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TOOLEY AND THE TROLLEY

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I. TOOLEY ON THE TROLLEY

Judith Thomson has discussed the Trolley Problem in two interesting and influential papers.¹ Thomson attributes the original formulation and discussion of the problem to Philippa Foot.² Recently, Michael Tooley has discussed a version of the problem, and he has defended what he takes to be the solution suggested by Thomson.³ In this paper I shall first very briefly set out a version of the problem. Then I shall explain Tooley's preferred solution to the problem and his defense of this solution. Finally, I shall argue that Tooley's solution is inadequate: either it is no solution at all to the particular version of the problem discussed by Tooley, or it is not suitably generalizable to other cases which are similar to the cases involved in Tooley's version of the problem.

Consider the following two cases. Let us call the first case, "Bystander-at-the-Switch".⁴ A trolley is hurtling down the tracks. There are five "innocent" persons on the track ahead of the trolley, and they will all be killed if the trolley continues going straight ahead.⁵ There is a spur of track leading off to the right. Unfortunately, there is one innocent person on that spur of track. The brakes of the trolley have failed, and you are strolling by the track. You see that you could throw a switch that would cause the trolley to go onto the right spur. You are an "innocent bystander", i.e., not an employee of the railroad, etc. You can throw the switch, thus saving the five persons but causing the one to die, or you can do nothing, thus allowing the five to die. What should you do?

It seems that it would at least be permissible for you to turn the trolley to the right, thus saving the five but killing the one. Perhaps it is

also obligatory to do this, but it is at least intuitively plausible that one *may* turn the trolley to the right.

But consider now a second case, “Transplant”. Thomson asks you to imagine that you are a surgeon, “a truly great surgeon”. Now there are five persons in the hospital, each of whom needs an organ in order to survive. It just happens that an innocent visitor has arrived in the hospital, and you know that he is tissue-compatible with all the people who need organs, and that you could cut him up and distribute his parts among the five who need them. Would it be permissible for you to perform the operation (without his consent)?

It certainly seems as if it would not be permissible for you to proceed. But why is it permissible for you to save the five in “Bystander-at-the-Switch” but not in “Transplant”? This is what Thomson is inclined to call the “Trolley Problem”.

Tooley endorses what he takes to be Thomson’s solution to this problem, which is as follows. In “Bystander” all six persons have an equal claim that the trolley not run over them, and the five claims together constitute a reason to save the five which is not overridden by the lone individual’s claim not to be run over by the trolley. In “Transplant” the lone individual’s claim not to be killed trumps the claims of the five insofar as his bodily organs are *his*. That is, each person has a much stronger claim to his bodily organs than anyone else does, and thus the lone individual has a much stronger claim to his bodily organs than does any of the five (and indeed than do the five together). Tooley says, “Thomson’s answer is that in the trolley case the lone individual has no more claim not to be run over by the trolley than each of the other five individuals, whereas in the medical case the healthy person has more of a claim to his organs — simply because they are his — than the other five individuals. This seems to be a plausible view of the matter.”⁶ Later, Tooley says (in respect of a related example) that the key distinction is between “allowing a person to keep things to which he has a claim, and giving them to someone else who does not have a comparable claim to them.”⁷

I shall now argue that the sort of solution favored by Tooley is morally unacceptable. Consider another case, “Scan”. Again, there are five people dying — this time they are dying of some disease. Let us suppose that there is a scanning device that can scan the brain of an

individual (with certain neurological properties) and generate information that can be used to save the five dying persons. Imagine further that there is an innocent visitor to the hospital who is neurologically suited to the scan. Unfortunately, if you do the scan, you kill this innocent person, for the scanning method is lethal. You can save the five if you do the scan, but you will kill the one if you do so, and this is the only way in which you could save the five.

It seems to me that if it is morally unacceptable to save the five in "Transplant", it is also morally unacceptable to save the five in "Scan". That is, it is plausible to suppose that there is some wrong-making feature which is common to "Transplant" and "Scan" which is sufficient to render saving the five unacceptable in both cases. But Tooley's explanation of the wrongness of saving the five in "Transplant" is clearly irrelevant to "Scan": there is no issue of property rights to one's bodily parts or the redistribution of something from someone with a stronger claim to it to others with a weaker claim to it. And it is completely unclear how one could generate an account of the wrongness of saving the five in "Scan" that employs the notion of claims or rights that would not equally imply that saving the five in "Bystander" would be wrong. For example, if one explains the wrongness of saving the five in "Scan" by appealing to the lone individual's claim that no one else employ some device that would cause his death, then it obviously follows that saving the five in "Bystander" would be impermissible.

