THE ACTIVE-PASSIVE DISTINCTION IN
ETHICAL DECISION-MAKING

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ABSTRACT

The subject of this paper is the distinction between (actively) bringing about and (passively) letting-happen, and the implications of the distinction in the ethics of decision-making, especially in cases of withdrawal of therapy in critical care. First, the no-difference arguments of Rachels and Tooley are outlined. Some counter-arguments to the no-difference thesis are brought forward, and it is concluded that all the no-difference arguments show is that in some cases the active-passive factor is relatively insignificant compared to other ethical factors. Yet the counter-arguments make clear that in some cases, the active-passive factor is ethically critical. Therefore, as a general principle, the no-difference thesis must fail. Finally, it is argued that the no-difference thesis tends to misidentify action with bodily movement. Some discussion of how the active-passive distinction might be analysed is included.
The Active-Passive Distinction in Ethical Decision-Making*

An issue of widespread current public concern is the question of the justification of the selective limitation of therapeutic measures in treating critically ill patients. The health practitioner's goal has traditionally been thought to be that of assisting to prolong life. But the use of modern resuscitation technology makes the prolongation of life a technical possibility in hopeless circumstances that a patient or his family might consider a terrible cruelty and indignity.

The new power given to us by such devices as machines for artificial ventilation brings with it the ethical question of whether reasonable limitations can be set in the limitation or withdrawal of their use under circumstances where their unthinking or automatic application might be a severe violation of an individual's rights, well-being, or autonomy of decision.

Two types of cases may be distinguished that have come in for special attention. First, the case where the patient is being treated aggressively in intensive care, but critically ill and shortly about to die under circumstances that might make the value of continued aggressive treatment extremely questionable—the question here is whether to withdraw treatment. Second, the case where a patient is shortly about to die beyond any reasonable doubt, and where it may be clear that bringing in cardiopulmonary resuscitation or other aggressive therapy would be cruel and pointless.1

In the decision-making context operative in dealing with these kinds of cases, often presupposed is the belief that there is an applicable distinction between actively bringing about the termination of life (killing) and merely allowing

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1See Walton (1978).
to die (letting die). Those who adhere to some such distinction commonly argue that the withdrawal or non-utilization of therapy may sometimes be justifiable, even if active intervention (e.g., killing by injecting with poison) is never morally permissible.

At the center of these arguments and issues, two fundamental principles are basic: (1) that there is a difference, deeply felt if never very clearly articulated, between (actively) bringing about death and merely allowing death to occur, and (2) that this is a difference that makes a difference, i.e., the distinction is morally significant. A widespread and evidently natural belief is that actively making happen is more serious morally than merely letting happen in that there may be cases where the latter is permissible whereas the former is not. Indeed, many would insist that actively bringing about death is never morally permissible whereas allowing-to-die, while also a serious matter morally, may be permissible under certain extenuating circumstances in some cases, even if these types of circumstances may not be very easily defined. Putting other issues more to the sidelines, (1) and (2) will be the primary areas of concern of this essay, in the philosophical quest to clarify the underlying principles at the heart of the conflict.

1. The No-Difference Argument

A skeptical position that has gained considerable currency in recent times is the stance that the alleged difference is ethically trivial. That is, the feeling is that there is no morally significant difference at all, per se, between killing and letting-die, if the outcome, the intentions of those involved, and all factors other than the action-inaction element, are identical.

James Rachels (1975) mounted this argument by initially conceding that a distinction between withholding treatment and allowing a patient to die, and taking direct action designed to kill the patient, appears to be widely accepted by physicians and is even endorsed by a well-known statement of the American Medical Association.\(^2\) Rachels argued however, that the distinction ostensibly appealed to, that between killing and letting die, is one that, in itself, could be of no moral importance, all else being equal, in our reasoned ethical evaluation of a situation. To show this Rachels considered two cases, hypothetically parallel in all respects except that

\(^2\)See Rachels (1975).
in one case a killer takes direct action, whereas in the other a counterpart merely stands by and fails to intervene in order to accomplish the same objective. Rachels advances the skeptical challenge: what difference does it make to our evaluation of the reprehensibleness of the outcome whether one "killed" and the other "merely let die" if the motives, intentions, and consequences are equally culpable in both cases? While the question of whether there was or not some direct or overt action by a person in carrying out his desired objective is of considerable legal import in the courts, Rachels suggests that from a purely moral standpoint it is insignificant. That is, questions of how we establish guilt aside, questions of how we know or determine culpability aside, considering the issue purely from a viewpoint of whether there is a certain degree of blameworthiness, moral evaluations are not necessarily affected at all by the question of whether actual, overt bodily movements led up to or played a role in the eventuation of a given outcome. Other factors, such as the question of motive, or the factor of the seriousness of the outcome itself, must be the real loci of moral evaluation.

