

## 'WHATEVER THE CONSEQUENCES'

By JONATHAN BENNETT

THE following kind of thing can occur.<sup>1</sup> A woman in labour will certainly die unless an operation is performed in which the head of her unborn child is crushed or dissected; while if it is not performed the child can be delivered, alive, by post-mortem Caesarian section. This presents a straight choice between the woman's life and the child's.

In a particular instance of this kind, some people would argue for securing the woman's survival on the basis of the special facts of the case: the woman's terror, or her place in an established network of affections and dependences, or the child's physical defects, and so on. For them, the argument could go the other way in another instance, even if only in a very special one—*e.g.* where the child is well formed and the woman has cancer which will kill her within a month anyway.

Others would favour the woman's survival in any instance of the kind presented in my opening paragraph, on the grounds that women are human while unborn children are not. This dubious argument does not need to be attacked here, and I shall ignore it.

Others again would say, just on the facts as stated in my first paragraph, that the *child* must be allowed to survive. Their objection to any operation in which an unborn child's head is crushed, whatever the special features of the case, goes like this:

To do the operation would be to kill the child, while to refrain from doing it would not be to kill the woman but merely to conduct oneself in such a way that—as a foreseen but unwanted consequence—the woman died. The question we should ask is not: 'The woman's life or the child's?', but rather: 'To kill, or not to kill, an innocent human?' The answer to *that* is that it is always absolutely wrong to kill an innocent human, even in such dismal circumstances as these.

This line of thought needs to be attacked. Some able people find it acceptable; it is presupposed by the Principle of Double Effect<sup>2</sup> which permeates Roman Catholic writing on morals; and I cannot find any published statement of the extremely strong philosophical case for its rejection.

<sup>1</sup> J. K. Feeney and A. P. Barry in *Journal of Obstetrics and Gynaecology of the British Empire* (1954), p. 61. R. L. Cecil and H. F. Conn (eds.), *The Specialties in General Practice* (Philadelphia, 1957), p. 410.

<sup>2</sup> See G. Kelly, *Medico-Moral Problems* (Dublin, 1955), p. 20; C. J. McFadden, *Medical Ethics* (London, 1962), pp. 27–33; T. J. O'Donnell, *Morals in Medicine* (London, 1959), pp. 39–44; N. St. John-Stevás, *The Right to Life* (London 1963), p. 71.

I shall state that case as best I can. My presentation of it owes much to certain allies and opponents who have commented on earlier drafts. I gratefully acknowledge my debt to Miss G. E. M. Anscombe, A. G. N. Flew, A. Kenny and T. J. Smiley; and to a number of Cambridge research students, especially D. F. Wallace.

### The plan of attack

There is no way of disproving the principle: 'It would always be wrong to kill an innocent human, whatever the consequences of not doing so.' The principle is consistent and reasonably clear; it can be fed into moral syllogisms to yield practical conclusions; and although its application to borderline cases may raise disturbing problems, this is true of any moral principle. Someone who thinks that the principle is laid down by a moral authority whose deliverances are to be accepted without question, without *any* testing against the dictates of the individual conscience, is vulnerable only to arguments about the credentials of his alleged authority; and these are not my present concern. So I have no reply to make to anyone who is prepared to say: 'I shall obey God's command never to kill an innocent human. I shall make no independent moral assessment of this command—whether to test the reasonableness of obeying it, or to test my belief that it *is* God's command, or for any other purpose.' My concern is solely with those who accept the principle: 'It would always be wrong to kill an innocent human, whatever the consequences of not doing so', not just because it occurs in some received list of moral principles but also because they think that it can in some degree be recommended to the normal conscience. Against this, I shall argue that a normal person who accepts the principle must either have failed to see what it involves or be passively and unquestioningly obedient to an authority.

I do not equate 'the normal conscience' with 'the "liberal" conscience'. Of course, the principle *is* rejected by the 'liberal' majority; but I shall argue for the stronger and less obvious thesis that the principle is in the last resort on a par with 'It would always be wrong to shout, whatever the consequences of not doing so', or 'It would always be wrong to leave a bucket in a hall-way, whatever *etc.*'. It is sometimes said that we 'should not understand' someone who claimed to accept such wild eccentricities as these as fundamental moral truths—that he would be making a logical mistake, perhaps about what it is for something to be a 'moral' principle. I need not claim so much. It is enough to say that such a person, if he was sincere and in his right mind, could safely be assumed to have delivered himself over to a moral authority and to have opted out of moral thinking altogether. The same could be said of anyone who accepted *and really understood* the principle: 'It would always be wrong to kill an innocent human,

whatever the consequences of not doing so.' This principle is accepted by reasonable people who, though many of them give weight to some moral authority, have not abdicated from independent moral thinking. Clearly, they regard the principle as one which others might be led to accept, or at least to take seriously, on grounds other than subservience to an authority. From this fact, together with the thesis for which I shall argue, it follows that those who accept the principle (like others who at least treat it with respect) have not thought it through, have not seen what it comes to in concrete cases where it yields a different practical conclusion from that yielded by 'It is wrong to kill an innocent human unless there are very powerful reasons for doing so'. I aim to show what the principle comes to in these cases, and so to expose it for what it is.

My arguments will tell equally against any principle of the form 'It would always be wrong to . . . , whatever the consequences of not doing so'; but I shall concentrate on the one principle about killing, and indeed on its application to the kind of obstetrical situation described in my opening paragraph.

