

On the Paradox of Deontological Restrictions

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Most people find it intuitive that there are some things that are just plain wrong, no matter what. Enslaving some minority group or torturing the innocent are prime examples of such things. Nevertheless, there are some, called *consequentialists*, who think there are circumstances in which any action, no matter how vile in the estimation of common sense, is not merely permissible but positively obligatory if performing it is expected to produce more good than any of its alternatives. In his article “The Consequentialist Perspective”, William Shaw argues that the commonsense view that something can be wrong even though it leads to the production of the most good is actually paradoxical. In what follows I will show that while Shaw’s argument may be fatal to certain forms of deontology, it leaves a moderate form of particularism of the sort advocated by W.D. Ross unscathed.

Before we begin, it will be good to briefly explain the moral theories that are relevant to our discussion. Consequentialism is the view that all and only those actions are right which maximize the total amount of goodness in the world, or at least those actions which are expected to do so. Deontologists and particularists, by contrast, both think that one is sometimes prohibited from maximizing the good. They differ in that deontologists hold there are a great many moral principles that require or prohibit certain actions in all circumstances—or else that there are moral principles which always count for or against a certain action, even when they are trumped by other moral principles—while particularists hold there are few such principles, if

any. Instead, particularists think that what counts as a reason for an action in one case will most often be found to constitute a reason against that action in other cases, and *vice versa*.

Shaw's paradox stems from the fact that non-consequentialist theories regard certain actions as prohibited even when they maximize the good. It arises when one is in a situation where, by violating some deontological restriction R, one can thereby prevent more violations of R (Shaw, p. 473). For example, by killing an innocent person who is detested by an angry mob, one might placate them, and thereby prevent the mob from killing eight other innocent persons. Many deontologists would condemn such an action as immoral. But, Shaw would urge, if one thinks that killing the innocent is such a bad thing, shouldn't one feel obliged to prevent as many innocent persons from being killed as possible, and hence kill the one innocent person to prevent the mob from killing the other eight as well? Yet these same deontologists would persist in their belief that one ought not to do so. Is their view defensible?

My answer is: It depends. In this particular case I think Shaw may be right, but I also think that the case does not generalize. On the view I advocate, one cannot say in general whether or not it is permissible or even required to violate a certain deontological restriction R in order to prevent further violations of R. On a quasi-deontological, quasi-particularist view like that of W. D. Ross, one might say that it depends on which restriction R is, in what ways one expects it to be violated, how one plans to violate it oneself, the motives of the various parties involved, and so on. It also depends on how one spells out the idea of a deontological restriction, as I will explain below.

Ross's view is roughly as follows. Instead of having one fundamental moral principle from which all our duties can be derived, he posits a variety of duties which he regards as mutually irreducible (Ross, pp. 754-755; see especially the right column of 755). Ross

distinguishes one's *prima facie* duties from one's duty proper, or actual duty. A *prima facie* duty is that which appears to be one's duty; it counts in favor of one's performing an action, and would be one's duty proper—what one *actually* should do—if it were the only morally significant consideration (Ross, p. 754). Oftentimes, however, it is *not* the only morally significant consideration. One can have multiple *prima facie* duties which conflict with each other. For example, one's *prima facie* duty not to lie can conflict with one's *prima facie* duty not to tell an inquiring murderer where one's friend is hiding. Ross also holds that some *prima facie* duties are more stringent than others, which can resolve a conflict between *prima facie* duties. In the above scenario, the *prima facie* duty not to lie is much less stringent than the other one.

Having expounded our theory, we can return to Shaw's paradox. Suppose one thinks that, for whatever reason, telling a lie is the only way to prevent three other people from lying. Suppose further that the lies, while not significantly harmful, or perhaps even neutral, are not well-intentioned. The motive of the three is not to spare someone's feelings, as with a white lie, but solely to benefit themselves. Of course, one would have to know more details of the case to reach a final judgment, but I would say that in a case like this one is probably not required to prevent the three from lying. The parties being deceived by the three are *wronged*, but are not *harmed* enough to warrant one's interfering, since the only way to interfere is to lie oneself. For I maintain that there is an important difference between wronging someone and harming them. To wrong someone is to treat them unjustly, either by denying them something which they deserve or dealing with them in a way which does not befit their dignity as a person. To harm someone is to do them physical, psychological or emotional damage. One can wrong someone without harming them, such as by refusing to pay them the five dollars one owes them. One can also

harm someone without wronging them, for example by shocking a fleeing criminal with a stun gun.

I also maintain that one has both a *prima facie* duty to prevent harm and a *prima facie* duty to prevent wrong-doing, and that the former duty is more stringent than the latter. It is primarily in those cases where wrong-doing *involves* harming someone, whether physically, psychologically or emotionally, that one becomes obliged to prevent it. (There is, however, an exception in one's own case, for then one's *prima facie* duty to prevent wrong-doing collapses into one's *duty proper* not to do wrong oneself.) In cases where little to no harm is involved, one is not required to prevent violations of a deontological restriction by violating it oneself. For if one has exhausted one's other options, such as trying to rationally persuade the three not to lie, why should one stoop to their level when the only thing being harmed by their deceit is their own moral integrity?