The basis of Rachels' argument is a hypothetical instance designed to show that we can have two cases that are equally morally culpable even though one is a bringing about and the other a letting happen of the outcome. In the first case, Smith drowns his young cousin, then makes it look like an accident in order to secure an inheritance. Jones plans to drown his young cousin for the same reason but as he enters the bathroom he sees the child slip, hit his head, and fall face down in the water. He is delighted—he stands by ready to push the child's head back under if necessary. But it is not necessary. We are asked to assume that both men acted from the same motive. Rachels concludes that there is no moral difference between the two cases in regard to the question of moral responsibility for the outcome.

Tooley (1977) offers examples that are similar to Rachels'. Here is one. Two sons look forward to the death of a wealthy father. Tired of waiting, they each decide independently to poison him. The first adds some poison to his father's whiskey. The second sees this, and approving of it, refrains from administering the antidote he has in his pocket while the father consumes the poisoned whiskey. One killed and the other let die. But Tooley thinks that we can't say that what one did is any worse than what the other failed to do. He concludes that the actions are morally equivalent.

If Rachels and Tooley are right in this, the consequences for medical ethics are of more than passing significance. For if there really is no morally significant difference
between making and letting happen, then the defenders of so-called "passive euthanasia" can scarcely be logically consistent in a wholesale rejection of the moral permissibility of "active euthanasia" (if the provocative term "euthanasia" is appropriate here at all to indicate the sort of distinction at issue). A particularly vexing instance of the issue is that of infants born with a meningomylocele so severely debilitating that it has sometimes been thought permissible to withhold surgery or other therapeutic measures in order to mercifully let the child die. Freeman (1972) argues that in some cases the more humane course might be to allow physicians to alleviate suffering by direct intervention. To be sure, if the distinction carries no moral weight, how could it be logically consistent to object to positive intervention in the same case where one does not object to allowing the child to die by failing to intervene?

As Morison (1973) points out, some schools of thought on the subject of ethics, such as the situational ethicist or consequentialist, who is suspicious of abstract subtleties, might dismiss the distinction between acting and allowing as irrelevant to the concrete, real-life decision-situation. Thus the skepticism suggested by Rachels and Tooley might find more general justification in the view that logical distinctions are trivial because there simply are no general, universally applicable distinctions that can meaningfully be applied to particular circumstances. Whether such an ethical relativism is in general defensible is a question that must be regarded as beyond the scope of this essay, but we need to note that Rachels' skepticism is by no means to be taken as captious or trifling, but could be buttressed by an ethical framework of longstanding tradition.

2. Cases Counter to the No-Difference Argument

Rachels and Tooley want to advance a general principle, the no-difference thesis, and they do so by means of singular examples or cases that purport to illustrate or exemplify this principle. As convincing as their argument may seem to be, we need to note that there is something lacking in adequacy about the general procedure of proof they have adopted. For we cannot concede a general principle on the strength of one or two singular instances.

No doubt the no-difference theorist feels that the Rachels-Tooley examples are somehow generally characteristic of the no-difference feature of the type of case in question, so we can generalize from them. After all, they are not strictly empirical cases, say drawn from medical practice, they constitute a kind of thought-experiment. Nonetheless, if cases
of a philosophically abstract sort can verify the no-difference thesis, perhaps some could falsify it too. Rachels and Tooley cite cases where there doesn't seem to be a difference. But aren't there cases too where there does seem to be a difference. Let's construct some.

Sally has a critical organ disfunction which will result in her death in two weeks unless the organ of her identical twin, Sue, were transplanted into her. That is the only way she could possibly be saved, but such a transplantation would immediately result in the death of Sue. If there is no difference between killing and letting-die, everything else being equal, why should it make the least ethical difference whether we let Sally die or kill Sue? But of course there is a difference, as anyone put in the position of carrying out such a transplant would clearly realize.

