

think, that we simply do not have a satisfactory theory of morality, and need to look for it. Scanlon was indeed right in saying that the real answer to utilitarianism depends on progress in the development of alternatives. Meanwhile, however, we have no reason to think that we must accept consequentialism in any form. If the thesis of this paper is correct we should be more alert than we usually are to the possibility that we may unwittingly, and unnecessarily, surrender to consequentialism by uncritically accepting its key idea. Let us remind ourselves that the idea of the goodness of total states of affairs played no part in Aristotle's moral philosophy, and that

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in modern times in plays no part either in Rawls's account of justice or in the theories of more thoroughgoing contractualists such as Scanlon.<sup>18</sup>

<sup>18</sup> J. Rawls, *A Theory of Justice* (Cambridge, Mass., 1971): Scanlon, 'Contractualism and Utilitarianism'.

If we accustom ourselves to the thought that there is simply a blank where consequentialists see 'the best state of affairs' we may be better able to give other theories the hearing they deserve.

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## 5 Killing and Letting Die

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### Philippa Foot

Is there a morally relevant distinction between killing and allowing to die? Many philosophers say that there is not, and further insist that there is no other closely related difference, as for instance that dividing act from omission, which ever plays a part in determining the moral character of an action. James Rachels has argued this case in his well-known article on active and passive euthanasia, Michael Tooley has argued it in his writings on abortion, and Jonathan Bennett argued it in the Tanner Lectures given in Oxford in 1980.<sup>1</sup>

<sup>1</sup> James Rachels, 'Active and Passive Euthanasia', *New England Journal of Medicine*, 292 (9 Jan. 1975); Michael Tooley, 'Abortion and Infanticide', *Philosophy and Public Affairs*, 2/1 (Fall 1972). Jonathan Bennett, 'Morality and Conscience', in S. McMurrin (ed.), *The Tanner Lectures on Human Values*, vol. ii (Cambridge: Cambridge University Press, 1981).

I believe that these people are mistaken, and this is what I shall try to show in this essay. I shall first consider the question in abstraction from any particular practical moral problem, and then I shall examine the implications my thesis may have concerning the issue of abortion.

The question with which we are concerned has been dramatically posed by asking whether we are as much to blame for allowing people in Third World countries to starve to death as we would be for killing them by sending poisoned food? In each case it is true that if we acted differently—by sending good food or by not sending poisoned food—those who are going to die because we do not send the good food or do send the

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poisoned food would not die after all. Our agency plays a part in what happens whichever way they die. Philosophers such as Rachels, Tooley, and Bennett consider this to be all that matters in determining our guilt or innocence. Or rather they say that although related things are morally relevant, such as our reasons for acting as we do and the cost of acting otherwise, these are only contingently related to the distinction between doing and allowing. If we hold *them* steady and vary only the way in which our agency enters into the matter, no moral differences will be

found. It is of no significance, they say, whether we kill others or let them die, or whether they die by our act or our omission. Although these latter differences may at first seem to affect the morality of action, we shall always find on further enquiry that some other difference—such as a difference of motive or cost—has crept in. Now this, on the face of it, is extremely implausible. We are not inclined to think that it would be no worse to murder to get money for some comfort such as a nice winter coat than it is to keep the money back before sending a donation to Oxfam or Care. We do not think that we might just as well be called murderers for one as for the other. And there are a host of other examples which seem to make the same point. We may have to allow one person to die if saving him would mean that we could not save five others, as for instance when a drug is in short supply and he needs five times as much as each of them, but that does not mean that we could carve up one patient to get 'spare parts' for five.