I need a label for someone who accepts principles of the form: 'It would always be wrong to . . . , whatever the consequences of not doing so.' 'Roman Catholic' is at once too wide and too narrow; 'intrinsicist' is nasty; 'absolutist' is misleading; 'deontologist' means too many other things as well. Reluctantly, I settle for 'conservative'. This use has precedents, but I offer it as a stipulative definition—an expository convenience and not a claim about 'conservatism' in any ordinary sense.

Well then: When the conservative condemns the operation described in my opening paragraph, he does so *partly* because the operation involves the death of an innocent human. So does its non-performance; but for the conservative the dilemma is asymmetrical because the two alternatives involve human deaths in different ways: in one case the death is part of a killing, in the other there is no killing and a death occurs only as a consequence of what is done. From the premiss that operating would be killing an innocent human, together with the principle: 'It would always be wrong to kill an innocent human, whatever *etc.*', it does follow that it would be wrong to operate. But the usual conservative—the one I plan to attack—thinks that his principle has *some* measure of acceptability on grounds other than unquestioning obedience to an authority. He must therefore think that the premiss: 'In this case, operating would be killing an innocent human while not-operating would involve the death of an innocent human only as a consequence' gives *some* reason for the conclusion: 'In this case, operating would be wrong'. I shall argue that it gives no reason at all: once the muddles have been cleared away, it is just not humanly possible to see

the premiss as supporting the conclusion, however weakly, except by accepting the principle 'It would always be wrong *etc.*' as an unquestionable *donnée*.

### The action/consequence distinction

When James killed Henry, what happened was this: James contracted his fingers round the handle of a knife, and moved his hand in such a way that the knife penetrated Henry's body and severed an artery; blood escaped from the wound, the rate of oxygen-transfer to Henry's body-cells fell drastically, and Henry died. In general, someone's performing a physical action includes his moving some part or parts of his body. (The difference between 'He moved his hand' and 'His hand moved' is not in question here: I am referring to movements which he *makes*.) He does this in a physical environment, and other things happen in consequence. A description of what he *did* will ordinarily entail something not only about his movements but also, *inter alia*, about some of their upshots. Other upshots will not ordinarily be covered by any description of 'what he did', but will be counted amongst 'the consequences of what he did'. There are various criteria for drawing the line between what someone did and the consequences of what he did; and there can be several proper ways of drawing it in a given case.

This last point notwithstanding, there are wrong ways of dividing a set of happenings into action and consequences. Even where it is not positively wrong to give a very parsimonious account of 'what he did', it may be preferable to be more inclusive. If in my chosen example the obstetrician does the operation, it is true that he crushes the child's head with the consequence that the child dies, but a better account, perhaps, would say that he *kills* the child by crushing its head. There can certainly be outright wrongness at the other end of the scale: we cannot be as inclusive as we like in our account of 'what he did'. If at the last time when the operation could save the woman's life the obstetrician is resignedly writing up his notes, it is just not true that, as he sits at his desk, he is killing the woman; nor, indeed, is he killing her at any other time.

The use of the action/consequence distinction in the conservative premiss is, therefore, perfectly correct. Operating *is* killing; not-operating is not. What are we saying when we say this? By what criteria is the action/consequence distinction drawn in the present case? I shall try, by answering this, to show that in this case one cannot attach moral significance to the fact that the line drawn by the distinction falls where it does. Briefly, the criteria for the action/consequence distinction fall into two groups: those which could support a moral conclusion but which do not apply to every instance of the obstetrical example; and

those which do apply to the example but which it would be wildly eccentric to think relevant to the moral assessment of courses of action. There is no overlap between the two groups.

### Aspects of the distinction: first group

Some differences which tend to go with the action/consequence distinction, and are perhaps to be counted amongst the criteria for it, clearly do have moral significance. None of them, however, is generally present in the obstetrical example.

Given a question about whether some particular upshot of a movement I made is to be covered by the description of what I *did*:

(a) The answer may depend in part upon whether in making the movement I was entirely confident that that upshot would ensue; and this could reasonably be thought relevant to the moral assessment of my conduct. This aspect of the action/consequence distinction, however, is absent from most instances of the obstetrical example. The classification of not-operating as something other than killing does not imply that the obstetrician rates the woman's chance of survival (if the operation is not performed) higher than the child's chance of survival (if it is performed). If it did imply this then, by contraposition, not-operating would in many such cases have to be classified as killing after all.

(b) The answer may depend in part upon how certain or inevitable it was that that upshot would ensue from my movement, or upon how confidently I ought to have expected it to ensue; and that too may have a strong bearing on the moral assessment of my conduct. But it gets no grip on the obstetrical example, for in many cases of that kind there is moral certainty on both sides of the dilemma. If the conservative says that the action/consequence distinction, when correctly drawn, is always associated with morally significant differences in the inevitability of upshots of movements, then he is vulnerable to an argument by contraposition like the one in (a). He is vulnerable in other ways as well, which I shall discuss in my next section.

(c) The answer may depend in part upon whether I made the movement partly or wholly for the sake of achieving that upshot; and this is a morally significant matter. But the obstetrical example is symmetrical in that respect also: if the obstetrician crushes the child's head he does so not because this will lead to the child's death or because it constitutes killing the child, but because that is his only way of removing the child's body from the woman's.