The no-difference theorist might object—we're not really letting Sally die in this case. Why not? Because the alternative—removing Sue's organ—is not a reasonable one to pursue. And to be sure, there is force in this objection. Better to describe the case as a choice between an action—of transplanting—and an inaction—of not transplanting. This raises the issue of what the difference is between a letting happen and a not-doing, but that issue is tangential. The case still illustrates that there is a morally significant difference between an act that results in death and a failure to act that also results in death, even if all other morally relevant factors are held constant.

The no-difference theorist might insist that the outcome is equally bad in either case, so really there is no ethical difference at all. But this view of the matter overlooks two critical differences. (1) Killing Sue is murder, but letting Sally die is not morally culpable at all, because there is no reasonable way to prevent it. So there is a big difference, ethically. The act is a culpable one, the inaction is not culpable at all. (2) By transplanting, you are depriving someone of something they have a right to. That act is culpable. By doing nothing, we do not violate anyone's rights. So there is a big difference between the two courses in this case. In sum, there is a difference between the active and passive modes of action, even if all the "other factors" postulated by Rachels and Tooley are held constant and equal on both sides of the case.

So we seem to have discovered a counter-example to the no-difference thesis. Now notice that one positive instance does not prove a general thesis, whereas one counter-example does overturn it. To achieve parity with our presentation of the no-difference case however, let us construct one more
Smith is laying in ambush in some foliage beside a footbridge for his archenemy Jones who is approaching the bridge from the opposite bank of a fast-flowing river with a dangerous undertow. Neither individual is a particularly good swimmer. As Jones starts across the bridge, Smith deliberates on whether or not to fire. However, half way across the bridge, Jones falls into the water after missing his footing, and is swept downstream past Smith.

Case I

Smith deliberates about whether to fire, but concludes "Why bother? Jones will drown for sure anyway." He holds his fire and Jones subsequently dies by drowning.

Case II

Smith deliberates about whether to fire, and concludes "Why not? This way I'll make sure, and nobody can connect me with the crime anyway." he fires, mortally wounding Jones, who subsequently expires by drowning and by his gunshot wound.

To make the conditions appropriate for the philosophical thought-experiment, we let it be the case that all conditions of both cases are identical except that in I Smith fired, whereas in II he did not. Jones died at the same time in both cases, Smith was equally malevolent, etc.

The no-difference theorist would point out that the two outcomes are the same (the death of Jones) and that in both cases, Smith was postulated to be equally malevolent in intentions. Yet there is clearly a significant ethical difference between the two cases. What is the basis of the difference? Two suggestions occur to me.

First, in Case I, Jones stood a better chance of survival. In Case II, Smith allowed him no chance to survive, by his act of shooting. Although the outcome was the same, it might not have been, so Smith's action was significant. Second, Smith need not be morally responsible for the death of Jones in Case I, assuming that the river was sufficiently dangerous and that a safe way of saving Jones was not feasible for Smith at the time. But Smith is much more definitely responsible for the death in Case II. The difference lies in Smith's ethical accountability for what happened.

So here is another counter-example. Cases I and II may be postulated as exactly alike except that in the one there
was an action, in the other inaction. But the ethical difference is manifest.

It seems fair to conclude that all Rachels' and Tooley's arguments have shown is that in some cases the action-inaction factor is relatively insignificant compared to other ethical factors that are more serious in the particular case being discussed.

Take the actual case of Winston Churchill's life-and-death dilemma during the Second World War: (1) to evacuate Coventry by giving advance warning of the German bombing mission, with the inevitable consequence of informing the Nazis that the Enigma code had been broken, thus depriving the allies of one of their most powerful weapons that would, among other benefits, save many thousands of allied soldiers; (2) not to evacuate, with the inevitable consequence that thousands of civilians would die in the bombing raid who might otherwise have been saved. This was a terrible decision to be confronted with—it had to be made fairly quickly, and obviously the consequences of either choice were enormously tragic. Now the no-difference theorist might put his question this way: is the factor that alternative (1) involved the actual movement of giving orders to alert the citizens of Coventry, whereas (2) need not have involved any positive movement but could be "allowed to happen," of significance in deciding one way or the other? Does history judge Churchill as having made the best possible decision under the circumstances partly because what he did was not an active bringing-about but only a letting-happen? It would seem highly implausible to think so. Surely the important thing was the seriousness of the consequences that were at stake, and the question of whether a doing as opposed to a refraining is the means to one outcome or the other is overwhelmingly trivial by comparison.