These moral intuitions stand clearly before us, but I do not think it would be right to conclude from the fact that these examples all seem to hang on the contrast between killing and allowing to die that this is precisely the distinction that is important from the moral point of view. For example, having someone killed is not strictly *killing* him, but seems just the same morally speaking; and on the other hand, turning off a respirator might be called killing, although it seems morally indistinguishable from allowing to die. Nor does it seem that the difference between "act" and "omission" is quite what we want, in that a respirator that had to be turned on each morning would not change the moral problems that arise with the ones we have now. Perhaps there is no locution in the language which exactly serves our purposes and we should therefore invent

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our own vocabulary. Let us mark the distinction we are after by saying that one person may or may not be "the agent" of harm that befalls someone else. When is one person "the agent" in this special sense of someone else's death, or of some harm other than death that befalls him? This idea can easily be described in a general way. If there are difficulties when it comes to detail, some of these ideas may be best left unsolved, for there may be an area of indefiniteness reflecting the uncertainty that belongs to our moral judgements in some complex and perhaps infrequently encountered situations. The idea of agency, in the sense that we want, seems to be composed of two subsidiary ideas. First, we think of particular effects as the result of particular sequences, as when a certain fatal sequence leads to someone's death. This idea is implied in coroners' verdicts telling us what someone died of, and this concept is not made suspect by the fact that it is sometimes impossible to pick out a single fatal sequence—as in the lawyers' example of the man journeying into the desert who had two enemies, one of whom bored a hole in his water barrel while the other filled it with brine. Suppose such complications absent. Then we can pick out the fatal sequence and go on to ask who initiated it. If the subject died by poisoning and it was I who put the poison into his drink, then I am the agent of his death; likewise if I shot him and he died of a bullet wound. Of course there are problems about fatal sequences which would have been harmless but for special circumstances, and those which although threatening would have run out harmlessly but for something that somebody did. But we can easily understand the idea that a death comes about through our agency if we send someone poisoned food or cut him up for spare parts, but not (ordinarily) if we fail to save him when he is threatened by accident or disease. Our examples are not problem cases from this point of view.

Nor is it difficult to find more examples to drive our original point home, and show that it is sometimes permissible to allow a certain harm to befall someone, although it would have been wrong to bring this harm on him by one's own agency, by originating or sustaining the sequence which brings the harm. Let us consider, for instance, a pair of cases which I shall call Rescue I and Rescue II. In the first Rescue story we are hurrying

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in our jeep to save some people—let there be five of them—who are imminently threatened by the ocean tide. We have not a moment to spare, so when we hear of a single person who also needs rescuing from some other disaster we say regretfully that we cannot rescue him, but must leave him to die. To most of us this seems clear, and I shall take it as clear, ignoring John Taurek's interesting if surprising argument against the obligation to save the greater number when we can.<sup>2</sup>

<sup>2</sup> John Taurek, 'Should the Numbers Count?', *Philosophy and Public Affairs*, 4 (Summer 1977).

This is Rescue I and with it I contrast Rescue II. In this second story we are again hurrying to the place where the tide is coming in in order to rescue the party of people, but this time it is relevant that the road is narrow and rocky. In this version the lone individual is trapped (do not ask me how) on the path. If we are to rescue the five we would have to drive over him. But can we do so? If we stop he will be all right eventually: he is in no danger unless from us; but of course all five of the others will be drowned. As in the first story our choice is between a course of action which will leave one man dead and five alive at the end of the day and a course of action which will have the opposite result. And yet we surely feel that in one case we can rescue the five men and in the other we cannot. We can allow someone to die of whatever threatens him if the cost of saving him is failing to save five; we cannot, however, drive over him in order to get to them. We cannot originate a fatal sequence, although we can allow one to run its course. Similarly, in the pair of examples mentioned earlier, we find a contrast between on the one hand refusing to give to one man the whole supply of a scarce drug, because we can use portions of it to save five, and on the other, cutting him up for spare parts. And we notice that we may not originate a fatal sequence even if the resulting death is in no sense our object. We could not knowingly subject one person to deadly fumes in the process of manufacturing some substance that would save many, even if the poisoning were a mere side effect of the process that saved lives.