To summarize: moral conclusions may be supported by facts (a) about what is expected, but in the example each upshot is confidently expected; (b) about what is inevitable, but in the example each upshot is

inevitable; or (c) about what is ultimately aimed at, but in the example neither upshot is aimed at.

### An aside: degrees of inevitability

I have suggested that a conservative might say: 'The action-consequence distinction is always associated with a morally significant difference in the degree to which upshots are certain or inevitable.' This is false; but let us grant it in order to see whether it can help the conservative on the obstetrical example. I concede, for purposes of argument, that if the operation is not performed the woman will pretty certainly die, while if it is performed the child will even more certainly die.

What use can the conservative make of this concession? Will he say that the practical decision is to be based on a weighing of the comparative desirability of upshots against the comparative certainty of their achievement? If so, then he must allow that there *could* be a case in which it was right to kill the child—perhaps a case where a healthy young widow with four children is bearing a hydrocephalic child, and where her chance of survival if the operation is not performed is *nearly* as bad as the child's chance of survival if it is performed. If a professed 'conservative' allows that there could, however improbably, be such a case, then he is not a conservative but a consequentialist; he does after all base his final judgment on the special features of the case; and he has misrepresented his position by using the language of action and consequence to express his implausible views about the comparative inevitability of upshots. On the other hand, if the conservative still absolutely rules out the killing of the child, whatever the details of the particular case, then what could be his point in claiming that there is a difference in degree of inevitability? The moral significance of this supposed difference would, at best, have to be conceded to be an obscure one which threw no light on why anyone should adopt the conservative view.

A certain conservative tactic is at issue here. Miss G. E. M. Anscombe has said:

If someone really thinks, *in advance*, that it is open to question whether such an action as procuring the judicial execution of the innocent should be quite excluded from consideration—I do not want to argue with him; he shows a corrupt mind.<sup>1</sup>

The phrase 'quite excluded from consideration' clearly places Miss Anscombe as what I am calling a 'conservative'. (The phrase 'a corrupt mind', incidentally, tends to confirm my view that conservatives think their position can stand the light of day, *i.e.* that they do not see it as

<sup>1</sup> G. E. M. Anscombe, 'Modern Moral Philosophy', *Philosophy*, vol. 33 (1958), p. 17.

tenable only by those who passively obey some moral authority.) Now, in the course of a footnote to this passage Miss Anscombe remarks:

In discussion when this paper was read, as was perhaps to be expected, this case was produced: a government is required to have an innocent man tried, sentenced and executed under threat of a 'hydrogen bomb war'. It would seem strange to me to have much hope of averting a war threatened by such men as made this demand. But the most important thing about the way in which cases like this are invented in discussions, is the assumption that only two courses are open: here, compliance and open defiance. No one can say in advance of such a situation what the possibilities are going to be—*e.g.* that there is none of stalling by a feigned willingness to comply, accompanied by a skilfully arranged 'escape' of the victim.

This makes two points about the case as described: there might be nothing we could do which would have a good chance of averting a war; and if there were one such thing we could do there might be several. The consequentialist might meet this by trying yet again to describe a case in which judicially executing an innocent man *is* the only thing we could do which would have a good chance of averting a war. When he has added the details which block off the other alternatives, his invented case may well be far removed from present political likelihood; it may even be quite fantastic. Still, what does the conservative say about it?

Here is Miss Anscombe, at her most gamesome, on the subject of 'fantastic' examples:

A point of method I would recommend to the corrupter of the youth would be this: concentrate on examples which are either banal: you have promised to return a book, but . . . and so on, or fantastic: what you ought to do if you had to move forward, and stepping with your right foot meant killing twenty-five young men, while stepping with your left foot would kill fifty drooling old ones. (Obviously the right thing to do would be to jump and polish off the lot.)<sup>1</sup>

The cards are now well stacked; but this is a game in which a conservative should not be taking a hand at all. Someone may say (i): 'In no situation could it be right to procure the judicial execution of the innocent: political probability aside, the judicial execution of the innocent is absolutely impermissible in any possible circumstances.' Or someone may say (ii): 'It is never right to procure the judicial execution of the innocent: a situation in which this would be right has never arisen, isn't going to arise, and cannot even be described without entering into the realm of political fantasy.' These are different. The

<sup>1</sup> G. E. M. Anscombe, 'Does Oxford Moral Philosophy Corrupt the Youth?', *The Listener*, February 14, 1957, p. 267. See also the correspondence in ensuing numbers, and Michael Tanner, 'Examples in Moral Philosophy', *Proceedings of the Aristotelian Society*, vol. 65 (1964-5).

former is conservatism, according to which 'the judicial execution of the innocent should be quite excluded from consideration'. The latter is not conservatism: according to it, the judicial execution of the innocent is taken into consideration, assessed in the light of the political probabilities of the world we live in, and excluded on that basis. The former is Miss Anscombe's large type; the latter, apparently, is her footnote. The difference between (i) 'In no situation could it be right . . .' and (ii) 'No situation is even remotely likely to occur in which it would be right . . .' can be masked by dismissing what is relevant but unlikely as 'fantastic' and therefore negligible. But the difference between the two positions is crucial, even if in the first instance it can be brought out only by considering 'fantastic' possibilities. The two may yield the same real-life practical conclusions, but (ii) can be understood and argued with in a way in which (i) cannot. If someone accepts (ii), and is not afraid to discuss a 'fantastic' but possible situation in which he would approve the judicial execution of an innocent man, he can be challenged to square this with his contrary judgment in regard to some less fantastic situation. Whether he could meet the challenge would depend on the details of his moral position and of the situations in question. The point is that we should know where we stood with him: for example, we should know that it was *relevant* to adduce evidence about how good the chances would be of averting war in this way in this situation, or in that way in that. It is just this sort of thing which the unwavering conservative must regard as irrelevant; and that is what is wrong with his position. Miss Anscombe says: 'No one can say in advance of such a situation what the possibilities are going to be'; but the central objection to conservatism is, precisely, that it says in advance that for the judging of the proposed course of action *it does not matter* what the possibilities are going to be. Why, then, go on about them—if not to disguise conservatism as something else when the going gets tough?