Saving the five in "Scan" is wrong if saving the five in "Transplant" is wrong. But Tooley's explanation of the wrongness of saving the five in "Transplant" does not apply to "Scan". Now if there is some wrong-making feature *common* to both "Transplant" and "Scan" (which is sufficient to render it morally unacceptable to save the five in each case), then Tooley's explanation of the wrongness of saving the five in "Transplant" is inadequate. I suppose that it could be argued that what makes it wrong to save the five in "Scan" is *different* from what makes it wrong to save the five in "Transplant". That is to say, it might be argued that "Scan" has at least one wrong-making feature not possessed by "Transplant", where this feature would in itself be sufficient for the conclusion that it is unacceptable to save the five in "Scan". Then it would not follow from the fact that Tooley's explanation does not apply to "Scan" that it must be rejected as an explanation of the wrongness of

saving the five in “Transplant”. But then we would be left with a New Trolley Problem: in virtue of what may we save the five in “Bystander” but not in “Scan”? So either Tooley’s purported explanation is no genuine explanation of the wrongness of killing the five in “Transplant”, or it cannot suitably be generalized to related cases.

Tooley presents another example which he believes reinforces his explanation of the wrongness of killing the five in “Transplant”. (He attributes this example to Jeff McMahan.) It will be instructive briefly to consider this case, “Transplant*”. In “Transplant*” there are five persons who are dying (because they need organs), you are a great surgeon, etc. You know that a particular individual is tissue-compatible with the five, and that you could use his organs to save the five. Suddenly, he is in an automobile accident, and he will die unless you call an ambulance. If you call, he will live, and if you do not call the ambulance, he will die (and you can use his organs to save the five).

Intuitively, it is impermissible for you to refrain from calling (and to save the five) in “Transplant*”. Certainly, if it is impermissible to save the five in “Transplant”, it is impermissible to save the five in “Transplant*”. Tooley makes two claims about “Transplant*”. First, he claims that it shows that the critical moral distinction (in virtue of which we can systematize our intuitive judgments about a broad range of cases) is *not* the distinction between action and omission (or at least the distinction between killing and letting die): after all, your behavior in “Transplant*” is equally bad as in “Transplant” (if you go ahead and save the five), and yet in “Transplant*” you are merely letting the one individual die, whereas in “Transplant” you are killing the one.⁸ Second, Tooley claims that “Transplant*” corroborates his explanation of the wrongness of saving the five in such cases: “the crucial factor must be that the organs belong to the one person.”⁹

As to Tooley’s first point, I agree. It is evident that the key moral distinction cannot be between action and omission (or killing and letting die) if it is permissible to save the five in “Bystander”. (Of course, one can save the five in “Bystander” only by killing the one.)

But I believe that the second claim is false. The inadequacy of Tooley’s second claim is parallel to the inadequacy of his claim above. To see this, consider “Scan*”. “Scan*” is the same as “Scan” except that

you are the Chief of Medicine and one of your subordinates has already ordered that the (lethal) scan be done on the lone individual. The preparations are being made, but you can stop the process by simply ordering that it be stopped. If you refrain from so ordering, the scan will be done, the lone individual will be killed, and the five will be saved. If you order that the scan not be done, the one individual will be saved but the five will die.

It seems to me that “Scan*” is morally on a par with “Scan.” It is impermissible for you to refrain from stopping the scan in “Scan*.” Certainly, if it is impermissible to save the five in “Scan,” it is impermissible to save the five in “Scan*.” But it is evident that Tooley’s putative explanation of the wrongness of saving the five in “Transplant*” does not apply to “Scan*”: there is no issue of property rights, or of taking something to which one individual has a stronger claim and giving it to others who have a less strong claim to it. Also, if one says that the one individual has the claim against all others that they not behave in such a way (either through their actions or their omissions) that some mechanism is triggered which causes his death, then one clearly cannot say that it is permissible to save the five in “Bystander”.

To proceed as above. If there is some wrong-making feature which is *common* to both “Scan*” and “Transplant” which is sufficient to render it morally unacceptable to save the five in each case, then Tooley’s explanation of the wrongness of saving the five in Transplant is manifestly inadequate — it does not apply to “Scan*.” And if what makes it wrong to save the five in “Scan*” is not identical to what makes it wrong to save the five in “Transplant”, *i.e.*, if there is at least one wrong-making feature possessed by “Scan*” but not “Transplant” which would in itself be sufficient for the claim that it is morally unacceptable to save the five in “Scan*”, then we still have the residual problem (seemingly as intractable as the original problem about “Bystander” and “Transplant”): in virtue of what is it permissible to save the five in “Bystander” but not in “Scan*”?

I believe, then, that Tooley’s solution to the Trolley Problem (which he attributes to Thomson in her first paper on the subject) is inadequate. Although I cannot argue this point here, it is hard for me to see how any fairly straightforward appeal to rights or claims can solve the

Trolley Problem.¹⁰ Certainly, it does not appear that any such appeal to *property rights* (and in particular to property rights to one's own bodily organs) can do the trick.

II. THE TROLLEY PROBLEM

In this paper I have had a rather minimal project. I have been *assuming* for the sake of this discussion, that the intuitive judgments which generate the Trolley Problem are valid. That is, I have been assuming that there is an important moral difference between "Bystander" and "Transplant", and I have considered whether Tooley's purported solution is adequate, given this assumption.

