

Phil 108, July 15, 2010

Foot on intending vs. foreseeing and doing vs. allowing:

Two kinds of effects an action can have:

- What the agent *merely foresees* will happen because of his action.
- What the agent *intends*. His *end*, and what he believes are *means* to that end.

The Doctrine of Double Effect:

- In *some cases*, it is not wrong to X if one merely foresees that Y will happen, even though it would be wrong to X if one intended for Y to happen.
- The DDE is important in Catholic teaching.
- The DDE does not say that this is true in *all* cases. For example, just as it is wrong for gravediggers to give away poisonous oil in order to have more people to bury (intending their deaths), so too it is wrong for merchants to sell poisonous oil in order to make money (merely foreseeing their deaths).
- What is the difference? Perhaps: the DDE applies only when X-ing brings about a *better* state of affairs.
- Note that consequentialism requires us to bring about a better state of affairs, and does not treat intending any differently from foreseeing.
- The DDE can be thought of as a *constraint* on consequentialist reasoning. We may not bring about a better state of affairs if we *intend* to harm others, but we may, at least in some cases, if we only foresee that others will be harmed.

Problems for the DDE:

- The DDE gives the intuitively *right* answer that it is permissible to remove a uterus even though it is foreseen that this will kill the fetus.
- But it gives the intuitively *wrong* answer that it is not permissible to crush the fetus's skull in order to save the mother's life. (Or, at least, it seems intuitively incorrect that the one action should be permissible, but the other action impermissible.)
- *Objection:* The DDE does not lead to the wrong answer, since "the death of the fetus is not a *means* to saving the mother's life. If the fetus could somehow survive the operation, it is not as though our end would not be achieved."
- *Reply:* This makes the DDE too permissive. For example, we can say about the fat man in the mouth of the cave, "We don't intend to kill him, only to blow him to small bits."
- *Moral:* To close this loophole, we need to specify when effects that are *not strictly necessary* for the intended end (such as breaking the fat man into smaller pieces) are still so *closely related* to the intended end that they should count as intended means. What is this relation of "closeness"?

The appeal of the DDE:

- How do we distinguish the framing case from the trolley case? The DDE gives us an answer: In the trolley case, we are diverting the trolley from the five, merely foreseeing that it will hit the one. In the framing case, we are framing the one in order to save the five.
- Likewise, how do we distinguish the case of using the medicine we have to save five instead of one from the case of killing one in order to make a serum from his body to save five?

Foot's diagnosis of the appeal of the DDE:

- We confuse the *intending/foreseeing* distinction with the *doing/allowing* distinction.
- It is really the doing/allowing distinction that matters morally.
- The two distinctions can also come apart:
 - One can intend to allow something to happen (e.g., allowing it can be a means to one's end, as in the case of using the beggar for medical research below).

- One can do things that one does not intend (e.g., one *kills* the one by diverting the trolley, but one intends only to divert it from the five, and merely foresees that it will kill the one).

Positive and Negative Duties:

- What we *allow* to happen to people is governed by our *positive* duties, which say what we owe people in terms of *aid*.
- What we *do* to people is governed by our *negative* duties, which say what we owe people in terms of *noninterference, noninjury*.
- In general, negative duties are *stronger* than positive duties.

How the doing/allowing distinction handles the cases:

- In the trolley case, we have a conflict of a *negative* duty not to kill the one vs. five *negative* duties not to kill each of the five.
- In the framing case, we have a conflict of a *negative* duty not to frame the one vs. many *positive* duties to aid each person in danger of the mob.
- So it is not inconsistent to hold that it is wrong to frame the one, but not wrong to send the trolley to roll over the one.
- In the case of merely distributing the medicine, we have a conflict of a *positive* duty to aid the one vs. many *positive* duties to aid each of the others.
- In the case of turning the one into medicine, we have a conflict of a *negative* duty not to kill the one vs. many *positive* duties to aid each of the others.
- So it is not inconsistent to hold that it is wrong to turn the one into medicine, but not wrong to give the medicine to others.
- Rescuing one or five from torture by the tyrant: conflict of positive duties.
- Torturing one oneself in order to save the five from torture by the tyrant: conflict of a positive with a negative duty.
- Not inconsistent to say that it is not wrong to rescue the five, but is wrong to torture one oneself. “To refrain from inflicting injury ourselves is a stricter duty than to prevent other people from inflicting injury, which is not to say that the other is not a very strict duty indeed.”
- A case that the positive/negative distinction and DDE treat differently: “Suppose, for instance, that there are five patients in a hospital whose lives could be saved by the manufacture of a certain gas, but that this inevitably releases lethal fumes into the room of another patient whom for some reason we are unable to move.” Wrong, because we violate a *negative* duty to that patient in order to fulfill positive duties to the others. But we do not *intend* to kill that patient, merely foresee that he will die.
- “In an interesting variant of the model, we may suppose that instead of killing someone we deliberately let him die. (Perhaps he is a beggar to whom we are thinking of giving food, but then we say ‘No, they need bodies for medical research.’) Here it does seem relevant that in allowing him to die we are aiming at his death, but presumably we are inclined to see this as a violation of negative rather than positive duty.”
 - But if so, doesn’t it suggest that the negative/positive distinction is not the same as the doing/allowing distinction, and that the negative/positive distinction is the one that matters?
 - *Why* is this as a violation of a negative duty? After all, it’s a refusal to aid.

- Isn't it plausible to say that the difference is that one *intends* the beggar's death in this case, but does not intend the death of the one when one gives medicine to the five? Doesn't the *DDE* explain this case?
- Perhaps the intending/foreseeing distinction is a further factor. One may fail to fulfill one's positive duty to the one in order to fulfill positive duties to others, but not if one intends that the one will be harmed as a result.
- Allowing someone to die of starvation before one's eyes is *just as* wrong as poisoning him.
- Why? Perhaps because, in these cases, the positive and negative duties do not conflict with any other duties.
- But *this* does not explain why allowing people in other countries to die of starvation is *not as* wrong as poisoning them.

Other factors that may matter:

- Strict duty vs. charity: our own children vs. children in other countries
- Is the person not already threatened?
- Is the person himself the threat?

Three abortion cases: Assume that the fetus has the same rights as an adult.

1. Nothing can be done to save the fetus, but by killing the fetus we can save the mother. Here the *DDE* says we may not kill the child in order to save the mother, which seems wrong. (Doesn't the positive/negative distinction say the same thing? We are violating our negative duty to the fetus in order to fulfill our positive duty to the mother. Isn't the explanation of why it is permissible to kill the fetus that it has no strong interest in *not* being killed, because it will die anyway very soon?)
2. Either we kill the mother to save the fetus, or kill the fetus to save the mother. The fact that we would be killing one in order to save the other does not resolve the conflict of interests, since this is true whether we save the fetus or the mother. The question is just whom to save. (Why doesn't the positive/negative distinction say that we must let *both* die?)
3. The fetus will otherwise live, but by killing the fetus we can save the mother. The right answer is that we should not do this (again, assuming that the fetus is a person). The *DDE* gives the right answer, but for the wrong reason. The positive/negative distinction gives the right answer for the right reason: we may not kill one person in order to save another.

The big questions:

- Is there a consistent distinction between aiding and noninterfering/noninjuring?
- Does it matter morally?
- If so, why?

Thomson's solution to the Trolley Problem:

The original puzzle:

Why is the agent,

in *Trolley*, permitted to turn the trolley onto the one, which will save the five

but,

in *Transplant*, not permitted to take the one's organs, which will save the five?

What is the difference between *Trolley* and *Transplant*?

Foot's answer:

- In *Transplant*, the choice is between a *doing* and an *allowing*: *killing* one and *letting* five die.

- Since doings are worse than allowings—since negative rights not to be *injured*, not to have harms *done* to you are stronger than positive rights to be *saved* from harms, not to have harms *allowed* to befall you—killing the one is wrong.
- In Trolley, the choice is between two doings: *killing* one and *killing* five.
- Here the fact that negative rights are stronger than positive rights is irrelevant. The agent will kill someone, and violate negative rights, no matter what he does. So killing the one is (at very least) not wrong.

