Lecture 6: The Doctrine of Double Effect and the Doctrine of Doing and Allowing

Pairs of cases

First pair:

JUDGE. A mob will kill five members of a particular section of the community unless a culprit is executed for a crime. The judge doesn't know who did it, but could frame and execute an innocent person.

DRIVER. A runaway tram is going to hit five people. The driver can steer it so that it goes down another track where it will hit one other person.

Second pair:

DRUG. We can use our drug to save five people or a sixth.

ORGANS. We can kill one person in order to harvest their organs to save five others.

Direct & Indirect Intention

You directly intend X either if and only if

(i) you aim at X as your end; or
(ii) you aim at X as a means to your end.

You indirectly intend an effect E if and only if you aim to perform an action that causes E but you do not directly intend E.

FIRECRacker. Anna lights a firecracker in order to startle Bert. She knows that this will lead to there being soot on the floor.

Here Anna's end is startling Bert and her means is lighting a firecracker. So she directly intends both the startling and the lighting. The soot is neither her end nor her means, but she knows it will be an effect of her action, so she indirectly intends the soot.

Doctrine of Double Effect

The Doctrine of Double Effect (DDE): “it is sometimes permissible to bring about by indirect intention what one may not directly intend.”

There are some harms, H, and benefits, B such that
(i) you may not directly intend H in order to achieve B; and
(ii) you may achieve B and thereby indirectly intend H.

Unless the difference between H and B is very great, then you may not directly intend H in order to achieve B.

MINE. A fat man is stuck in a mine, where water is rising. His head is outside the mine. Five people will drown unless they blow him up with dynamite.

Applying the doctrine of double effect: they may not blow him up because this would be to directly intend his death as a means to their end of survival.
Motivation for DDE

(A) It can explain our different intuitions between the pairs of cases above.

(B) If we follow the doctrine of double effect, we will not be vulnerable to bad people coercing us into doing bad things by threatening lesser harms to others.

Objections to DDE

(C) the doctrine is rather odd

(D) the individuation problem

Objection: can they blow him up saying that they did not directly intend the fat man's death, but only that he is blown up into small pieces?

Reply: you also directly intend anything that is “very close” to your means or end and you know will come about as the result of your action.

(E) it leads to unusual conclusions about abortion

Suppose an abortion is necessary to save the life of the mother. According to DDE, it matters whether the fetus’s death is a means to saving the mother’s life or a side effect. But how could it make a difference how the fetus dies?

Doctrine of Doing & Allowing

The Doctrine of Doing and Allowing (DDA):

For some harms H and benefit B,

(i) It is wrong to do harm H to someone in order to provide another with B; and

(ii) It is not wrong to allow someone to suffer H in order to provide another with B.

Varieties of allowings of harm

(i) Forebearing to prevent. There is a sequence of events in place that will result in someone suffering a harm. The agent knows they could intervene to prevent this, but does not.

(ii) Enabling. There is an obstacle that is preventing a sequence of events that will result in someone suffering a harm. The agent removes the obstacle.

Foot’s Argument for preferring DDA to DDE

1. DDA has motivations (A) and (B) above.
2. (A) and (B) are the only motivations for DDE.
3. DDA doesn’t face objections (C) - (E).
4. DDE faces objections (C) - (E).
5. Therefore, DDA has all of the motivations that DDE has but doesn’t face objections that DDE faces (From 1 - 4).
6. Therefore, we should prefer DDA to DDE (from 5).
Positive & Negative Rights

A positive right corresponds to a positive duty—a duty to perform some positive act on behalf of the right-holder.

A negative right corresponds to a negative duty—a duty to refrain from some act that would interfere with the right-holder.

Examples of positive rights:
- a right to what one has been promised.
- a right to what one has contracted for.
- a right to care arising out of a special relation.

Examples of negative rights:
- a right not to be harmed.
- a right for one's property not to be damaged.
- a right for one's body or property not to be trespassed upon. - a right not to be lied to.

The Trolley Problem: why is it wrong for the surgeon to cut up the healthy person in ORGANS, but it is not wrong for you to turn the switch in the trolley case?

Solution #1: It’s wrong to use people as means

Kant’s theory: “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.”

Doctrine of Double Effect: sometimes, you may not directly intend a harm as a means to your end or as your end, even though you may act foreseeing that you will bring about this harm as a side-effect of your action.

Proposal: in ORGAN, you would be using the healthy person as a means to your end. In BYSTANDER AT THE SWITCH, you would not use the bystander’s death as your means. This could explain why it is wrong to cut up the healthy person in the former case, but not wrong to flip the switch in the latter.

MEANS. Someone's death is your means to your goal if and only if this person's death is necessary for you to achieve your goal.

Objection: in loop, you may flip the switch, even though the sixth person's death would be a means to saving the five.

LOOP. A trolley is going to hit five. You are a bystander, but could flip a switch so that they trolley hits a sixth instead. The track behind the sixth loops around so that it connects with the track where the five are.

Solution #2. It’s wrong to infringe someone’s right

Claim-rights:
- “rights trump utilities”: it can be wrong to infringe a claim-right even when doing so maximizes welfare
IB Ethics

- rights leave a “moral residue.” If you infringe someone’s claim-right, then you must apologize. If she suffers a harm as a result of your infringement, then you often have to compensate her for that harm.

- rights require “releases.” If you foresee that you will infringe someone’s claim-right, then you must seek a release from her in advance—you must ask her to waive the right against you.

Duties and rights are correlates. So where p is a proposition that expresses a state of affairs:

X has a claim-right against Y that p just in case Y has a duty to X that p.

One could hold that

(i) the patient has a claim-right against the surgeon that the surgeon not cut up the patient.

(ii) the sixth worker does not have a claim-right against the bystander that the bystander not flip the switch.

Objection 1: there is no independent reason for thinking that the sixth worker lacks the claim-right.

Objection 2: the bystander acts permissibly, but does wrong to the sixth worker. The sixth’s worker having a claim-right would explain why the bystander does wrong to him.

Readings

P. Foot, ‘The Problem of Abortion and the Doctrine of Double Effect’ in her Virtues and Vices, ch. 2. [oxfordscholarship]
