DUCKING HARM AND SACRIFICING OTHERS

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I. In a recent paper, Christopher Boorse and Roy A. Sorensen call attention to what they take to be an important and interesting nonconsequentialist constraint on distributing harm. This constraint presupposes a distinction between merely "ducking harm" and "sacrificing others." Specifically, it claims that there is a difference in the moral status of the two sorts of actions; there are stronger reasons not to sacrifice others than not to merely duck harm. Indeed, these reasons not to sacrifice others may be decisive, whereas it may be permissible merely to duck an impending threat. Boorse and Sorensen begin as follows:

...two campers, Alex and Bruce, meet a ravenous bear. As Alex grabs his running shoes, Bruce points out that no one can outrun a bear. 'I don't have to outrun him,' Alex replies. 'I only have to outrun you.' Few contemporary Westerners will criticize Alex for running away full tilt, or even for using his new Sauconys. But suppose Alex instead ties Bruce's ankles, or knocks Bruce unconscious and throws him to the bear. Alex is now blameworthy in ethics and in law. The result is the same in both cases: Bruce's death. Further, Alex may know the result to be the same if he knows he can outrun Bruce. Nonetheless most people sharply distinguish the two acts.

They present the following three case-pairs to illustrate the distinction between ducking harm and sacrificing others:

Mall Gunman:
(a1) Angela, at the end of a movie ticket line, sees X about to shoot a .22 automatic at her. Angela knows that a .22 bullet will kill one person but not two. Angela leaps aside; the bullet kills Brenda, who is next in line.
(a2) Same as (a1), but Angela grabs Brenda and moves her in front as a shield; the bullet kills Brenda.
Speeding Truck:
(b1) Arthur, at the end of a line of stopped traffic, sees a runaway truck in his rearview mirror. Arthur changes lanes; the truck crashes into Brian's car, injuring him.
(b2) Same as (b1), but Arthur beckons to a new driver, Brian, to join the line behind him; Brian does so and is injured by the truck.

Terrorists:
(c1) Alison is one of 25 United States government officials on an airplane, each with a briefcase bearing an official seal. Terrorist hijackers announce they will kill one American per hour until their demands are met. Surreptitiously Alison covers her seal with a Libya Air sticker. The terrorists pass her briefcase and shoot Beatrice, the next American.
(c2) Same as (c1), but Alison has no Libyan sticker. Instead, she switches briefcases with Babette, a French novelist, while she is in the bathroom. The terrorists shoot Babette.

Although they realize that there is some important moral difference between the first cases and the second cases in the trio of pairs, Boorse and Sorensen proceed to explore (and to reject) various ways of explaining this intuitive difference. We shall not address any of these particular strategies. Rather, we wish to present a way of arguing that the members of the various case-pairs are not morally different in the sense suggested by Boorse and Sorensen; that is, we shall develop a strategy of argumentation which appears to imply that it is not the case that there are stronger moral reasons not to sacrifice others than not to duck harm.

II

Whereas upon first scrutiny the distinction between ducking harm and sacrificing others appears to have some moral force, it is interesting to see that there is a form of argumentation which casts some doubt on this. Because this form of argumentation raises some difficult and delicate questions, we would not claim that it presents decisive reason to reject the moral significance of the distinction. But we believe that the strategy of argumentation presents at least a prima facie problem for the proponents of the moral significance of the distinction. We shall lay out the arguments, after which we shall address a potential objection.
We shall proceed by presenting sequences of cases involving examples which are in some sense "intermediate" between the two members of the case-pairs presented by Boorse and Sorensen. These sequences link the two members of the case-pairs; indeed, consideration of the sort of linkage found in the sequences strongly suggests that there is no relevant moral difference between the members of the trio of pairs presented by Boorse and Sorensen.

Case 1 is (c1) of Boorse and Sorensen. Recall that in this case Alison hides her United States government seal, thus causing the terrorists to
pass her by and shoot Beatrice. Now consider Case 2, depicted in Figure 1. A trolley whose brakes have failed is hurtling down the tracks; it cannot be stopped. The two individuals positioned on the tracks are "morally equivalent" in the sense that nothing about their characters, past actions, or future potential distinguishes them, from a moral point of view. (For example, neither has been warned of the dangers of trains on the tracks, or assured that there are no such dangers, and so forth.) Note that X and Y are both heavy enough to stop the progress of the trolley. X sees the trolley coming. He knows the tracks are set up so that the trolley will run over him, unless he ducks. He does duck, but this results in the train running over Y, who is unable to escape quickly enough.

