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LETTERS TO A LAW STUDENT

**A GUIDE TO STUDYING
LAW AT UNIVERSITY**

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Pearson



Letters
to a
Law Student

Contrast:

Nuclear. President Truman authorised the dropping of a nuclear bomb on each of the Japanese cities of Hiroshima and Nagasaki, on 6 August 1945 and 9 August 1945, respectively. He did so in order to force the Japanese authorities to surrender to the Americans, and save the thousands of American lives that would have been lost in attempting to bring World War II to an end by invading and conquering Japan.

On the argument developed here, President Truman acted wrongly. He used the lives of the Japanese residents killed in Hiroshima (up to 160,000 people) and Nagasaki (up to 80,000 people) as a means of saving the lives of American soldiers, even though the Japanese who were killed by the dropping of nuclear weapons were innocent people.

The idea that the Kantian injunction against using people as a means to an end only applies where the people in question are innocent might explain why there is a difference between *Surgeon* and *Fat Man* on the one hand, and *Terrorist* on the other. In *Surgeon* and *Fat Man* the people we would be treating as a means to an end are innocent people – in *Surgeon*, the homeless person, and in *Fat Man*, the Fat Man. Whereas the terrorist in *Terrorist* is not an innocent person. So it might be okay to torture the terrorist in *Terrorist* because he played a part in creating the threat posed by the nuclear device that was planted in London. On the other hand, it wouldn't be okay to torture in the following scenario:

Daughter. The terrorist in *Terrorist* will not give up the information as to the location of the nuclear device. So the terrorist's daughter is brought in, and it is proposed to torture her in front of the terrorist, in order to get the terrorist to say where the nuclear device is.

This would not be allowed under the Kantian rule against treating people as means to an end. The daughter is an innocent person and cannot therefore be tortured as a means of finding out the location of the nuclear device that has been planted in the middle of London. We are only allowed to torture the terrorist.

And if the terrorist won't crack and give us the information we want when we torture him, as opposed to torturing his daughter? That's the big question. Either we become utilitarians and decide that it is okay to torture the daughter, even though she is an innocent person. Or we remain Kantians and refuse to compromise on our principles, even if that might mean millions of Londoners dying. What would you do?

All best wishes,

Nick

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Acts and omissions

Dear Jess,

In the last letter I wrote for you, I looked at one possible moral principle that we have to live by, which is that we should not use people as a means to an end. Today I am going to look at a different moral principle – which is that acts are worse than omissions.

What I mean by ‘act’ is your doing something that makes someone worse off than they would have been had you done nothing at all; and what I mean by ‘omission’ is your failing to do something to make someone better off. To illustrate the distinction, consider the following two cases:

Boat. Tom and Dickie go out to sea in Dickie’s boat. When they are some way out to sea, they get into an argument and Tom hits Dickie over the head with an oar, and pushes his unconscious body into the sea. Dickie drowns.

Swimmer. Freddie goes swimming and gets into trouble and starts to drown. Marge, who is sunbathing on the beach, notices that Freddie is drowning, and could easily draw the attention of the breach lifeguard to Freddie’s plight. But she does nothing. Freddie drowns.

Boat is an ‘act’ case – Tom has done something to make Dickie worse off than he would have been had Tom done nothing at all. *Swimmer* is an ‘omission’ case – Marge has done nothing to make Freddie worse off than he would have been had she done nothing at all (in fact, she has done nothing at all). Instead, Marge has merely failed to make Freddie better off – she’s failed to call the lifeguard when doing so (let’s suppose) would have saved Freddie’s life.

The moral principle that acts are worse than omissions says that Tom has done something worse than Marge. It's worse to drown someone than it is to fail to save someone from drowning. As the poet Arthur Hugh Clough observed in his poem *The Latest Decalogue* ('decalogue' is a fancy word for the Ten Commandments): 'Thou shalt not kill; but need'st not strive / Officiously to keep alive.'

The law certainly takes the position that acts are worse than omissions. In *Boat* Tom would be found guilty of murder (intentionally causing someone's death), but in *Swimmer* Marge would not be found to have committed any criminal offence by allowing Freddie to drown.

In this letter I want to address two issues. First, is it right to say that acts that bring about a certain bad outcome are morally worse than failures to prevent that kind of outcome occurring? Second, is the law justified in treating acts more seriously than omissions?

Morality

One reason for saying that acts are morally worse than omissions is that if there was no distinction between acts and omissions, certain bad consequences would ensue. Specifically: (1) we would be faced with certain impossible moral dilemmas; and (2) normal life would become impossible.