I have based this paper on the obstetrical example in the hope that, without being jeered at for having 'invented' an example which is 'fantastic', I could present a kind of case in which a conservative principle would yield a practical conclusion different from any likely to be arrived at by consequentialist arguments. The claim that in these cases there would always be a morally significant difference between the woman's chance of survival and the child's could only be another attempt to get the spotlight off conservatism altogether—to get the consequentialist to accept the conservative's conclusion and forget about his principle. In the obstetrical example, the attempt is pretty desperate (though, with the aid of judiciously selected statistics, it is made often enough); with other kinds of example, used to examine this or other conservative principles, it might be easier for the conservative to make a show of insisting on the addition of details which



render the examples 'fantastic'. But this does not mean that the case against conservatism is stronger here than elsewhere. It means only that the obstetrical example gives less scope than most for the 'there-might-be-another-way-out' move, or protective-coloration gambit, which some conservatives sometimes use when they shelter their position by giving the impression that it does not really exist.

A conservative might invoke inevitability, without comparing degrees of it in the consequentialist manner, by saying that if the operation is not performed the woman still has *some* chance of survival while if it is performed the child has *none*. Barring miracles, this is wrong about the woman; not barring miracles, it is wrong about the child. It could seem plausible only to someone who did not bar miracles but took a peculiar view of how they operate. Some people do attach importance in this regard to the fact that if the operation is not performed the woman may take some time to die: they seem to think—perhaps encouraged by an eccentric view of God as powerful but *slow*—that the longer an upshot is delayed the more room there is for a miraculous intervention. This belief, whatever the assumptions which underlie it, gives no help to the conservative position. For suppose the obstetrician decides to try, after operating and delivering the child, to repair its head by microsurgery. The woman's supposed 'some chance' of survival if the child's head is not crushed is of the same kind as the obstetrician's 'some chance' of saving the child after crushing its head: in each case there is what the well-informed plain man would call 'no chance', but in each case it will take a little time for the matter to be finally settled by the events themselves—for the woman to die or the obstetrician to admit failure. Would the conservative say that the obstetrician's intention to try to save the child in this way, though hopeless, completely alters the shape of the problem and perhaps makes it all right for the obstetrician to crush the child's head? If so, then what we have here is a morality of gestures and poses.

### Aspects of the distinction: second group

I return to the main thread of my argument. Of the remaining three aspects of the action/consequence distinction, it was not quite true to say that all are present in (every instance of) the obstetrical example; for the first of them has not even that merit. The main point, however, is that even if it were always present it would not help the conservative—though it might help us to diagnose his trouble.

(d) Someone's decision whether an upshot of a movement of mine is to be covered by his description of what I *did* may depend partly on his moral assessment of my role in the total situation. Your condemnation of me, or perhaps your approval, may be reflected in your putting

on the 'action' side of the line an upshot which an indifferent onlooker would count as merely a 'consequence'. This aspect of the action/consequence distinction—if indeed it is one independently of those already discussed—cannot help the conservative who believes that a premiss using the distinction tends to *support* a moral conclusion. That belief demands a relevance relation which slopes the other way.

There seem to be just two remaining aspects to the action/consequence distinction. Certainly, there are only two which do appear in all instances of the obstetrical example. These two must be the sole justification for saying that operating would be killing while not-operating would not be killing; and so they must bear the whole weight of any conservative but non-authoritarian case against killing the child.

(e) Operating is killing-the-child because if the obstetrician operates there is a high degree of *immediacy* between what he does with his hands and the child's dying. This immediacy consists in the brevity or absence of time-lag, spatial nearness, simplicity of causal connexions, and paucity of intervening physical objects. The relations amongst these are complex; but they are severally relevant to the action/consequence distinction, and in the obstetrical example they all pull together, creating an overwhelming case for calling the performance of the operation the *killing* of the child.

(f) Not-operating is not killing-the-woman because it is not *doing* anything at all but is merely *refraining* from doing something.

Since (e) and (f) are so central to the action/consequence distinction generally, it is appropriate that they should sometimes bear its whole weight, as they do in the conservative's (correct) application of the distinction to the obstetrical example. But if (e) and (f) are all there is to the premiss: 'In this case, operating would be killing an innocent human while not-operating would involve the death of an innocent human only as a consequence', then this premiss offers no support at all to the conclusion: 'In this case, operating would be wrong.'