In Case 3 everything is as in Case 2, except that X can push a button which will cause the trolley to go straight, running over Y (who cannot escape quickly enough). X does push the button, and Y is killed. (Y is heavy enough to stop the train.) In Case 2, X ducks and the train runs over Y; in Case 3, X redirects the train so that it runs over Y. Finally, Case 4 is (c2) of Boorse and Sorensen. In this case Alison switches briefcases with Babette, and the terrorists shoot Babette.

We do not see how these cases could plausibly be thought to differ morally. Indeed, if one considers the sequence, "1, 2, 3, 4," it is hard to see where there is a factual transition which can plausibly be said to underwrite a moral difference. Thus, using the "method of intermediation," one can apparently construct an argument for the conclusion that there is no relevant moral difference between "c1" and "c2."3

Now let Boorse and Sorensen's (a1) be Case 0: in this case Angela ducks out of the way of a bullet in a movie ticket line. And let (a2) be Case 5: in this case Angela grabs Brenda and moves her in front of the bullet as a shield. We claim that the sequence, "0, 1, 2, 3, 4, 5," gives at least some reason to think that there is no relevant moral difference between (a1) and (a2).

The following argument also leads to precisely the same conclusion. Let Case A be (a1). Recall that in (a1) Angela leaps aside and allows the bullet to kill Brenda. Now let Case B—depicted in Figure 2—be a case in which the heavy individual X knows that the train will proceed to come to the right and run him over, if he does nothing. (The tracks are set up in this way.) So he ducks, and the train proceeds around on track "ii" (which is the set-up) and runs over Y, who is unable to escape sufficiently quickly.
Case C is similar to B. X knows that the tracks are configured so that the train will come to the right and run him over, if he does nothing. But he can press a button which will cause the tracks to reconfigure so that the train will go straight and then take track "ii." He pushes the button, thus causing the train to run over Y. In Case B, X ducks and the train proceeds to run over Y; in Case C, X redirects the train which proceeds to run over Y.

Let D be a case in which the tracks are so configured that the trolley will proceed along track "i" and then around to where X is, if X does nothing. But X can press a button to shunt the train from "i" to "ii." X does
so, and the trolley runs over Y. Now Case E is like D except that X’s pushing the button would cause the heavy individual Y to topple onto “i” and in front of the trolley. (It is here assumed that “i” and “ii” are close together.) X pushes the button. In D the pressing of the button causes the tracks to (let us say) “jiggle” in such a way as to redirect the train; in E the pressing of the button causes the tracks to jiggle in such a way as to reposition an individual. Finally, let Case F be Boorse and Sorensen’s (a2). In this case Angela grabs Brenda and uses her as a shield.

It appears that the sequence, “A, B, C, D, E, F,” shows that there is no relevant moral difference between (a1) and (a2). Indeed, it at least seems that the only way to maintain that there is such a difference is to point to some factual transition that could plausibly underwrite a relevant moral difference; but it is highly dubious that this could be done. Where in the sequence could one plausibly draw a moral line? Further, we believe that the same reasoning applies, mutatis mutandis, to Boorse and Sorensen’s (b1) and (b2). Thus, the method of intermediation generates at least some reason to think that the members of the trio of case-pairs presented by Boorse and Sorensen do not relevantly differ morally.

III

In the previous section we employed the method of intermediation to call into question the moral significance of the distinction between ducking harm and sacrificing others. But someone might challenge the legitimacy of this method. Clearly, there are illegitimate and specious uses of “slippery-slope” argumentation; it is beyond dispute that one can generate all sorts of apparently paradoxical results by using “sorites-type” argumentation. Someone might claim that the method of intermediation is relevantly similar in form to the specious sort of slippery-slope and sorites argumentation.

The challenge could be put as follows. Indisputably, day becomes night; and indisputably, periods of time during the afternoon are different from periods of time during the night. But if one were challenged to say exactly when day becomes night, one would surely be hard pressed to do so. And of course from one’s inability to specify the precise point of demarcation, it does not follow that there is no difference between day and night. Similarly, someone might contend that, from one’s inability to specify the precise point of moral demarcation in the above sequence of examples, it does not follow that there is no interesting moral difference between the terminal points. Against this, we wish to claim that there are certainly legitimate and
valid uses of slippery-slope argumentation, as well as clearly illegitimate uses of such argumentation. Further, not all uses of transitivity are problematic. The question then becomes whether the method of intermediation is relevantly similar to the legitimate uses of such patterns of argumentation, or the illegitimate ones. Regrettably, we do not have a way of arguing decisively that the method of intermediation is properly assimilated to the valid uses of this pattern of argumentation rather than the invalid uses, but in what follows we shall attempt at least to give some reason to think that the method is more similar to the kosher forms of argument than to the obnoxious forms. In what follows we shall lay out more carefully the form of argumentation of the method of intermediation and distinguish it from clearly fallacious forms of reasoning. Then we shall give an example from another context within moral philosophy of a structurally similar form of argument, and we suggest that this similar type of argument is not objectionable in respect of its form.