So it is clear that sometimes the action-inaction distinction is not the main ethical factor compared to other more weighty considerations. But it is equally evident that in other cases the action-inaction factor is more in the forefront of the ethical deliberations and cannot be treated as relatively inconsequential. Therefore, as a general principle about the ethical evaluation of actions, the no-difference thesis must fail.

3. What Is the Distinction?

We have now reached the point of refuting the no-difference argument and establishing that the active-passive factor in actions does make an ethical difference, at least

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sometimes. But precisely what does the distinction amount to, and what is the nature of the difference it can make in evaluating actions? These are hard questions, but perhaps some discussion of them might be helpful in enabling us to at least appreciate that the distinction can have some ethical import, depending on how it is drawn.

I confess to suspicions that whether the very narrow way the no-difference theorists seem to construe the notions of bringing about and letting happen has led them to draw the distinction in an arbitrary or artificial way. When they argue that it makes no difference whether an outcome is brought about or allowed to occur, they seem to mean "brought about" in the sense that some bodily movement, some episode of behavior causally connected the agent and the outcome, and "allowed" meaning only that no bodily movement was directly causally involved. But surely this rather minimal, physicalistic way of viewing these concepts is not the only legitimate way. There seems to be an equally legitimate sense of bringing about which is equated with deliberate and forceful intervention in nature, as when one brings about a certain outcome whether or not by means of a single, direct bodily movement, but by planning the outcome, by acting in such a manner that a certain causal process must eventuate in that outcome. According to this apparently much broader conception of bringing something about, there would be a morally significant contrast with letting happen because the latter expression would signify less deliberation, less forcefulness, less than an outcome must occur but rather that it might occur. Could it be that letting-happen need not always be a species of inaction or omission? Could more than one distinction be at stake?

Hart and Honoré (1969) have pointed out that interpersonal cases show that the difference between "causing" and "permitting" another's act need not coincide precisely with the distinction between act and omission. An omission might, even if rarely, be held to cause (bring about) the act of another person. Hart and Honoré cite the following kind of case: "Suppose A threatens that unless B or C reveals a certain secret he will shoot D. B remains silent; C then reveals the secret. B's silence (an omission to speak) might well be said to have caused C to speak" (p. 329). Here we have an unusual case where an omission is said to be the cause of another's action. This suggests, according to Hart and Honoré, that the difference between causing and permitting another's action is not precisely the same distinction as that between act and omission. Rather the former distinction should be understood as the difference between compelling another to act and "leaving him free to choose while withdrawing an obstacle that he should make a certain choice"
If this pair of distinctions is separable in interpersonal cases, perhaps their separation should also be extended to cases where the outcome of the causing or permitting need not be another's action. Thus perhaps the distinction between the causing of death and the permitting of death to occur by some agent is not to be sought in relation to whether or not an "act" (bodily movement) or omission (no movement) occurred, but in relation to the question of whether the agent saw to it that one outcome eventuated or left the eventualities of nature open while withdrawing an obstacle to one possible outcome of the various possible alternatives. Fletcher (1968) confirms our suspicion that the issue of the distinction is not exclusively one of whether there is physical movement. He argues that there are cases we think to be "acts" where there may be no purely physical movement, for example if one should sit motionless in the driver's seat as one's car heads towards an intended victim. We might add that in ethically problematic cases in medical ethics there is very often thought to be a "mere allowing" (passive letting-die) in cases where physical movements are directly involved, e.g., removing the ventilator.

However, if we reject "physical movement" as the criterion, what is the essential basis of the distinction? Here Fletcher's suggestion is that we should employ our "linguistic sensitivity as native speakers of English" in classifying the hard cases. According to Fletcher's account of this sensitivity, we perceive certain uses of the respirator, i.e., in critical cases beyond recovery, as "artificial prolongations of life". But the basic reason his account of the distinction is not as helpful as we might wish is that at bottom it remains essentially subjective, a matter of how the individual perceives the case by his individual linguistic sensitivity. Fletcher admits this, noting that our differentiation between the natural and the artificial is a "function of time and culture." In other words the patient's reasonable expectations of what sort of treatment he will receive are at the bottom of the distinction, and these simply depend on what doctors customarily do.