Considering these examples, it is hard to resist the conclusion that it makes all the difference whether those who are going to die if we act in a certain way will die as a result of a sequence that we originate or of

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one that we allow to continue, it being of course something that did not *start* by our agency. So let us ask how this could be? If the distinction—which is roughly that between killing and allowing to die—is morally relevant, because it sometimes makes the difference between what is right and what is wrong, how does this work? After all, it cannot be a magical difference, and it does not satisfy anyone to hear that what we have is just an ultimate moral fact. Moreover, those who deny the relevance can point to some cases in which it seems to make no difference to the goodness or badness of an action having a certain result, as, for example, that some innocent person dies, whether that is due to a sequence we originate or one we merely allow. And if the way the result comes about sometimes makes no difference, how can it ever do so? If it sometimes makes an action bad that harm came to someone else as a result of a sequence we originated, must this not always contribute some element

of badness? How can a consideration be a reason for saying that an action is bad in one place without being at least a reason for saying the same elsewhere?

Let us address these questions. As to the route by which considerations of agency enter the process of moral judgement, it seems to be through its connection with different types of rights. For there are rights to non-interference, which form one class of rights; and there are rights to goods or services, which are different. And corresponding to these two types of rights are, on the one hand, the duty not to interfere, called a "negative duty", and on the other the duty to provide the goods or services, called a "positive duty". These rights may in certain circumstances be overridden, and this can in principle happen to rights of either kind. So, for instance, in the matter of property rights, others have in ordinary circumstances a duty not to interfere with our property, though in exceptional circumstances the right is overridden, as in Elizabeth Anscombe's example of destroying someone's house to stop the spread of a fire.<sup>3</sup>

<sup>3</sup> G. E. M. Anscombe, 'Modern Moral Philosophy', *Philosophy*, 33 (1958).

And a right to goods or services depending, for example, on a promise will quite often be overridden in the same kind of case. There is, however, no guarantee that the special circumstances

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that allow one kind of right to be overridden will always allow the overriding of the other. Typically, it takes more to justify an interference than to justify the withholding of goods or services; and it is, of course, possible to think that nothing whatsoever will justify, for example, the infliction of torture or the deliberate killing of the innocent. It is not hard to see how all this connects with the morality of killing and allowing to die—and in general with harm which an agent allows to happen and harm coming about through his agency, in my special sense having to do with originating or sustaining harmful sequences. For the violation of a right to non-interference consists in interference, which implies breaking into an existing sequence and initiating a new one. It is not usually possible, for instance, to violate that right to noninterference, which is at least part of what is meant by "the right to life", by failing to save someone from death. So if, in any circumstances, the right to non-interference is the only right that exists, or if it is the only right special circumstances have not overridden, then it may not be permissible to initiate a fatal sequence, but it may be permissible to withhold aid.

The question now is whether we ever find cases in which the right to non-interference exists and is not overridden, but where the right to goods or services either does not exist or is here overridden. The answer is, of course, that this is quite a common case. It often happens that whereas someone's rights stand in the way of our interference, we owe him no service in relation to that which he would lose if we interfered. We may not deprive him of his property, though we do not have to help him secure his hold on it, in spite of the fact that the balance of good and evil in the outcome (counting his loss or gain and the cost to us) will be the same regardless of how they come about. Similarly, where the issue is one of life and death, it is often impermissible to kill someone—although special circumstances having to do with the good of others make it permissible, or even required, that we do not spend the time or resources needed to save his life, as, for instance, in the story of Rescue I, or in that of the scarce drug.

It seems clear, therefore, that there are circumstances in which it makes all the difference, morally speaking, whether a given balance of

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good and evil came about through our agency (in my sense), or whether it was rather something we had the ability to prevent but, for good reasons, did not prevent. Of course we often have a strict duty to prevent harm to others, or to ameliorate their condition. And even where they do not, strictly speaking, have a *right* to our goods or services, we should often be failing (and sometimes grossly failing) in charity if we did not help them. But, to reiterate, it may be right to allow one person to die in order to save five, although it would not be right to kill him to bring the same good to them. How is it, then, that anyone has ever denied this conclusion, so sympathetic to our everyday moral intuitions and apparently so well grounded in a very generally recognized distinction between different types of rights? We must now turn to an argument first given by James Rachels, and more or less followed by others who think as he does. Rachels told a gruesome story of a child drowned in a bathtub in two different ways: in one case someone pushed the child's head under water, and in the other he found the child drowning and did not pull him out. Rachels says that we should judge one way of acting as bad as the other, so we have an example in which killing is as bad as allowing to die. But how, he asks, can the distinction ever be relevant if it is not relevant here?<sup>4</sup>

<sup>4</sup> Rachels, 'Active and Passive Euthanasia'.