In the method of intermediation one begins with a case A which has two sorts of properties: call them “first-level properties” and “second-level properties.” The second-level properties in some sense depend on or supervene on the first-level properties. Specifically, in the examples above the first-level properties are physicocausal features, and the second-level properties are moral features (which correspond to claims about permissibility). One reasons as follows. Case A has some first-level property p1 which underlies a second-level property P1. Now case B has a slightly different first-level property p2, but p2 does not differ from p1 in such a way that if p1 underlies P1, then p2 does not. Thus, in case B p2 underlies P1. Case C has a slightly different first-level property p3, but p3 does not differ from p2 in such a way that if p2 underlies P1, then p3 does not. Thus, in case C p3 underlies P1. This process can be reiterated; in the cases employing the method of intermediation employed above, it is in fact reiterated once or twice more; we do not see how one or two more applications of the above form of reasoning can possibly affect its legitimacy.

As far as we can see, there is nothing wrong with the above argument-form. Consider, as an example, a particular shade of gray, G1, a second-level property which is associated at the first level with a number of different physical propensities to reflect light. These different propensities all underlie the same supervenient shade of gray. Considered (metaphorically) as lines, the different particular propensities to reflect light are all sub-segments associated with the line-segment, G1. Suppose g1 is a propensity associated with G1. Now imagine that g2 is slightly different from g1, but not so different that if g1 underlies G1, then g2 does
not. It follows that \( g_2 \) underlies \( G_1 \). And suppose further that \( g_3 \) is a propensity that is slightly different from \( g_2 \), but not so different that if \( g_2 \) underlies \( G_1 \), then \( g_3 \) does not. It follows that \( g_3 \) underlies \( G_1 \): \( g_1, g_2, \) and \( g_3 \) are all sub-segments associated with the same shade of gray.

Nothing seems formally wrong with the above pattern of argumentation. And, as above, one or two more applications of the above form of reasoning cannot possibly affect its legitimacy. It is important to contrast the above form of argumentation with clearly problematic ones. One cannot, for example, argue as follows. Because \( g_1 \) is associated with \( G_1 \) and \( g_2 \) is associated with \( G_1 \), it follows that \( g_1 \) and \( g_2 \) are identical or indistinguishable (at the first level). Clearly, they may be different and have distinguishable particular propensities to reflect light. Further, one cannot argue that, insofar as \( g_1, g_2, \) and \( g_3 \) all are associated with \( G_1 \), they are all equally "central" in respect of \( G_1 \); this is clearly an invalid inference, as \( g_1 \) and \( g_3 \) may indeed be relatively peripheral sub-segments of the line-segment that underlies \( G_1 \). All three propensities are "equally \( G_1 \)" in the sense that it is true of each of them that it is associated with \( G_1 \); but it need not be the case that all three are equally central cases of \( G_1 \).

Our claim then is that the method of intermediation employs an abstract argument-structure which is valid, and which can be distinguished from obviously invalid structures. It is interesting to note further that the pattern of argumentation used above does not have the surface form of the specious sort of sorites pattern. In the sorites pattern, one typically finds an inductive clause of roughly the following kind: if entity \( E \) has some property \( P \), then some entity suitably related to \( E, E+1 \), has \( P \). The paradoxical result is then generated by an extremely large number of applications of this inductive clause to some base case. But the form of the method of intermediation is fundamentally different; there is not a very large number of applications of some inductive clause specifying some very small change. Rather, three, four, or five cases are alleged to be identical with regard to one feature of their moral status (although admittedly factually different in certain respects). In the sorites, there is a huge number of applications of some tiny change, and this (together with the fact of a certain sort of continuity) is exploited to generate the paradoxical result; in the arguments employing the method of intermediation, a few cases which may indeed be substantially different factually (i.e., which do not differ only in some tiny way) are alleged to be morally similar in the relevant respects.

One encounters the sort of argumentation adumbrated above in various contexts. Frequently, the argument-form is invoked as a heuristic
device; it assists in bringing out some point which could in principle be seen in a more direct way. As an example, we shall now sketch an argument of Michael Tooley. Tooley asks us to imagine that there is a special chemical which can be injected into kittens; the chemical causes no immediate macroscopic or psychological changes in the kitten, but it does cause microscopic changes in the kitten's brain which endow it with the potential to be a creature with a psychological life like ours. He also invites us to imagine that there is a neutralizing chemical which returns the kitten to its original state.