There is no doubt substantial wisdom in Fletcher's proposal in that it makes clear that in attempting to work with this distinction in ethical or legal decision-making a good deal turns on custom, reasonable expectations, and culturally relative perceptions of what is "artificial" in a given context. Nevertheless it is necessary to seek the underlying principle, because an uncritical use of a poorly understood notion of the distinction may mask ambiguities and inconsistencies in the decision procedures themselves. Of course we
hardly expect to take a logical analysis of the underlying distinction, if one were available, and expect to use it as a draconian decision procedure for ruling that patient X should live and patient Y should die, or something of the sort. Setting our expectations of philosophical analysis this high would be absurdly quixotic. On the other hand, we do seem to have a legitimate expectations that if the distinction is to have serious weight, some coherent and moderately philosophically adequate account of the basis of it should be forthcoming.

Dinello (1971) proposed this analysis. x killed y if x caused y's death by performing movements which affect y's body such that y dies as a result of these movements. x let y die if (a) there are conditions affecting y, such that if they are not altered, y will die, (b) x has reason to believe that the performance of certain movements will alter conditions affecting y, such that y will not die, (c) x is in a position to perform such movements, (d) x fails to perform these movements. We should note the same ambivalence here that emerged in the previous treatments between wider, more morally significant ways of drawing the distinction and narrower, more essentially physicalistic ways that tend to undercut moral significance or relegate the moral aspects to the domain of "other circumstances".

In Dinello's account, condition (c) requires that x be in a position to perform certain movements. But Sanford notes quite correctly that more must be involved in the notion of "being in a position to do something" than mere physical possibility. Just because a physician could have saved his dying patient's life by killing some innocent bystander to provide healthy kidneys, it does not follow that he "let his patient die."4 At any rate, merely because it was physically possible for him to do certain (completely unethical) things that could save the patient's life, I think most of us would be reluctant to use the phrase "allow to die" or "let die" to apply to his failure to do these things. Here again, one suspects that, over and above the mere physical possibility, certain expectations of what is "reasonably possible" within the framework of our ethical judgement are essentially involved. So Dinello's account, in the end, is not much of an advance over Fletcher's suggestions.

In other ways too, more questions are begged than answered. We want to say of the nurse who removes the ventilator from a patient with advanced terminal emphysema who died "as a

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4This was pointed out by David Sanford (1976).
result" that he or she let the patient die. But do we want to say that the patient died as a result of the removal of the ventilator or as a result of the emphysema? The analysis is not much help, because "as a result" (the expression in the analysans) is about as problematic as the analysans "killed".

Another disadvantage of the analysis is that by emphasizing the performing of movements, it does not make clear why we say that one person lets another drop a revolver in a sewer, by removing a manhole cover. Nor can it square with our saying that one person kills another by not letting him breathe. The question remains whether a conceptual analysis of the distinction can be given that may at least give us a minimal philosophical basis in theory for helping to adjudicate on the issue. Throughout, we have seen hints that such a basis is only to be found in a theory of action. Thus we are carried over a wide gap from the life-or-death decisions of medical practice to the abstract philosophical domain of the language of action.

My own suggestion (1976) is that the underlying syntax of the distinction can be characterized by the following equivalence: x allows p if, and only if, x does not bring it about that not-p. In other words, bringing about and allowing are related to each other by a process of double negation. Whether this way of drawing the distinction may be more naturally extended to the broader or narrower family of bringing-about concepts is of course a question that only further investigation may resolve. Indeed whether bringing about and its cognates are systematically ambiguous in the way our dialogue seems to indicate is a question that remains for the theory of action.

In a fuller treatment (1978) I have tried to show how the distinction between bringing about and letting happen can be modelled in a theory of action which takes as its basis the notion of a game-tree. The nodes of the tree represent points of time at which an agent may act or fail to act. Then a state of affairs Ø is said to be brought about by some agent at a node x if something he did or failed to do at x is such that Ø obtains at every node that is reachable from the node x. Ø is said to be allowed to happen by some agent at x if something he did or failed to do at x is such that Ø obtains at some node that is reachable from x.

Future research in medical ethics must look more to the study and analysis of concepts of action as they apply to ethical dilemmas arising out of the practical concerns of medicine and the law. Studies in the categories of the language of action have heretofore been predominantly pursued.
in an abstract theoretical fashion characterized by purely analytical philosophical investigation. It is time to put some of this theory to work in assisting to clarify the foundational categories of medical ethics.

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