxim is an agent's subjective principle of acting, the representation of a law that s/he governs him/herself by. So what we need to ask is whether *that agent* can universalize *that maxim*, whether *that agent* would be failing to treat someone at the same time as an end in acting on *that maxim*. However, I am going to overlook this complication for present purposes.

...we shall often have to take the special *nature* of humans, which is cognized only through experience, as an object in order to *show* in it the conclusions from general moral principles, without that either taking thereby anything from the purity of the latter, or making their *a priori* origin thereby doubtful. —That is as much as to say: a metaphysics of morals cannot be grounded on anthropology, but it nevertheless can be applied to it.²⁴

On Kant's account, the various formulations of the CI are *a priori* and known through pure reason. But to figure out our general duties, we must use these *a priori* principles in conjunction with anthropological knowledge gained through experience. Anthropological knowledge is necessary in order to arrive at auxiliary hypotheses that we can use to derive duties using the *a priori* moral principles.

I am not going to try to set out a complete account of how Kant's prohibition would apply to Trolley, Fat man, or Loop. Instead, I am going to sketch only two of the kinds of considerations that need to be brought on board.

First, there needs to be an account of agents' general abilities to process such situations. If most agents would panic or operate on the basis of habit or impulse, then questions about the general im/missibility of the actions in these scenarios will be based on the general im/missibility of the kinds of maxim-based habits and impulses inculcated by those who would engage in them as opposed to those who would not. This leads to the unorthodox conclusion that, depending on general contingent psychological tendencies, the im/missibility of throwing the switch or shoving the fat man might have very little to do with maxims directly about either of these actions. This is because (1) a maxim is the major premise in a practical syllogism leading to action, and unless the agents are able to process such situations sufficiently quickly and rationally, the premise about these actions might be the minor premises in the syllogism, and (2) the action might not be maxim-based at all; it might be an impulse resulting from maxim-based habits that have been cultivated over time. For example, if agents who would recoil from shoving the fat man generally would do so on account of having cultivated maxims to avoid direct physical violence, whereas agents who would shove him generally would do so on account of having cultivated maxims of indifference to others' intrinsic value, there are good grounds for thinking that the action kind of shoving the fat man would be impermissible.²⁵

Second, there needs to be an account of the general assumptions agents in these situations would make about whether the "ones" would contain in themselves the ends of saving the five (assuming, for the sake of argument, that saving the five is the end that agents in these situations would have). Maxims are agents' principles of action. As such, external descriptions of an action cannot suffice for determining the deontic status of an action. For example, suppose I am out for a walk at dusk and decide to sit down for a moment on what I take to be a log. But suppose that the log is actually a person in a sleeping bag.²⁶ My maxim does not involve using the humanity in this person as a mere means even though, from an external perspective, it is clear that the person does not contain the end of my action. External descriptions are useful only insofar as they can be a window into an agent's maxims. Correlatively, whether the fat man actually contains the end of the agent's action in shoving him is less important than whether the agent (non-negligently and sincerely) believes that he does. If the Trolley and Loop scenarios do not activate the recoil response referred to in the previous paragraph and if most agents in such situations would assume that the ones contain in themselves the ends of their actions (because they believe the ones would sacrifice themselves for the greater good, or something along these lines), then throwing the switch in Trolley and Loop very well might come out as generally permissible on the basis of Kant's prohibition.

The two considerations just described are not (and are not intended to be) exhaustive. Moreover, these considerations are needed in order to arrive at a conclusion about the deontic status of the action types in our three

²⁴ MS, 06: 217.01-08.

²⁵ However, if this is so, the deontic status of the action would be subject to amphiboly: the action involves others, but its deontic status is based on duties to oneself.

²⁶ This example is based off a similar one in Kleingeld (2020a, 399-400).

scenarios. But this is not equivalent to determining why people might have the immediate reaction that throwing the switch is permissible in Trolley and Loop but shoving the fat man is impermissible in Fat man. In order to figure out that, we would need to investigate how people generally fill in the details of these vignettes (and what morally salient aspects of them they focus on) when they think about them. From this it may be inferred that the Trolley problem literature raises interesting cases to elicit intuitions. But the difficult work of incorporating those intuitions into theory (and determining whether the intuitions should be revised) has not yet begun, and the hasty discarding of theoretical principles, including but not limited to Kant's prohibition, that characterizes this literature seems quite precipitate.

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