The matters which I group under 'immediacy' in (e) may borrow moral significance from their loose association with facts about whether and in what degree upshots are (a) expected, (b) inevitable or (c) aimed at. In none of these respects, however, is there a relevant asymmetry in the obstetrical example. The question is: why should a difference in degree of immediacy, unaccompanied by other relevant differences, be taken to support a moral discrimination? I cannot think of a remotely plausible answer which does not consist solely in an appeal to an authority.<sup>1</sup>

<sup>1</sup> Conservatives use words like 'direct' to cover a jumble of factors of which immediacy is the most prominent. Pius XII has said that a pain-killing, life-shortening drug may be used 'if there exists no direct causal link, either through the will of interested parties or by the nature of things, between the induced consciousness [*sic*] and the shortening of life . . .'

(Quoted in St. John-Stevás, *op. cit.*, p. 61.)

Suggestions come to mind about 'not getting one's hands dirty'; and the notion of what I call 'immediacy' does help to show how the literal and the metaphorical are mingled in some uses of that phrase. In so doing, however, it exposes the desire to 'keep one's hands clean', in cases like the obstetrical example, as a symptom of muddle or primness or, worst of all, a moral egoism like Pilate's. (To be fair: I do not think that many conservatives would answer in this way. If they used similar words it would probably not be to express the nasty sentiment I have mentioned but rather to say something like: 'I must obey God's law; and the rest is up to God.' Because this suggests a purely authoritarian basis, and because it certainly has nothing to do with immediacy, it lies beyond my present scope.)

Similarly with the acting/refraining distinction in (f). I shall argue in my next section that our criteria for this distinction do not invest it with any moral significance whatever—except when the distinction is drawn on the basis of independently formed moral judgments, and then it cannot help the conservative case for the reason given in (d). And if neither (e) immediacy nor (f) acting/refraining separately has moral significance, then clearly they cannot acquire any by being taken together.

### Acting and refraining

Suppose the obstetrician does not operate, and the woman dies. He does not kill her, but he *lets her die*. The reproach suggested by these words is just an unavoidable nuisance, and I shall not argue from it. When I say 'he lets her die', I mean only that he knowingly refrains from preventing her death which he alone could prevent, and he cannot say that her survival is in a general way 'none of my business' or 'not [even *prima facie*] my concern'. If my arguments so far are correct, then this one fact—the fact that the non-operating obstetrician *lets the woman die* but does not *kill her*—is the only remaining feature of the situation which the conservative can hope to adduce as supporting his judgment about what ought to be done in every instance of the obstetrical example.<sup>1</sup> Let us examine the difference between 'X killed Y' and 'X let Y die'.

Some cases of letting-die are also cases of killing. If on a dark night X knows that Y's next step will take him over the edge of a high cliff, and he refrains from uttering a simple word of warning because he doesn't care or because he wants Y dead, then it is natural to say not only that X lets Y die but also that he kills him—even if it was not X who suggested the route, removed the fence from the cliff-top, *etc.*

<sup>1</sup> In a case where the child cannot survive anyway: 'It is a question of the *direct taking* of one innocent life or merely *permitting* two deaths. In other words, there is question of one *murder* against two deaths . . .' Kelly, *op. cit.*, p. 181.

Cases like this, where a failure-to-prevent is described as a doing partly *because* it is judged to be wicked or indefensible, are beside my present point; for I want to see what difference there is between killing and letting-die which might be a *basis for* a moral judgment. Anyway, the letting-die which is also killing must involve malice or wanton indifference, and there is nothing like that in the obstetrical example. In short, to count these cases as relevant to the obstetrical example would be to suggest that not-operating would after all be killing the woman—a plainly false suggestion which I have disavowed. I wish to criticise the conservative's argument, not to deny his premiss. So from now on I shall ignore cases of letting-die which are also cases of killing; and it will make for brevity to pretend that they do not exist. For example, I shall say that killing involves moving one's body—which is false of some of these cases, but true of all others.

One more preliminary point: the purposes of the present enquiry do not demand that a full analysis be given either of 'X killed Y' or of 'X let Y die'. We can ignore any implications either may have about what X (a) expected, (b) should have expected, or (c) was aiming at; for the obstetrical example is symmetrical in all those respects. We can also ignore the fact that 'X killed Y' loosely implies something about (e) immediacy which is not implied by 'X let Y die', for immediacy in itself has no moral significance.

Consider the statement that *Joe killed the calf*. A certain aspect of the analysis of this will help us to see how it relates to *Joe let the calf die*. To say that Joe killed the calf is to say that

(1) Joe moved his body

and

(2) the calf died;

but it is also to say something about how Joe's moving was connected with the calf's dying—something to the effect that

(3) if Joe had not moved as he did, the calf would not have died.

How is (3) to be interpreted? We might take it, rather strictly, as saying

(3'): If Joe had moved in *any* other way, the calf would not have died.

This, however, is too strong to be a necessary condition of Joe's having killed the calf. Joe may have killed the calf even if he could have moved

in other ways which would equally have involved the calf's dying. Suppose that Joe cut the calf's throat, but could have shot it instead: in that case he clearly killed it; but (3') denies that he killed it, because the calf might still have died even if Joe had not moved in just the way he did.

We might adopt a weaker reading of (3), namely as saying

(3''): Joe could have moved in *some* other way without the calf's dying.

But where (3') was too strong to be necessary, (3'') is too weak to express a sufficient connexion between Joe's moving and the calf's dying. It counts Joe as having killed the calf not only in cases where we should ordinarily say that he killed it but also in cases where the most we should say is that he let it die.