It should be pointed out that there are deep and difficult issues lurking here, some of which are raised (if only epigrammatically) in the above discussion. For example, it was assumed that whereas it is permissible to save the five in "Bystander", it is impermissible to save the five in "Transplant". And I claimed that if it is impermissible to save the five in "Transplant", then it is impermissible to save the five in "Scan". It follows that there is an important moral difference between "Bystander" and "Scan": whereas it is permissible to save the five in "Bystander", it is impermissible to save the five in "Scan". But in virtue of what are these two cases distinguishable?

In attempting to distinguish the two cases, one could appeal to the Doctrine of the Double Effect, according to which there is a crucial moral difference between intending a result (as an end or a means) and merely foreseeing some result (which is a side-effect of what one does). Thus, one could point out that whereas in "Bystander" the death of the one person is a mere side-effect of what one does, in "Scan" the death of the one is (in some intuitive sense) a necessary means of saving the five. But I do not think that the Doctrine of the Double Effect is ultimately tenable.¹¹ Apart from appealing to the Doctrine, it is not evident how one might explain the difference between the two cases, if there is such a difference.

One could turn things upside down and argue as follows. There is no moral difference between "Bystander" and "Scan". (In the first case, you direct a train onto the one person, and in the second case, you direct some rays onto a person.) Further, it is not unreasonable to think (as I

have suggested above) that “Scan” and “Transplant” are morally similar. But if these two claims are true, then there would be some reason to assimilate (as regards what is morally permissible) “Bystander” and “Transplant”. Of course, this calls into question the original assumptions which generate the Trolley Problem.

In this paper I have provisionally accepted the intuitions that generate the Trolley Problem, and I have pointed to the inadequacy of a certain strategy which purports to explain those intuitions. But the considerations just presented offer at least some reason to question the validity of the original intuitive judgments. Elsewhere I have offered various other examples which call into question those judgments.¹² Looming on the horizon is the (admittedly scandalous and surprising) possibility that there really is no Trolley Problem. Perhaps — and I emphasize that I have not argued for this conclusion here and that I know of no conclusive reason to adopt the conclusion — it is permissible to save the five in *all* of the cases pertinent to the Trolley Problem. This is a conclusion which a prudent person would not rush to embrace, and it is a subject for further thought.¹³

NOTES

¹ “Killing, Letting Die, and the Trolley Problem”, *The Monist* 1976, and “The Trolley Problem”, *The Yale Law Journal* 94 (1985). Both articles are re-printed in: William Parent, (ed.), *Rights, Restitution, and Risk*, (Cambridge, Mass.: Harvard University Press, 1986), pp. 78–116.

² “The Problem of Abortion and the Doctrine of the Double Effect”, *Oxford Review* 5 (1967).

³ Michael Tooley, *Abortion and Infanticide*, (Oxford: Clarendon Press, 1983), pp. 214–6. Thomson has modified her suggestion for a solution in her second paper (which was not in print at the time of Tooley’s writing); Tooley is focussing on the solution suggested in Thomson’s first paper. I have discussed and criticized Thomson’s new approach — suggested in her second paper — in: “Thoughts on the Trolley Problem”, forthcoming in: John Martin Fischer and Mark Ravizza, (eds.), *Problems and Principles*, Holt, Rinehart, and Winston, 1991.

⁴ I follow Thomson here in naming the case, “Bystander”. Tooley discusses a slightly different example, but it is more useful to employ “Bystander”, and nothing in my discussion of Tooley will depend on the difference between “Bystander” and Tooley’s closely related case.

⁵ I shall use “innocent” in a rather broad sense to mean that the persons have not done anything morally wrong in virtue of which they “deserve” to die or have forfeited their right to life, etc. Further, I shall assume in this paper that no “special facts distinguish the persons involved in the cases. For instance, none of the six persons involved in “Bystander-at-the-Switch” is a mass-murderer, great scientist, etc. Further, one has not

made special arrangements with any of them. Of course, I shall be engaging in schematic and partial descriptions of the various cases, and the reader will need to keep in mind that certain ways of filling in the details of the cases will affect the moral judgments appropriate to the cases.

⁶ Tooley, p. 215.

⁷ Tooley, p. 216.

⁸ Tooley, pp. 215–6.

⁹ Tooley, p. 216.

¹⁰ For further development of this point, see: Fischer, “Thoughts on the Trolley Problem”. Also, there will be a detailed discussion of the Trolley Problem and related issues in: Fischer and Ravizza (eds.), *Problems and Principles*.

¹¹ For a critical discussion of the Doctrine of the Double Effect, see: Fischer, “Thoughts on the Trolley Problem”.

¹² Fischer, “Thoughts on the Trolley Problem”, and “Second Thoughts on the Trolley Problem (unpublished manuscript).

¹³ I have benefitted from discussions with Alexander Rosenberg and Mark Ravizza. I am indebted to very useful and generous comments by Michael Tooley.

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