



DISCUSSION NOTE

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JOURNAL OF ETHICS & SOCIAL PHILOSOPHY

DISCUSSION NOTE | AUGUST 2010

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A Challenge for New Defenders of the Doctrine of Double Effect

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RECENTLY, RALPH WEDGWOOD (forthcoming) has offered a defense of the doctrine of double effect (*DDE*) – a doctrine claimed by its defenders to explain our intuitions concerning the relevance of intention to the moral permissibility of actions.¹ My initial focus is not on his substantive defense of *DDE*, but rather on his formulation of *DDE* and of the success-conditions for a defense thereof. Wedgwood offers two formulations of *DDE* of different logical strength; endorses the *weaker* formulation (*WDDE*); and takes that formulation to be untouched by counterexamples to the *stronger* formulation (*SDDE*). Fine. But it has not been recognized that *WDDE* faces a difficult explanatory challenge – a challenge not faced by *SDDE*. Defending *WDDE* is no easy matter; in fact, curiously, in one respect it is harder than defending *SDDE*. Resultantly, opponents of *DDE* (see – notably – Foot 1978, Thomson 1985, 1991, 1999 and Scanlon 2008) need not be unduly concerned by its new defenders' arguments.

1. Formulating DDE and Success-conditions for a Defense Thereof

Consider:

(*SDDE*) [T]he fact that an act has [a bad event] as one of its intended effects...*invariably* make[s] the act impermissible.² (Wedgwood, forthcoming: 2)
(*WDDE*) [O]ther things equal, there is a *stronger* reason *against* an act if the act has a bad event...as one of its intended effects than if it merely has that bad event as one of its unintended effects.³ (Ibid.)

Wedgwood (forthcoming: 2) adds:

[*SDDE*] is absolutist: that is, it implies that acts that have [a bad event] as one of their intended effects are *always* wrong. But [*WDDE*] seems more plausible: according to [*WDDE*], the fact that an act has [a bad event] as one of its intended effects does not *invariably* make the act impermissible, since there may be sufficiently strong countervailing reasons in favour of the act (or against the available alternatives) to make the act permissible after all.

While Wedgwood may be the first philosopher (so) explicitly to distinguish between these two formulations of *DDE*, he is not the first to defend the weaker formulation. Warren Quinn (1989) has already done

¹ At many points in this paper – as in the debate in general – assertions are made about intuitions. Those on which I rely, I regard to be widely shared, though divergences from the shared view, in this or that case, are not unexpected.

² This is essentially Scanlon's (2008: 1) formulation of *DDE*: "The doctrine of double effect holds that an action that aims at the death of an innocent person, either as its end or as a means to its end, is always wrong." For Wedgwood, the death of an innocent person serves as his exemplar of a "bad event."

³ This is essentially Quinn's (1989: 335) formulation of *DDE*: "[T]he pursuit of a good tends to be less acceptable where a resulting harm is intended as a means than where it is merely foreseen."

so. Further, many (contemporary) defenses of *DDE* implicitly function (in part) as defenses of *WDDE*. A demonstration of an acute difficulty for *WDDE*, therefore, is of singular importance.⁴

We need two (familiar) pairs of cases to root out the differences between these formulations. First, the *Trolley/Transplant* cases; second, the *Trolley/Loop* cases:

Trolley: Is it permissible to divert a runaway trolley about to kill five workers onto a side-track where it will kill only one?

Transplant: Is it permissible to kill a healthy patient in order to use his organs to save five others who can survive only by receiving his heart, kidneys, etc.?

Trolley: As above.

Loop: As *Trolley*, but the side-track on which the one worker is strapped loops around and rejoins the main track such that the trolley will kill the five workers from the other direction unless it is stopped by colliding with the one worker on the side-track.

The first pair of cases is wielded by *defenders* of *DDE* to support the *relevance* of intention to moral permissibility-classifications, while the second pair is wielded by *opponents* of *DDE* (see Thomson 1985: 1402-3) to support the *irrelevance* of intention to moral permissibility-classifications. Each view claims intuition is on its side. I take it that it is a strength of any thesis to accommodate as broad a range of intuitive judgments as possible.