The truth lies somewhere between (3'), which is appropriate to 'Joe killed the calf in the only way open to him', and (3''), which is appropriate to 'Joe killed the calf or let it die'. Specifically, the connexion between Joe's moving and the calf's dying which is appropriate to 'Joe killed the calf' but not to 'Joe let the calf die' is expressed by

(3'''): Of all the other ways in which Joe might have moved, *relatively few* satisfy the condition: if Joe had moved like that, the calf would have died.

And the connexion which is appropriate to 'Joe let the calf die' but not to 'Joe killed the calf' is expressed by

(4): Of all the other ways in which Joe might have moved, *almost all* satisfy the condition: if Joe had moved like that, the calf would have died.

This brings me to the main thesis of the present section: apart from the factors I have excluded as already dealt with, the difference between 'X killed Y' and 'X let Y die' is the difference between (3''') and (4). When the killing/letting-die distinction is stripped of its implications regarding immediacy, intention *etc.*—which lack moral significance or don't apply to the example—all that remains is a distinction having to do with where a set of movements lies on the scale which has 'the only set of movements which would have produced that upshot' at one end and 'movements other than the only set which would have produced that upshot' at the other.

This, then, is the conservative's residual basis for a moral discrimination between operating and not-operating. Operating would be killing: if the obstetrician makes movements which constitute operating, then the child will die; and there are very few other movements he could make which would also involve the child's dying. Not-operating would only be letting-die: if throughout the time when he could be operating the obstetrician makes movements which constitute not-operating, then the woman will die; but the vast majority of alternative movements he could make during that time would equally involve the woman's dying. I do not see how anyone doing his own moral thinking about the matter could find the least shred of moral significance in *this* difference between operating and not-operating.

Suppose you are told that X killed Y in the only way possible in the circumstances; and this, perhaps together with certain other details of the case, leads you to judge X's conduct adversely. Then you are told: 'You have been misled: there is another way in which X could have killed Y.' Then a third informant says: 'That is wrong too: there are two other ways . . . *etc.*' Then a fourth: 'No: there are three other ways . . . *etc.*' Clearly, these successive corrections put no pressure at all on your original judgment: you will not think it relevant to your judgment on X's killing of Y that it could have been carried out in any one of  $n$  different ways. But the move from 'X killed Y in the only possible way' to 'X killed Y in one of the only five possible ways' is of the same *kind* as the move from 'X killed Y' to 'X let Y die' (except for the latter's implications about immediacy); and the moral insignificance of the former move is evidence for the moral insignificance of the latter move also.

The difference between 'X killed Y' and 'X let Y die' is the sum-total of a vast number of differences such as that between 'X killed Y in one of the only  $n$  possible ways' and 'X killed Y in one of the only  $n+1$  possible ways'. If the difference between ' $\dots n \dots$ ' and ' $\dots n+1 \dots$ ' were morally insignificant only because it was *too small* for any moral discrimination to be based upon it, then the sum-total of millions of such differences might still have moral significance. But in fact the differences in question, whatever their size, are of the *wrong kind* for any moral discrimination to be based upon them. Suppose you have judged X adversely, on the basis of the misinformation: 'X killed Y in the only way possible in the circumstances'; and this is then replaced, in one swoop, by the true report: 'X did not kill Y at all, though he did knowingly let Y die'. Other things being equal, would this give you the slightest reason to retract your adverse judgment? Not a bit of it! It would be perfectly reasonable for you to reply: 'The fact remains that X chose to conduct himself in a way which he knew would involve Y's death. At first I thought his choice could encompass Y's death only

by being the choice of some rather specific course of conduct; whereas the revised report shows me that X's choice could have encompassed Y's death while committing X to very little. At first I thought it had to be a choice to act; I now realize that it could have been a choice to refrain. What of it?'

There are several things a conservative is likely to say at this point—all equivalent. 'When we know that the crucial choice could have been a choice to refrain from something, we can begin to allow for the possibility that it may have been a choice to refrain from doing something wrong, such as killing an innocent human.' Or: 'You say "other things being equal", but in the obstetrical example they aren't equal. By representing letting-die as a kind of wide-optioned killing you suppress the fact that the alternative to letting the woman die is killing the child.'

Replies like these are available to the conservative only if he does not need them and can break through at some other point; for they assume the very point which is at issue, namely that in every instance of the obstetrical example it would be wrong to kill the child. I think that in some cases it would indeed be wrong—(I do not press for a blanket judgment on all instances of the example—quite the contrary); and in such a case the obstetrician, if he rightly let the woman die, could defend his doing so on the basis of the details of the particular case. Furthermore, he might wish to begin his defence by explaining: 'I let the woman die, but I did not kill her'; for letting-die is in general likely to be more defensible than killing. My analysis incidentally shows one reason why: the alternatives to killing are always very numerous, and the odds are that at least one of them provides an acceptable way out of the impasse; whereas the alternative to letting-die is always some fairly specific course of conduct, and if there are conclusive objections to *that* then there's an end of the matter. All this, though, is a matter of likelihoods. It is no help in the rare cases where the alternatives to killing, numerous as they are, arguably do *not* include an acceptable way out of the impasse because they all involve something of the same order of gravity as a killing, namely a letting-die. The conservative may say: 'Where innocent humans are in question, letting-die is not of the same order of gravity as killing: for one of them is not, and the other is, absolutely wrong in all possible circumstances.' But this, like the rejoinders out of which this paragraph grew, assumes the very point which is at issue. All these conservative moves come down to just one thing: 'At this point your argument fails; for the wrongness of killing the child, in any instance of the obstetrical example, *can* be defended on the basis of your own analysis of the acting/refraining distinction—plus the extra premiss that it would always be wrong to kill the child.'