Tooley says that it would clearly be permissible to refrain from injecting a kitten with the special chemical, and painlessly to put it to death. (This presupposes that it is not seriously wrong painlessly to kill a kitten which does not belong to anyone; accept this for the sake of the argument, since what is at issue is the validity of the argument-form, rather than the truth of its conclusion.) Next Tooley claims that if this is so, then it would also be permissible to inject a kitten (already injected with the special chemical) with the neutralizing chemical, and then painlessly put it to death. Now Tooley claims that if this is so, then it would be permissible painlessly to put to death a kitten which had already been injected with the special chemical; this process involves one step rather than two, but it does not seem morally different from the process in the previous case. Thus, Tooley's claim is that if it is morally permissible painlessly to put to death an unattached kitten, it is also morally permissible painlessly to put to death an entity that has the potential to be a creature psychologically just like us. He proceeds to conclude that considerations pertinent to potentiality do not generate a decisive objection to abortion.

Now we recognize that the conclusion is highly controversial, and that some of the steps along the way can legitimately be challenged. But all we wish to do is point to an example in which the form of reasoning is structurally similar to that of the method of intermediation employed above and in which it is not controversial that the form of the argument is valid. Note further that Tooley might have simply invoked the final case (in which it is allegedly permissible to painlessly put to death a kitten who had been injected with the special chemical) and claimed that it shows that certain views about abortion are mistaken; but presumably the form of argumentation he actually employs is heuristically useful. It can assist the reader in appreciating the force of an example whose force could in principle be appreciated more directly. Such an approach seems to be most appropriate when the conclusion in question is rather controversial or surprising.
In their very interesting piece, Boorse and Sorensen claimed that the distinction between ducking harm and sacrificing others has moral significance. They canvassed various possible explanations of this significance, but found none adequate. We have argued that, despite the initial appearance, the distinction in question has no moral significance (of the sort envisaged by Boorse and Sorensen). It would then not be surprising that they were unsatisfied with the various possible explanations they considered. Further, we have offered a defense of our method of argumentation. We have pointed out that there are valid argument-forms which are structurally similar to ours. The structure of the method of intermediation is different in certain important respects from that of the clearly specious forms of argumentation associated with the sorites paradox.

Finally, consider the form of reasoning that takes place in some legal contexts. Let us say that there is a law which specifies some paradigmatic way in which a contract can be breached. Presumably, however, there are many different ways of breach the contract which differ physico-causally from the paradigmatic case; these ways differ from the paradigmatic case, but not in such a way as to make it true that if the paradigm case is a breach of contract, these ways are not. Presumably, it is fair to reason as follows. The law specifies that b1 is clearly a breach of contract. Admittedly, b2 differs in certain physico-causal respects from b1, but b2 is not so different from b1 that if b1 is a breach, b2 is not. Therefore, b2 is a breach of contract. This sort of reasoning must be prevalent in the law. Further, there does not seem anything objectionable about reiterating the reasoning; if the reasoning is acceptable in one step, how could it possibly be unacceptable in two or three steps?

Notes

2 Ibid., 115.
5 This sort of response was suggested in correspondence with Roy Sorensen.

We now quote at length a letter from David Dolinko, Professor, UCLA Law School:

My immediate reaction is that there are millions of such examples, it happens all the time. Unfortunately, I run into difficulties when I actually try to provide you with a concrete illustration! Perhaps criminal and constitutional law are too high-level to provide good examples—judges in such cases are forever trying to explain why the new case is really like the old one, by subsuming it under some verbal formula, instead of clearly expressing the thought that the new case is simply ‘sufficiently like’ a paradigm example. In any event, at the moment I have thought of two or three examples....

In the Katz case, in 1967, a major Fourth Amendment decision, the Supreme Court decided that that Amendment’s prohibition of ‘unreasonable searches and seizures’ applied to the electronic ‘bugging’ of what defendant said in a public phone booth—i.e., to electronic eavesdropping. Implicit in the Court’s decision is the notion that such eavesdropping is ‘sufficiently like’ standard kinds of searches and/or seizures so that it should qualify as a search or a seizure....

In Tinker v. Des Moines Independent School District, 393 US 50# (1969), the Court treated wearing black protest armbands as ‘closely akin to “pure speech” which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.’ And in Bullington v. Missouri, 451 US 430 (1981), the Court treated a jury’s sentence of life imprisonment, after defendant had been convicted of capital murder, as the equivalent of ‘acquittal’ of the death penalty for double jeopardy purposes—meaning that after defendant’s conviction was reversed and a new trial ordered, no death sentence could be imposed if defendant got convicted again at the new trial.

Finally, in US v. Jewell, 532 F.2d 697 (9th Cir. 1976), the Ninth Circuit held that a statute penalizing someone who ‘knowingly’ brings marijuana into the country applies also to one who doesn’t literally KNOW he’s got pot, but only because he consciously avoids inquiry that could confirm his suspicions.

We are very grateful to Alexander Rosenberg and David Dolinko for their help.