

VIII Pulling some themes together: Intention, double effect, moral rules

Some Cases

Branch line trolley v. fat man trolley v. loop trolley;

Strategic bomber v. terror bomber;

Opiates to reduce pain v. to end life;

Hysterectomy v. abortion.

Some empirical studies have suggested that people in the loop case are moved by double effect reasoning; others that they are not. Plausibly the difference stems from the order in which options are presented (a framing effect).

Two Responses

- (i) Reject the intuitions, perhaps by showing that they are unstable, can't be clearly formulated etc. This is the traditional consequentialist approach, also taken by some who are not (e.g. Thomson).
- (ii) Try to accommodate them, providing a framework that makes sense of them. Traditional deontological approach, but also taken by some rule consequentialists.

On the second approach we get something like:

An effect that it would be impermissible to bring about intentionally (or to intend to bring about), may be permissibly brought about if it is the unintended but foreseen consequence of some otherwise permissible action.

Note that it doesn't say that *every* such case is permissible.

What is the difference between intending and foreseeing an effect?

Both may be regretted. Neither is the ultimate intention. Doing as against letting happen? Not quite. More plausible: the nature of the plan. If, in the branch case, there were a way of helping the person to escape from the line, that would be embraced. In contrast, in the loop case, if they looked like they were about to escape, they would be forced back. Here is one sense in which they are really being *used*.

Knobe cases

Consider an executive who, motivated entirely by the goal of maximizing profit, embarks on a policy that he knows will also cause environmental damage. Does he intentionally *harm* the environment? Most people hold that he does. In contrast, when considering an otherwise

identical case in which the side effects would be beneficial to the environment, most people hold that the executive does not intentionally *help* the environment.

So is intention itself a moral notion? The case of the industrialist under the Nazi regime. Another possibility: the focus here is on violation of norms as against conformity to norms. The polluter intentionally violates, whereas the non-polluter doesn't intentionally conform. If we concede that, perhaps we can insist that strictly the polluting is not itself intentional. Or we might distinguish between intending something, and doing something intentionally: the executive intentionally pollutes, but does not have the intention to pollute, and it is the latter that we are after in discussions of double effect.

Thomson and Scanlon

They are sceptical about double effect; what matters for the evaluation of an action should be determined by looking to the world, not to the actor's motives. Thomson: we conflate evaluation of the action with evaluation of the agent. Consider her example of the patient who is incurably ill and in great pain. Does whether it is permissible to give them a dose of pain killers so great that it will kill them hinge on the intentions of the doctor? Thomson argues that that is absurd. We might think worse of the doctor who aims to kill, but the action itself is the same in both cases. But is that all there is to it? If the doctor in the hospital case is moved by a desire for revenge, shouldn't they be prosecuted for murder? And isn't that a response to them having *done* something wrong? We don't prosecute people for their characters. Likewise Scanlon thinks that we conflate the deliberative stance and the critical stance. From the deliberative stance (whether taken by the agent or an on-looker) we can never take intentions into account in deciding what to do.

Resolution

Can we evaluate actions just by looking to the world? As we've seen, moral resolution might be needed to avoid temptation. Consider the case of torture. Can't this be captured with an entirely outward gaze: to moral rules? No, because if all we have are the rules, creating exceptions will be too easy: 'torture is wrong unless...' We need the commitment, and that comes as a resolution, which is essentially inwardly directed.

That provides some response to Thomson and Scanlon's *criticism* of double effect. But does it provide a *justification* of the doctrine?

Primitive moral categories

Thomson and Scanlon assume that we can describe the actions independently of the intentions. Is it obvious that we can? How should we phrase a resolution against torture? In terms of not hurting, demeaning etc? That seems unlikely to work. More plausibly it will have to use the notion of torture itself; and that is intentional. Likewise for resolutions concerning other core moral notions: theft, murder, rape, sexual harassment.

Some authors have described these as morally thick: they combine normative and descriptive notions. That is far from obvious though. Couldn't someone think that torture, under the circumstances, is a good thing? Likewise theft, murder, etc. Nonetheless they seem to be intentionally thick: they combine an action and an intention (though it is hard to say quite what). Perhaps those two cannot be prised apart: we cannot define the relevant intentions independently of the actions.

Back to double effect

That takes us to another possible interpretation of the doctrine of double effect. Both supporters and critics of that doctrine assume that we can divide off the actions from the intentions, and ask whether adding the intention to the same act makes a moral difference. But if we can't do that, then the doctrine itself is badly stated, although something central to the doctrine may be true: intentions make a difference. If that were right, it would be cases that involve these intentionally loaded notions that would provide the relevant instances: where, for instance, we can identify an act as murder. Perhaps that is what is happening in the Thomson hospital cases.