

Intending Versus Foreseeing Harm

The Trolley Problem: Consider the following pair of cases:

- Trolley: There is a runaway trolley barreling down the railway tracks. Ahead, on the tracks, there are five people. The trolley is headed straight for them. You are standing some distance off in the train yard, next to a lever. If you pull this lever, the trolley will switch to a different set of tracks. Unfortunately, you notice that there is one person on the side track. You have two options: (1) Do nothing, and the trolley kills the five people on the main track. (2) Pull the lever, diverting the trolley onto the side track where it will kill one person.
- Fat Man: There is a runaway trolley headed toward five people again. Only, this time, you are not in the train yard next to a lever. You are on a bridge, watching the events from above the tracks. There is a very large man next to you. You realize that, if you push him off the bridge and down onto the tracks below, the trolley will hit and kill him, but his body is so large that it will stop the trolley before it reaches the five endangered people. You have two options: (1) Do nothing, and the trolley kills the five people. (2) Push the large man off the bridge, so that he dies, but the five others are saved.

Ross says that we have a duty to help others as well as a duty to not harm others (the duties of beneficence and non-maleficence), and the latter is stronger than the former. Suppose that the duty not to harm others is THREE times stronger than the duty to help others. This would mean that, in a case where you had to kill one person to save three, either option would be permissible. However, if killing one saved FOUR people, you should kill the one, since your duty of beneficence overrides your duty of non-maleficence in that case.

Note: In both Trolley and Fat Man, one is harmed, and five are helped. This means that, on Ross's view, we should have the same intuition about what to do in both cases. However, nearly everyone says we should kill the one in the Trolley case, but NOT in the Fat Man case. Why do we have completely different intuitions about these two cases?

Intending Versus Foreseeing Harm: Philippa Foot (who authored the original Trolley case) suggests that the difference is that, in Fat Man, one intends to harm the fat man as a means to saving the others. In that scenario, it is necessary to use the fat man as a tool in order to save the others (though using him this way will kill him). Meanwhile, in Trolley, one does not intend the harm at all. Rather, one merely foresees it as an unfortunate, unintended side-effect. We do not require the death of the one in order to save the five in Trolley. In fact, we would be quite relieved if the one somehow freed himself in time to avoid being hit by the trolley. We would not, if he escaped, chase him down and kill him!

Thus, Foot suggests that we have different judgments in the two cases because there are really TWO duties of non-maleficence: (1) The duty not to harm others intentionally as a means to some end, and (2) the duty not to harm others as a foreseen, but unintended side-effect of some action—and the former is much stronger than the latter. (Does this remind you of anyone else's view?)

Application: This distinction nicely explains the wrongness in many of the cases we have discussed. For instance, recall Innocent Conviction, Organ Harvest, and Crowded Cliff. Killing the innocent person is morally wrong in all of those cases, apparently, because the death is a harm that is intended as a means to some other end. The distinction also explains why, in some cases, the death of one is not wrong (because it is merely foreseen, and not intended). Consider:

- Pill Distribution: You are about to give a patient who needs it to save his life a massive dose of a certain drug in short supply. But, five new dying patients are suddenly admitted into your care who could be saved with only one fifth of the massive dose. You decide not to save the original patient, and instead re-distribute the massive dose to the five others. The original patient dies, but his death is merely a foreseen side-effect of saving the five.

Furthermore, the distinction helps us to determine where the line is between permissible and impermissible actions in difficult cases. Consider:

- Hysterectomy: A pregnant woman will die unless a hysterectomy is performed. Unfortunately, the operation will foreseeably result in the fetus's death as a side-effect (who would otherwise be born safely).
- Craniotomy: A pregnant woman will die during childbirth. Unfortunately, the only way to save her is to crush the baby's skull and extract it. Thus the baby's death would be an intended means to saving the life of the mother.

If this distinction is correct, then performing the hysterectomy is morally permissible, while the craniotomy is not (assuming the fetus has full moral status).

A Clarification: Foot points out that we can re-word cases of intending harm to SEEM like cases of foreseeing harm. For instance, in Fat Man, you might say, "Look, I didn't intend the death of the fat man as a means to saving the five. I only intended that his body would stop the trolley when the trolley hit it. His death was merely an unfortunate, merely foreseen side-effect of his body stopping the trolley. If he somehow survived unharmed, I'd be very happy." But, this sort of use of the term "foreseen" would be an absurd abuse of the term, Foot says. Obviously, the fat man's body stopping the trolley and his death are so closely connected that they cannot possibly be viewed as two separate effects (and thus be a "double-effect").

Objections to the Doctrine of Double-Effect

Norcross claims that defenders of the DDE use something like the following test in order to determine whether someone intends a harm that they are causing, or whether they merely foresee it as an unfortunate side-effect:

The Certainty of Harm Test: We ask the person who causes harm whether they would still perform that action if they knew that it was certain that no harm would occur. If they would still perform the action, given this information, then the harm is merely foreseen. If they would refrain from performing the action because of this information, then the harm is intended.