I take it that defenders of *WDDE* should say the following: The answer to *Trolley* and *Transplant* – each of which involves killing one to save five – is: yes and no, respectively. Relying on the *intending/foreseeing* distinction, such defenders will aver that the death of the single worker in *Trolley* is a merely foreseen effect of the diversion, while the death of the healthy patient in *Transplant* is an intended means to the end of saving the five. This difference in mental state explains the different permissibility-classification of the two actions. Meanwhile, the answer to both *Trolley* and *Loop* – each of which, again, involves killing one to save five – is: yes. Although – paralleling *Trolley/Transplant* – the death of the single worker in *Trolley* is a merely foreseen effect of the diversion, while the death of the single worker in *Loop* is (we can stipulate)⁵ an intended means to the end of saving the five, each action is – by contrast with *Trolley/Transplant* – intuitively permissible. This difference in mental state, while not resulting in a different permissibility-classification of the two actions, does nonetheless result in, and explain, the intuitive existence of *stronger-reason-against* the diversion in *Loop*. The diversion in *Loop* is still intuitively classed as permissible; but there is intuitively stronger-reason-against the

⁴ A full account of *DDE* would also specify the conditions under which it *is* permissible to bring about (unintended or even intended) bad events – for example, when the bad event is proportional to the good that can be achieved and there is no better way to achieve the good event. But I shall ignore this issue here.

⁵ Cf. Kamm (2000).

diversion than in *Trolley*.⁶ Additionally, the diverter in *Loop* (and, indeed, the organ harvester in *Transplant*) may be *blameworthy* in a way the diverter in *Trolley* is not. Note: Opponents of *DDE* – see Thomson (1999) and Scanlon (2008) – claim that the *addition* of an intention to bring about a bad event is of (non-derivative) relevance *only* to assessment of the *agent's character/decision-making/blameworthiness*, and not additionally to the *action's permissibility*.

By contrast, defenders of *SDDE*, while able to concur with defenders of *WDDE's* explanation of *Trolley/Transplant*, do not have the resources to give the intuitive permissible classification of *Loop*. For *SDDE*, the diverter in *Loop's* intending of the bad event *entails* his act's impermissibility. In sum, while the *Trolley/Loop* pair is a counterexample to (the more crude) *SDDE*, it fails to be so to (the more refined) *WDDE*.

Assume, further, no (or: not many) counterintuitive permissibility-classifications result from adoption of *WDDE*. Put differently, assume all (or: most of) its permissibility-classifications are intuitive. I take it that defenders of *WDDE* understand this to be sufficient for the success of their defense of *WDDE*.

2. *WDDE's* Explanatory Challenge

It follows, then, that we can describe *Trolley/Transplant* (and like pairs) as *valency-shifting* pairs, and *Trolley/Loop* (and like pairs) as *non-valency-shifting* pairs. And moving from *Trolley* to *Transplant* effects a *valency-shift*, while moving from *Trolley* to *Loop* effects no such shift. That is, the addition of an intention to bring about a bad event in the former pair results in a shift from permissible to impermissible action, but results in no such shift in the latter pair.

Note: The valency-shifting distinction has no relevance to *SDDE* – for defenders of *SDDE* *all additions* of an intention to bring about a bad event result in a shift in valency.⁷ Put differently, there is no such thing as non-valency-shifting pairs for defenders of *SDDE*.

While the foregoing enables defenders of *WDDE*, but not defenders of *SDDE*, to give intuitive classifications of our two pairs of cases (and like pairs), it raises an explanatory challenge for defenders of *WDDE*, but not for defenders of *SDDE*:

(*VALENCY-SHIFT CHALLENGE*)

If *WDDE* is to be defensible, its defenders must give an explanation of the distinction between valency-shifting and non-valency-shifting pairs.

⁶ “I am not claiming that diverting the trolley in the Loop case is positively *impermissible*: I am just claiming that there is a *stronger reason* against diverting the trolley in the Loop case than in the original Trolley case, which *either* makes diverting the trolley impermissible, or at least takes it significantly *closer to the line* that divides permissibility and impermissibility.” (Wedgwood, forthcoming: 4)

⁷ Where to *add* such an intention is to insert one where otherwise no such intention exists. Note that Cavanaugh (2006: 153), a defender of *SDDE*, takes himself to have the resources to be able to distinguish between cases “[w]hile similar in terms of being impermissible...differ[ing] in terms of their wrongness,” on account of *alterations* to intentions. And Cavanaugh makes a like point, *mutatis mutandis*, for permissible cases.