### The stress on the specific

My argument is finished; but its strategy might be thought to be open to a certain criticism which I want to discuss.

The obstetrical example is a *kind* of situation, on every instance of which the conservative makes a certain judgment. I have argued that this judgment, as applied to many instances of the example, cannot be defended except by the unquestioning invocation of authority. This would have been damaging to the conservative position even if I had appealed only to 'fantastic' kinds of instance such as seldom or never occur; but in fact my claims have been true of many real-life instances of the obstetrical example. Still, a conservative might resist my drive towards the relatively specific, my insistence upon asking: 'What is there about *this* kind of instance which justifies your judgment upon it?' He might claim that even my opening paragraph presents so special a kind of situation that he cannot fairly be asked to find in *it* something which supports his judgment other than by a blanket appeal to his general principle that it would always be wrong to kill an innocent human. There are two ways in which he might defend this stand: they look alike, but their fatal defects are very different.

The first is by the use of a sub-Wittgensteinian argument from the nature of language. Although I have never encountered it, it is a possible and plausible objection to my strategy of argument. The conservative might say: 'Granted that facts about (a) expectation, (b) inevitability and (c) intention are irrelevant to the way the action/consequence distinction applies to the obstetrical example; it does not follow that when we apply the distinction to the example *all* we are doing—apart from (d) reflecting our already-formed moral judgments—is to report facts about (e) immediacy and (f) acting/refraining. Language and thought don't work like this. When we say: "Operating would be killing; not-operating would not be killing though it would have death as a consequence", we are not *just* talking about immediacy and specificity of options. We are using words which, *qua* words in the language, are laden with associations having to do with (a)–(d); and these associations of the words cannot simply be ignored or forgotten in a particular case. Language is not atomic in that way, and it would be at best a clumsy instrument if it were.'

I agree that we often do, and perhaps must sometimes, decide our conduct in one situation partly through verbal carry-overs from others in which similar conduct could be justified more directly. But I think that everyone will agree that the more serious a practical problem is, the greater is our obligation to resist such verbal carry-overs and scrutinize the particular problem in order to see what there is about *it* which would justify this or that solution to it. A practical problem in which human lives are at stake is a deeply serious one, and it would be an abdication



from all moral seriousness to settle it by verbal carry-overs. I am not saying: 'Take pity on the poor woman, and never mind what the correct description of the situation is.' I am opposing someone who says: 'This is the correct description of the situation—never mind what its force is in this particular case.'

The second objection to my stress on the particular case, or the specific kind of case, is one which conservatives do sometimes use; and it connects with a muddle which is not special to conservatives. It goes like this: 'We must have rules. If every practical problem had to be solved on the spot, on the basis of the fine details of the particular case, the results would be disastrous. Take a situation which falls under some rule which I know to be justified in most situations. There may not be time or means for me to learn much more about the present situation than just that it does fall under the rule; the details of the case, even if I can discover them, may be too complex for me to handle; my handling of them, even if intellectually efficient, may without my knowing it be self-interested or corrupt; by deciding, however uncorruptly, not to follow the rule on this occasion, I may weaken its hold on me in other situations where it clearly ought to be followed; and even if I could be sure that I was in no such danger, I might help others into it by publicly breaking the rule.'<sup>1</sup>

This is all true, but it does not help the conservative. Notice first that it tells against undue attention to individual cases rather than against undue attention to limited kinds of case: its target is not the specific but the particular. Still, it could be developed into an attack on over-stressing very specifically detailed kinds of case: its opening words would then have to be replaced by: 'We must have rather general rules.' This is true too, but it is still no help to the conservative.

This argument for our bringing practical problems under rather general rules is based on the consequences of our not doing so: it points to the dangers attendant on suspending a general rule and considering whether one's practical problem might be better resolved by applying a less general one. But sometimes these dangers will be far too slight to justify doing what a given general rule enjoins in a particular situation. If the thesis under discussion is to have any practical upshot which is not ludicrous ('Never break any general rule which would enjoin the right action in more cases than not'), or vague to the point of vacuity ('Always apply some fairly general rule'), or merely question-begging ('Never break a rule forbidding an action which really is absolutely impermissible'), then it must allow us to raise questions of the form: 'Need we be deterred by the dangers attendant on suspending *this* rule in favour of *this* more specific rule in *this* kind of situation?' The answer will depend

<sup>1</sup> For a gesture in this direction, see St. John-Stevás, *op. cit.*, pp. 14-16. See also McFadden, *op. cit.*, p. 133.

upon what the challenged general rule is, what the proposed substitute for it is, the intelligence and character of the agent, and the likelihood that his breaking the rule (if it comes to that) would become generally known and, if known, demoralizing to others. These matters need not be so complex as to defeat finite intelligence, or so primrose-strewn that fallen man dare not venture among them. Furthermore, they can themselves be embodied in rules carefully formulated in advance—meta-rules about the kinds of situation in which this or that ground-level general rule may be suspended in favour of this or that more specific one.