This test seems to produce the right results in the typical trolley cases:

- In Trolley, if you were told that no harm would result from pulling the lever, you would still pull the lever—and with less hesitation! Being told that no harm would result, you would assume that this is because the one person on the side track will somehow escape the track in time to avoid being killed.
- In Fat Man, if you were told that no harm would result from pushing the fat man, you would not attempt to do so. This is because pushing him would then be pointless. You NEED the fat man to be hit by the trolley (in order to save the five others). Otherwise, pushing him serves no purpose at all.

The defender of the DDE stops there, satisfied with the distinction. Not so fast, Norcross says. The following results could just as easily be produced by the test:

- In Trolley, if you were told that no harm would result from pulling the lever, you would not pull the lever. Being told that no harm would result, you would assume that this is because the lever does not work, and there is no way to divert the trolley on to the side track; i.e., there is no way to save the five.
- In Fat Man, if you were told that no harm would result from pushing the fat man, you would still push him—and with less hesitation! You would assume that, if you pushed the fat man, his body would somehow safely absorb the trolley's impact without injury, but this would still save the other five people.

Norcross argues that it is not incredibly obvious that the first set of interpretations of the DDE test is better than the second. So, he rejects DDE.

The Distinction as Character Assessment: Norcross suggests that we get confused because we use something like the intend-foresee distinction, not in order to assess right and wrong, but in order to assess moral character. Consider this modified Trolley case:

- Sinister Trolley: This is the same as Trolley, except, when you pull the lever, you do so because you REALLY want the person on the side track to die. You take satisfaction from being the person who gets to divert the trolley onto the one person. It makes you feel like a killer, and you love it.

Norcross claims, most people will still think that you ought to pull the lever even in Sinister Trolley—even though it is a case of intending harm. (The saving of the five is a merely foreseen side-effect of purposely killing the one in this case.)

But, saying that pulling the lever is still the right thing to do in Sinister Trolley is not the same as saying that the person who pulls the lever is morally decent. On the contrary, we think the person pulling the lever is morally indecent for being so excited about the death of the person on the side track. It's just that, sometimes, people can do the right thing for the wrong reasons.

So, perhaps the distinction serves best to assess whether people are good or bad people, not whether their actions are right or wrong.

On Character: Not so fast, again, Norcross says. Actually, Norcross rejects the idea that the distinction is even a very good tool for character assessment, since people that think intending harm is worse than foreseeing it will often choose to do the thing that has the worst results! Consider a pair of cases:

- Strategic Bomber: A pilot bombs a factory that contains the enemy's store of weapons, and thus shortens the war, saving a million lives. Unfortunately, 10,000 civilians live next to the factory who will die in the bombings.
- Terror Bomber: A pilot deliberately bombs 10,000 innocent civilians in order to demoralize the enemy, thus shortening the war and saving a million lives.

In Terror Bomber, the 10,000 deaths are intended as a means to ending the war and saving millions of lives. In Strategic Bomber, the deaths of 10,000 is merely a foreseen, but unintended side-effect of ending the war and saving millions. On DDE, strategic bombing is morally permissible, but terror bombing is not.

Norcross points out that, if the only way to end the war was by terror bombing, the strategic bomber pilot would refuse, thus condemning millions of people to die unnecessarily. He objects that, surely, this is not a sign that the strategic bomber has a "better moral character" than the terror bomber. There is no case, in fact, where the strategic bomber would choose the option that was "better" than the one the terror bomber would choose. And the same can be said of the person willing to push the fat man, perform the craniotomy, etc.

Reply: It seems like Norcross is pre-supposing Utilitarianism here. That is, he seems to pre-suppose that the definition of a “better” choice is one that maximizes happiness. The Moderate Deontologist will insist that sometimes the “better” choices are NOT the ones that maximize happiness, but rather the ones that respect others as ends and not mere means. Intentionally harming someone as a means to an end is to fail to treat them with respect, acknowledging their wishes for their own life and right to their own life. It is, rather, to treat them as a mere object or tool to be used however you see fit.

Rebuttal: Norcross responds to this line of thought by pointing out that the terror bomber DOES respect others. The terror bomber respects the lives of the one million people who will die if the war continues JUST AS MUCH as she respects the lives of the 10,000 villagers who will die in the bombing. Norcross accuses the Moderate Deontologist of not respecting the lives of the 1 million who will die if we do not end the war as soon as possible.

He even goes further, and claims that, if someone said that he had a choice to die either an intended means to promoting the greater good or else as a merely foreseen side-effect of promoting the greater good, HE WOULD RATHER DIE AT THE HANDS OF SOMEONE WHO INTENTIONALLY KILLED HIM AS A MEANS TO AN END. In that case, he says, at least his death would MEAN something. He could say to himself, “Well, at least my death achieves something good.” Harming someone intentionally as a means to promoting the greater good is not to fail to respect that person, Norcross says. It is, rather, to respect everyone equally (including those who will be helped by promoting the greater good).

What do you think about this point?

The Looping Case: The following case is said by many to refute the DDE:

- Looping Trolley: This is the same as Trolley, except that the side track with one person on it is actually a circle, which loops back on to the main track. If you were to pull the lever WITHOUT one person on the side track, the trolley would merely loop around back onto the main track and kill the five. However, since there IS someone on the main track, the trolley hits them and is stopped by their body, thus saving the five.

In Looping Trolley, the death of the one is intended as a means to saving the five. However, most people still think it is permissible to pull the lever. Does this render the DDE false?