Things are different in the case of the angry mob. In that case there is a great probability that eight innocent persons will be killed. The mob cannot be reasoned with, and they are intent on harming a person or persons other than themselves. In this case one might be justified in killing the person who is the object of the mob's hatred in order to prevent the death of eight more innocents. (One might even try to obtain their consent to be killed, to mitigate the severity of one's action.) But what would justify one in acting this way is one's duty to prevent harm, not one's duty to prevent others from doing wrong. One should act to protect the innocent; not to prevent the mob, whose intentions are murderous, from bringing even more guilt on themselves by acting on those intentions. One would of course prevent that, but it need not be one's goal in acting.

My view is subject to a couple objections. First, can one really say, on a view like Ross's, that one is either permitted or required to violate what Shaw calls a "deontological restriction"? One might be said to violate deontological restrictions which hold in most circumstances, but if one is permitted or required to violate some deontological restriction R, isn't that because R is not morally binding in that case? And if R isn't morally binding in that case, what exactly is one "violating"?

As Shaw formulates the paradox, it presupposes that one *can* be required or permitted to do something wrong. Thus he says, "It seems illogical for a theory to forbid the performance of a morally objectionable act when doing so would reduce the total number of such actions and would have no other relevant consequences" (Shaw, p. 473). I think this way of putting the matter is inapt. The Rossian should respond by saying that if in such cases one is required to prevent others from violating some deontological restriction R then one's acting contrary to R does not count as a violation of one's duty proper, and hence is not actually wrong, even though one has a *prima facie* duty not to do it. One can be justified in violating one of one's *prima facie* duties, especially when two or more *prima facie* duties conflict, but it is surely impermissible to violate one's duty proper. From the perspective of a Rossian, Shaw's term 'deontological restriction' is ambiguous. If one identifies a deontological restriction with one of one's *prima facie* duties, then in many circumstances one can be required to violate it, but if one identifies a deontological restriction with one's duty proper, then one cannot be required to violate it. In consequence, the answer to the above difficulties is that once we distinguish one's *prima facie* duties from one's duty proper, Shaw's paradox simply dissolves.

Second, one might wonder whether it makes sense to regard one duty as being more stringent than another. David McNaughton has worries of this sort (McNaughton, pp. 766-769).

He argues that, in choosing between two or more alternatives, beneficence—that is, one’s *prima facie* duty to do good—always prescribes the course of action which is productive of the most good. If the alternatives are roughly equal in this respect, then some other duty may tip the scales in favor of the alternative which *it* prescribes. But what if the alternative prescribed by beneficence is prohibited by another *prima facie* duty? In that event, McNaughton thinks beneficence will prevail only if the good that one’s action will produce is so great that it surpasses the weight of any competing *prima facie* duty one may have. Thus McNaughton holds that the fact that these other *prima facie* duties are distinct from beneficence is enough to explain our intuitions regarding such an event, without any need to invoke the idea that one *prima facie* duty is more stringent than another (McNaughton, pp. 767-768).

This objection *might* be valid if one only considers instances of conflicts between beneficence and some other *prima facie* duty, as McNaughton does. But what about those instances where there is a conflict between two or more *prima facie* duties which are *distinct* from beneficence? I agree with McNaughton that beneficence is always relevant to some degree, but it may happen that all the alternatives available to one are equal in value, while at the same time one *prima facie* duty prescribes some alternative and another prohibits it. Beneficence cannot resolve a conflict of this sort because the value of each alternative is equal. If neither of these *prima facie* duties is more stringent than the other the conflict is irresolvable in principle, since the value of the consequences of one’s action and the weight of one’s *prima facie* duties jointly exhaust one’s morally significant considerations in any given case. If the conflict were irresolvable in principle, however, that would have a devastating impact on our moral lives. For there is a very large number of cases where there is a conflict between *prima facie* duties which

does not involve beneficence. Given this consequence, I think it is more reasonable to suppose that some *prima facie* duties are more stringent than others than to suppose the opposite.

McNaughton has another argument against one *prima facie* duty's being more stringent than another (McNaughton, p. 768). He tries to make sense of a passage in which Ross says that one can break a trivial promise to bring about a great amount of good, but McNaughton finds that he cannot do so. McNaughton considers an interpretation according to which there are two scales, one for breaches of fidelity (such as breaking a promise), and another for beneficent actions, each ranked from least to greatest. Beneficence will trump a breach of fidelity just in case the beneficent action is higher on its scale than the breach of fidelity is on its scale. McNaughton thinks this kind of comparison makes no sense, because there is no "top" to the scale of beneficent actions. Because there is no top to the scale, he says, there is no way of determining how "high up" on the scale an action is, and hence no way of comparing the actions on each scale with each other.

I find this argument puzzling. Seeing how far something is from the top of a scale is one way to find out how far up it is, but there is another, which is to see how far it is from the *base*. McNaughton does say that one needs to know the top of the scale as well as its base (McNaughton, p. 768), but it seems to me that knowledge of the base is sufficient. So long as each scale has a zero point—that is, a point on each scale where an action has no "weight"—one can compare two actions' respective "heights" based on how far each of them is from the zero point of its scale, even if there is no "top". All one has to do to find out which action is more weighty is determine which one has a greater value on its scale. That being so, I see no reason to conclude that a comparison between scales like those mentioned above is impossible.

In conclusion, the paradox of deontological restrictions is bound up with a variety of complex issues. I have only been able to address a few of them here, but I think I have shown that an approach like Ross's has the resources to provide a promising solution to Shaw's paradox.

Bibliography

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