John Dossetor Health Ethics Centre

Health Ethics Seminar

University of Alberta

December 16, 2016

Constraints on Harming and Health Care II: The Doctrine of Double Effect

Howard Nye

Department of Philosophy

University of Alberta

Constraints on Harming

- **Constraints on harming**: some harmful upshots of our conduct are particularly difficult to justify
  - **Doctrine of Doing and Allowing [DDA]**: all else held equal, there are stronger intrinsic moral reasons against doing harm than there are against allowing harm
  - **The Doctrine of Double Effect [DDE]:** All else held equal, there are stronger intrinsic moral reasons against doing *or* allowing harm as a means to an end than there are against doing or allowing harm as a side-effect
- Sumner (2011): plausible constraints on harming do *not* support a traditionally conservative stance towards end-of-life decision making
  - Elaborate this argument; explore its limitations

End-of-Life Decision Making

- Treatment options that (are believed to) hasten death:
  - **Non-treatment**: withdrawal / withholding of life-sustaining treatment
  - **Conventional palliative care**: providing / administering analgesics or sedatives that may cause death as a foreseen but unintended effect
  - **Assisting suicide**: providing a patient with means she will use to cause death with the intention of causing it
  - **Euthanasia**: administering treatment to a patient with the intention of causing her death
    - Voluntary, quasi-voluntary, non-voluntary

'Assisted death'

The Traditional Moral View

- **The Traditional Moral View**: There is a deep intrinsic moral difference between assisted death and other death-hastening treatment options
  - makes current practices of non-treatment and conventional palliation permissible but assisting death wrong
- Last time: Might try supporting this with the DDA
  - Problems: (1) assumes that death is a harm, (2) assumes that consent doesn't undermine the DDA's applicability
  - **Another problem**: doesn't distinguish assisted death from conventional palliative care that may hasten the patient's death as a side-effect
  - So may appeal to the DDE: assisted death aims at the patient's death as a means of relieving her suffering

Motivating the DDE

- Plausible: it's harder to justify doing or allowing harm to some individuals *as a means of benefitting others* than simply as a side-effect of helping others
  - *Choice Between Rescues*. You are hurrying in your jeep to save five individuals from drowning when hear of another individual who will drown if you don't change course
  - *Rescue-Transplant*. You are hurrying to save one individual from drowning, when you receive evidence that, if you don't save him, his organs will be used to save five people dying of organ failure
- Plausible: the greater benefits to 5 justify allowing 1 to die as a side-effect of helping them rather than him
  - But not allowing him to die as a means of helping them

Motivating the DDE

- *Trolley*: Five individuals are tied to a track, and a trolley will run them over if it continues on its present course. You can pull a switch that will divert the trolley onto a side-track. But there is one individual tied to the side-track who will be run over if you pull the switch
- *Big Man*. A trolley is headed towards five individuals tied to a track. The only way to stop the trolley is to get a large heavy, object in front of it. The only way to do this would be to push the big man standing next to you into the path of the trolley

- Plausible: the greater benefits to the five justify killing the one as a side-effect of saving them
  - But not killing the one as a means of saving them

But What if Death Isn't A Harm?

- **First main problem** with appealing to the DDE to justify the traditional moral view: it assumes that death is a harm in assisted death cases
  - In cases where death really *is* a harm, we should be pretty worried about death-hastening palliative care, not just assisted death
    - *Especially* if the patient is incompetent with no known wishes – e.g. if the only way to prevent the temporary suffering of a young child is to give her an analgesic / sedative that will kill her as a side-effect
  - Those who argue that assisted death is permissible in the same sorts of cases as death-hastening palliative care typically take these to be cases where death is a benefit rather than a harm

What if Death Isn't A Harm?

- If death really is a net benefit rather than a harm
  - (And the patient either voluntarily consents or can't give competent informed consent)
  - The DDE simply does not entail that deliberately ending her life is harder to justify than causing her to die as a side-effect
- The DDE doesn't seem plausible as a constraint against deliberately doing or allowing lesser harm to a patient for her own greater good

What if Death Isn't A Harm?

- E.g. deliberately causing pain when it's necessary to locate and then painlessly heal an injury seems no harder to justify than causing the same pain as a side-effect of a procedure needed to heal a similar injury
- Deliberately amputating someone's leg to save her life seems no harder to justify than amputating her leg as a side-effect of diverting a blade from killing her

- Plausible idea embodied in the DDE: it's harder to justify benefitting *some* at the expense of *others*
  - Doesn't apply to causing a lesser harm to someone (e.g. depriving her of any goods she'd experience by briefly shortening her life) to confer a greater benefit on her (e.g. protecting her from the greater harm of unbearable suffering by briefly shortening her life)

What if the Patient Consents?

- **Second main problem** with appealing to the DDE to justify the traditional moral view: it assumes that consent can't undermine the applicability of the DDE
  - The only cases in which it might be permissible to *harmfully* hasten death via conventional palliative care would be if the patient autonomously chose to do so
- But it seems that autonomous consent to be harmed at least weakens the applicability of the DDE
  - Suppose that the big man in Big Man was an autonomous adult who was trying to jump in front of the trolley to save the five, and he begged you to him by pushing him
  - Or if the one in Rescue-Transplant told you to leave him alone and not save him

Limitations of the Argument

- Sumner: in the typical cases legally permitted by regimes of assisted death (like C-14), death will be both (i) beneficial and (ii) chosen with competent informed consent
  - So the DDE will not militate against its permissibility
- Reasons to skeptical about both (i) and (ii)
  - Analgesia is capable of controlling physical suffering 80-98% of cases
  - Palliative sedation and as a last resort terminal sedation is capable of controlling it in the rest
- Main reasons for assisted suicide requests in Oregon:
  - Loss of independence / control, “indignity”, lost sense of self, diminished ability to engage in meaningful activities

Autonomy without Weighty Reasons?

- There are concerns about the extent to which patients request assisted death out of competence-undermining depression
  - Also a concern about allowing treatment refusals & death hastening "analgesia"
  - But allowing assisted death increases the scope for dubiously autonomous, self-harming decisions
- But even if the patients are autonomous, is it really right to support their self-harming decisions?
  - May be *unlike* the autonomous request to be killed in Big Man (or Rescue II) in that there's no significantly greater good that's achieved by doing this

References

- Foot, Philippa. 1984. Killing and Letting Die. In J.L. Garfield and P. Hennessey (eds.), *Abortion: Moral and Legal Perspectives*, Amherst: University of Massachusetts Press, 177-185.
- McMahan, Jeff. 1993. Killing, Letting Die, and Withdrawing Aid. *Ethics*, 103: 250-279.
- Nye, Howard. On the Equivalence of Trolleys and Transplants: The Lack of Intrinsic Difference Between Direct Attack and 'Collateral Damage'. *Utilitas* 26: 432-479
- Sumner, Wayne. 2011. *Assisted Death: A Case Study in Law and Ethics*. Oxford: Oxford University Press.