Here is a possible case. A certain obstetrician accepts the rule, 'Do not kill innocent humans', as applicable in every kind of situation he has thought of except the kind described in my opening paragraph. He wants a rule for this kind too, as a shield against the confusions, temptations and pressures of the concrete situation; and after reflection he adopts the following: 'If the child is not hydrocephalic it is not to be killed. If it is hydrocephalic it is to be killed unless either (a) the woman is bound to die within a month anyway, or (b) the woman has no other children under eighteen and she is known to be a chronic acute depressive. If (a) or (b) or both are true, the child is not to be killed.'

By preferring this rule to the more general one for instances of the obstetrical example, the obstetrician is not rendering it likely that in some situations he will flounder around not knowing what rule about killing to apply. For he has a clear enough meta-rule: 'If the only way to save a woman's life is to kill the child she is bearing, apply this rule: . . . ; otherwise apply the rule: Do not kill innocent humans.'

The obstetrician is not satisfied with his ground-level rule for instances of the obstetrical example, and he hopes to be able to improve it. Still, he is resigned to his rule's ignoring various matters which, though they are relevant to what the ideally right action would be, would involve him in the dangers of over-specificity mentioned above. 'Is the woman a potential murderess or the child a mongol?'—the answers are probably unobtainable. 'In what ways would the woman's death represent a real loss to others?'—the answer, even if discoverable, could be so complex as to elude any manageable rule. 'Would either course of action bring the medical profession into undeserved but seriously damaging disrepute?'—it would be too easy for that to be unconsciously conflated with the question of which course would best further the obstetrician's own career. 'Would the child, if delivered alive, be especially helpful to students of hydrocephalus?'—asking that could be the first step on a downward path: by allowing one woman to die partly because her child will be medically interesting if alive, even an uncorrupt man may ease the way towards allowing some other woman to die partly because *she* will be medically interesting when dead.

Although he pays heed—neurotically pays far too much heed—to

the conservative's warnings against over-specificity, this obstetrician arrives at a conclusion quite different from the conservative's. That is the crux. The conservative who warns against the dangers of over-specifying is trying to find a consequentialist basis for his whole position. Unlike the 'protective-coloration gambit' discussed earlier, this is legitimate enough in itself; but it simply does not yield the conservative position on the matter under discussion. For it to do so, the conservative would have to show that our obstetrician's more specific rule is *too* dangerous in the ways mentioned above; and he would have to do this without applying danger-inflating standards which would commit him also to condemning as too dangerous the suspension of the general rule: 'Never leave a bucket in a hall-way.' He may object: 'Buckets in hall-ways are not important enough to provide a fair analogy. Where something as grave as killing is in question, we should be especially sensitive to the dangers of suspending a general rule.' But then when something as grave as letting someone die is involved in applying the rule, we should be especially reluctant to accept, without good empirical evidence, popular clichés about the dangers of suspending general rules. The two points cancel out.

Of course, there are these dangers, and we should guard against them. To assess them at all precisely, though, would require more than we know of sociology, psychology and the philosophy of mind; and so our guarding against them can consist only in our keeping the urge towards specificity under some restraint, our remembering that in this matter it is not always true that the sky is the limit. The conservative who hopes to secure his position by pointing out these dangers must claim that he *can* assess them, and can discover in them a simple, sweeping pattern which picks out a certain list of general rules as the ones which ought never to be suspended by anyone in any circumstances. No-one would explicitly make so preposterous a claim.

'So you do at any rate retreat from act- to rule-utilitarianism?' No. Rule-utilitarianism can be presented (1) as a quasi-mystical doctrine about the importance of rule-following '*per se*', or (2) as a doctrine about the importance of rule-following because of what rule-following empirically *is*, because of what happens when people follow rules and what happens when they don't. In version (1), rule-utilitarianism is a distinct doctrine which has nothing to recommend it. In version (2), it is just part of a thorough act-utilitarianism. (In most actual presentations, there is a cloudy attempt to combine (2)'s reasonableness with (1)'s rejection of act-utilitarianism.) In this section I have been discussing what the consequences might be, for myself or others, of my suspending or breaking a given general rule. These are among, not additional to, the consequential factors whose relevance I have been urging all through the paper. There has been no retreat.

## Conclusion

Principles of the form: 'It would always be wrong to . . . , whatever the consequences of not doing so' seem defensible because the action/consequence distinction does often have a certain kind of moral significance. But in proportion as a situation gives real work to the rider ' . . . whatever the consequences of not doing so', in proportion as it puts pressure on this rider, in proportion as the 'consequences of not doing so' give some moral reason for 'doing so'—to that extent the action/consequence distinction lacks moral significance in that situation. The obstetrical example is just an extreme case: there the rider serves to dismiss the entire moral case against applying the principle; and, proportionately, the action/consequence distinction carries no moral weight at all.

The phenomenon of conservatism, then, can be explained as follows. The conservative naturally thinks that the action/consequence distinction has great moral significance because of its frequent connexion with differences concerning (a) expectation, (b) inevitability, (c) intention and (d) independently formed moral judgments. He then encounters cases like the obstetrical example, where (a)–(d) are irrelevant but where the distinction can still be applied because of facts about (e) immediacy and (f) acting/refraining. Failing to see that in these cases the distinction has lost absolutely all its moral bite, and perhaps encouraged by a mistake about 'rule-following *per se*', he still applies his principle in the usual way. Those who do not follow him in this he finds lax or opportunist or corrupt; and many of them half agree, by conceding to his position a certain hard and unfeeling uprightness. Both are wrong. Conservatism, when it is not mere obedience, is mere muddle.

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