Based on what has been said earlier, the answer to Rachels should be obvious. The reason why it is, in ordinary circumstances, 'no worse' to leave a child drowning in a bathtub than to push it under is that both charity and the special duty of care that we owe to children give us a positive obligation to save them, and we have no particular reason to say that it is 'less bad' to fail in this than it is to be in dereliction of the negative duty by being the agent of harm. The level of badness is, we may suppose, the same, but because a different kind of bad action has been done, there is no reason to suppose that the two ways of acting will always give this same result. In other circumstances one might be worse than the other, or only one might be bad. And this last result is exactly what we find in circumstances that allow a positive but not a negative duty to be overridden.

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Thus, it could be right to leave someone to die by the roadside in the story of Rescue I, though wrong to run over him in the story of Rescue II; and it could be right to act correspondingly in the cases of the scarce drug and the 'spare parts'.

Let me now consider an objection to the thesis I have been defending. It may be said that I shall have difficulty explaining a certain range of examples in which it seems permissible, and even obligatory, to make an intervention which jeopardizes people not already in danger in order to save others who are. The following case has been discussed. Suppose a runaway tram is heading towards a track on which five people are standing, and that there is someone who could switch the points, thereby diverting the tram onto a track on which there is only one person. It seems that he should do this, just as a pilot whose plane is going to crash has a duty to steer, if he can, towards a less crowded street than the one he sees below. But the railway man then puts the one man newly in danger, instead of allowing the five to be killed. Why does not the one man's right to non-interference stand in his way, as one person's right to noninterference impeded the manufacture of poisonous fumes when this was necessary to save five?

The answer seems to be that this is a special case, in that we have here the diverting of a fatal sequence and not the starting of a new one. So we could not start a flood to stop a fire, even when the fire would kill more than the flood, but we could divert a flood to an area in which fewer people would be drowned.



A second and much more important difficulty involves cases in which it seems that the distinction between agency and allowing is inexplicably irrelevant. Why, I shall be asked, is it not morally permissible deliberately to allow someone to die in order to use his body for a medical procedure that would save many lives? It might be suggested that the distinction between agency and allowing is relevant when what is allowed to happen is itself aimed at. Yet this is not quite right, because there are cases in which it does make a difference whether one originates a sequence or only allows it to continue, although the allowing is with deliberate intent. Thus, for instance, it may not be permissible to deprive someone of a possession which only harms him, but it may be reasonable

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to refuse to get it back for him if it is already slipping from his grasp.<sup>5</sup>

<sup>5</sup> Cf. Philippa Foot, 'Killing, Letting Die, and Euthanasia: A reply to Holly Smith Goldman', *Analysis*, 41/3 (June 1981).

And it is arguable that non-voluntary passive euthanasia is sometimes justifiable although non-voluntary active euthanasia is not. What these examples have in common is that harm is not in question, which suggests that the "direct", i.e., deliberate, intention of evil is what makes it morally objectionable to allow the beggar to die. When this element is present it is impossible to justify an action by indicating that no origination of evil is involved. But this special case leaves no doubt about the relevance of distinguishing between originating an evil and allowing it to occur. It was never suggested that there will always and everywhere be a difference of permissibility between the two.