I take this to be a far from easy explanatory challenge for defenders of *WDDE* to meet. Absent such an explanation, however, *WDDE* is bound to seem jejune.

3. Possible Responses

Note in closing three responses to the challenge that will not work. Call a subject intending to bring about a bad event an *actor*, and a subject in receipt of said consequence a *recipient*.

First, one might think stipulating that the diverter in *Loop* diverts *solely* in order to kill the one worker on the side-track crosses the line from permissible to impermissible action. And the point would putatively generalize. Perhaps:

(*MALEVOLENCE*) A valency-shift occurs iff one switches to a *malevolent* actor – that is, to an actor *only* intending to bring about a bad event.

But malevolence cannot carry this burden. We can falsify (*MALEVOLENCE*) in both the left-right and right-left direction. For the left-right direction, which introduces nothing new, we need only reconsider *Trolley/Transplant*. Here we have a valency-shifting pair, without switching to a malevolent actor. For the right-left direction, pair *Loop* with:

Malevolent-Loop: As *Loop*, but the diverter diverts *solely* in order to kill the one worker on the side-track.

Here we have switched to a malevolent actor, but we have a non-valency-shifting pair. If the diverter in *Loop* acts permissibly, so too does the diverter in *Malevolent-Loop*. Malevolence does not alter act evaluation. Making the actor malevolent only increases his blameworthiness.

Second, one might think that *consent* explains the valency-shifting distinction. Perhaps:

(*CONSENT*) A valency-shift occurs iff the recipient does not consent to the bad event.

But consent cannot carry this burden. We can falsify (*CONSENT*) in both the left-right and right-left direction. For the left-right direction, consider:

Consenting-Trolley: As *Trolley*, but the one worker consents to the diversion.

Consenting-Transplant: As *Transplant*, but the healthy patient consents to the organ harvesting.

Here we have the recipients consenting in each case, within an intuitively valency-shifting pair: there are limits to the power of consent to render an otherwise impermissible act – viz. *Transplant* – permissible. For the right-left direction, which introduces nothing new, we need only re-

consider *Trolley/Loop*. Here we have a non-valency-shifting pair, without the recipient consenting in either case.

Third, perhaps (suggested to me by Ralph Wedgwood):

(IMPOSSIBLE) A non-valency-shift occurs iff (i) it is in some fairly strong sense *impossible* for the actor to bring about the good event without doing so with an intention to bring about a bad event, and (ii) the consequences of every alternative action that does not involve bringing about that good event are significantly worse.

But to falsify (IMPOSSIBLE) in the left-right direction, reconsider *Trolley/Loop* and also:

Boulder-Loop: As *Loop*, but the diverter reasonably mistakes the one worker on the side-track for a boulder, such that he does not intend the death of the worker.

Trolley/Loop is a non-valency-shifting pair. But it is *possible* for the diverter in *Loop* to save the five *without intending* the death of the one. That is because *Boulder-Loop* is possible.⁸ And this means condition (i) of (IMPOSSIBLE) is not met. And because I cannot conceive of cases in which condition (i) of (IMPOSSIBLE) is *met* – notice how straightforward it was to construct *Boulder-Loop* – I think (IMPOSSIBLE) will be *vacuously* true in the right-left direction. But proponents of (IMPOSSIBLE) are hardly interested in defending its vacuous truth.⁹

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⁸ While it may be that a *candidate pair* must, as a matter of form, posit actors well informed about all non-normative features of the situation, this is not the case for all *possibilities* relative to one or other of the cases in the pair. Additionally, any attempt by proponents of (IMPOSSIBLE) to stipulate an operative notion of possibility on which *Boulder-Loop* is impossible is bound to seem ad hoc.

⁹ Thanks to Matt Kramer, Lee Walters and Ralph Wedgwood for stimulating discussion, and to a *JESP* referee for helpful comments.

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