An objection to Foot's answer:

- In *Bystander at the Switch*, the choice is between *killing* one and merely *letting* five *die*.
- So, as far as Foot's answer is concerned, it should be impermissible to turn the trolley, just as it is impermissible to take the organs in Transplant.
- But it is not impermissible to turn the trolley. It seems more or less equivalent to the original Trolley case.
- So (assuming that our intuitions do not mislead us) there must be some other morally relevant difference between Bystander and Transplant.
- In *Repentance*, the doctor intentionally caused the organ failure in the five, but now repents. So his choice is between *killing* five and *killing* one.
- So, as far as Foot's answer is concerned, it should be permissible to take the one's organs, just as it is permissible to turn the trolley in Trolley.
- But it is not permissible to take the one's organs. It seems more or less equivalent to the original Transplant case.

The new puzzle: What is the difference between *Bystander* and Transplant, and between *Repentance* and Trolley?

Objections to some attempted answers:

1. "Transplant uses the one *as a means* to save the five, whereas Bystander does not."

Objection: Loop uses the one as a means to saving the five, but this is still permissible. It seems more or less like Bystander.

2. "Transplant infringes a right, whereas Bystander does not."

Objection: One infringes a right in Bystander also.

- Suppose one turns the trolley toward the one when there were no others to save. Surely this would infringe a right.
- And even when there are others to save, and turning the trolley is permissible, one still *wrongs* the one. For example, one might be expected to apologize to his family.

The relevant differences between Transplant and Bystander:

(1) The Bystander saves the five by making something that threatens them instead threaten one. He only *diverts* an existing threat; he does not *create* a new threat.

(2) The Bystander does not do (1) by means which themselves constitute an infringement of any right of the one's.

Condition (1): only diverting an existing threat:

"The bystander who proceeds does not merely minimize the number of deaths which get caused: He minimizes the number of deaths which get caused by something that already threatens people, and that will cause deaths whatever the bystander does. The bystander who proceeds does not make something be a threat to people which would otherwise not be a threat to anyone; he makes be a threat to fewer what is already a threat to more."

An illustration:

- Recall Foot's *Hospital*: There are five patients in a hospital whose lives could be saved by the manufacture of a certain gas, but that this will inevitably release lethal fumes into the room of another patient whom for some reason we are unable to move. Making the gas is impermissible.
- But now consider a case in which lethal fumes are being released by the heating system in the basement of a building next door to the hospital. The fumes are headed towards the room of five. We can deflect them towards the room of one. Deflecting the gas is permissible

Condition (2): not infringing the rights of the one

Why do we need this restriction?

- In *Fat Man(!)*, we push the fat man off of the footbridge in order to stop the trolley.
- We make what threatens the five (i.e., the trolley) threaten the one instead. But this still seems impermissible.
- *Explanation*: Pushing someone off a footbridge is an infringement of his rights. By contrast, turning the trolley in *Bystander* does not infringe the rights of the one.
- *Another explanation?* We don't *divert* a threat onto the fat man?

Objection: "What about wobbling the handrail? That doesn't infringe his rights."

Reply: But wobbling isn't the *entire means* to saving the five. The entire means requires somehow knocking him off of the footbridge, which does infringe his rights.

Objection: "Isn't it permissible to steal a nailfile from the one, or to trespass his property, or to break a promise to him in order to turn the trolley?"

Reply: Maybe (2) should require that the infringed right be particularly stringent.

Question: "According to this theory, it is impermissible to kill the one in *Repentance*. (Why?) But suppose that a doctor faces a similar choice in the *present*. He must choose between poisoning the five or killing the one. Here it is permissible to kill the one. Why should the present tense matter so much?"

Reply: The present tense matters because the question for the agent at the time of acting is about the present: "Which of the alternatives here and now open to me may I choose?"

Question: What do you think Unger would say about these intuitions?

Reply: Take your own guess, based on what you have already read. (If you are interested, you can read what Unger says, by accessing the rest of his book online.)