Having defended the moral relevance of the distinction which roughly corresponds to the contrast between killing and allowing to die, I shall now ask how it affects the argument between those who oppose and those who support abortion. The answer seems to be that this entirely depends on how the argument is supposed to go. The most usual defence of abortion lies in the distinction between the destruction of a fetus and the destruction of a human person, and neither side in this debate will have reason to refer to the distinction between being the agent of an evil and allowing it to come about. But this is not the only defence of abortion which is current at the present time. In an influential and widely read article, Judith Jarvis Thomson has suggested an argument for allowing abortion that depends on denying what I have been at pains to maintain.<sup>6</sup>

<sup>6</sup> Judith Jarvis Thomson, 'A Defence of Abortion', *Philosophy and Public Affairs*, 1/1 (Fall 1971).

Thomson suggests that abortion can be justified, at least in certain cases, without the need to deny that the fetus has the moral rights of a human person. For, she says, no person has an absolute right to the use of another's body, even to save his life, and so the fetus, whatever its status, has no right to the use of the mother's body. Her rights override its rights, and justify her in removing it if it seriously encumbers her life. To persuade us to agree with her she invents an example, which is supposed to

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give a parallel, in which someone dangerously ill is kept alive by being hooked up to the body of another person, without that person's consent. It is obvious, she says, that the person whose body was thus being used would have no obligation to continue in that situation, suffering immobility or other serious inconvenience, for any length of time. We should not think of him as a murderer if he detached himself, and we ought to think of a pregnant woman as having the same right to rid herself of an unwanted pregnancy.

Thomson's whole case depends on this analogy. It is, however, faulty if what I have said earlier is correct. According to my thesis, the two cases must be treated quite

differently because one involves the initiation of a fatal sequence and the other the refusal to save a life. It is true that someone who extricated himself from a situation in which his body was being used in the way a respirator or a kidney machine is used could, indeed, be said to kill the other person in detaching himself. But this only shows, once more, that the use of 'kill' is not important: what matters is that the fatal sequence resulting in death is not initiated but is rather allowed to take its course. And although charity or duties of care could have dictated that the help be given, it seems perfectly reasonable to treat this as a case in which such presumptions are overridden by other rights—those belonging to the person whose body would be used. The case of abortion is of course completely different. The fetus is not in jeopardy because it is in its mother's womb; it is merely dependent on her in the way children are dependent on their parents for food. An abortion, therefore, originates the sequence which ends in the death of the fetus, and the destruction comes about 'through the agency' of the mother who seeks the abortion. If the fetus has the moral status of a human person then her action is, at best, likened to that of killing for spare parts or in Rescue II; by contrast, the act of someone who refused to let his body be used to save the life of the sick man in Thomson's story belongs with the scarce drug decision, or that of Rescue I.

It appears, therefore, that Thomson's argument is not valid, and that we are thrown back to the old debate about the moral status of the fetus, which stands as the crucial issue in determining whether abortion is justified.

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## 6 Morality, Action, and Outcome

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### Philippa Foot

No decision is more important for practical ethics than that by which we come to embrace or reject utilitarianism. For although non-utilitarian principles are apparently deeply embedded in our ordinary morality, theoretical justification often seems hard to find; and some common intuitions are in danger of being disregarded on theoretical grounds. I want to consider two of these intuitions, and to defend them. The first is that there is a morally relevant distinction between what we do and what we allow to happen, and the second that there is a similarly relevant distinction between what we aim at and what we foresee as the result of what we do. I believe it is rather generally thought that the moral relevance of these distinctions is impossible to maintain. I shall, however, deny this, arguing that both differences are defensibly as well as widely recognized in the moral judgements we ordinarily make. Let us consider first of all the distinction between 'doing' and 'allowing', the moral judgements which seem to depend upon it, and the nature of the distinction itself. It is implied, it seems, in many decisions about what it is right to do, e.g. in cases dealt with in medical ethics. So, for instance, if some medical resource is in short supply and it would be possible

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to deploy it either to save a number of patients or to save one, then the policy would be to save as many as possible. It does not follow, however, that any and every decision could rightly be taken which resulted in the same net saving of lives. For although it might be called a regrettable moral necessity that a smaller group should be left to die while a larger group was saved, this could not be said in the case where the few were to be killed. It is not respectably believed that medical experimentation is justifiable so long as the benefit to some outweighs the cost to others; nor do those