As an example of (1), let's think about a variation on the Trolley Problem that we first met in my last letter to you. If you remember, the Trolley Problem involves a runaway train or tram which is going to run down a certain number of people unless it is diverted onto another track, where it will run down some other people. In the original Trolley Problem, it was five people who were going to be run down if the train or tram continued on its existing track, while it was one person who was going to be run down if the train or tram were diverted.

But what about this situation?

Inevitable. A runaway train is on course to run down one person (Tina) unless it is diverted onto another track, where it will run down another person (Harry). You get to decide whether to pull the lever that will divert the train. What do you do?

If acts and omissions were morally the same, you would be in an impossible position in *Inevitable*. If you pull the lever, then that is an act that will kill

Harry (it's an act because Harry will be made worse off by your pulling the lever than he would have been had you done nothing at all). But if you don't pull the lever, that's an omission – a failure to save Tina from being run down and killed. If acts and omissions are morally the same, it seems like whatever you do, you will do something wrong.

The moral principle that acts are worse than omissions saves you from being condemned to do something wrong in *Inevitable*. It would be worse if you pulled the lever and diverted the train into killing Harry than it would be if you left the lever alone and let the train proceed on its way and run down Tina. So you should not pull the lever – unless there's something else about the situation that would make it worse to allow the train to carry on than it would be to divert it.

Turning to (2), how would normal life become impossible if acts were *not* morally worse than omissions? Well, it would become impossible because we are all of us guilty, all the time, of failing to save people from harm. The money I spent on Christmas presents for my loved ones could have been given to charity, and that money used to save someone's life. If that omission – that failure to save someone's life – was as bad as actively killing someone, then no more Christmas presents for my loved ones! All my spare money would have to go on trying to save people's lives by donating money to charity. And what about my time? Instead of writing this letter for you, maybe my time would be better spent standing outside in the cold trying to raise money for charity, or getting on a plane (if such a thing is possible at the moment) to work in some far-off country trying to save people's lives.

Now – there *are* people who think along those kinds of lines. They don't necessarily think that omissions are just as bad as acts. What they tend to focus on is outcomes – they think that omitting to donate £5 to charity is worse than spending £5 on a nice ice cream. They think – well my £5 (with lots of other people's five pounds) could save someone's life, so how can I spend that £5 on ice cream for myself? I think people who think like that are really wrong to do so, and they lead very sad lives driving themselves into the ground because they basically turn over everything they have to trying to save other people from harm. What's more interesting is that normal people would *not* think that failing to donate £5 to charity is worse than spending £5 on an ice cream. Which just goes to show just *how much* omissions are *less bad* morally than acts. They are so much less bad that we feel perfectly okay (and we are right to do so) spending £5 on an ice cream when we could give that money to charity instead.

Having said that, not *all* omissions are morally less bad than acts. Parents who failed to feed their baby, with the result that the baby starved to death,

would not be regarded as morally less bad than parents who positively killed their baby by giving it something poisonous to eat. In fact, the parents who starved their baby to death might be regarded as worse because the baby's sufferings as it starved to death would probably be much worse than would be the case if it were poisoned and killed.

We tend to mark out the situations where an omission is as morally bad as an act by saying that in those situations there is a *moral duty to act*. So parents have a moral duty to feed their children. By contrast, in *Swimmer* Marge did not have a moral *duty* to save Freddie's life – instead, saving Freddie's life would have been a *good* thing to do, and had Marge saved Freddie's life, she would have deserved a lot of praise and credit for doing that good thing. (By contrast, we tend not to shower praise and credit on people for doing what they morally ought to do in any case.)

In what other situations does someone have a moral duty to act to save someone's life, so that their failure to act is morally as bad as positively bringing about someone's death? Well, we would normally think that a *doctor* who just stands by and allows a patient to die is just as bad as a doctor who does something positive to bring about the patient's death, for example by injecting them with a poison. So we say that a doctor has a duty to treat a patient. And we would also think that a doctor who tries to save a patient's life but is so incompetent in doing so that they fail to save the patient's life when they could easily have done so is just as bad as a doctor who incompetently kills a patient by giving them a drug that (as the doctor should have known) they were allergic to. So we not only say that doctors have duties to treat patients; they have a duty to treat them *well*.

But a doctor won't always have a duty to treat a patient well: sometimes there is nothing they can do for them. This could be either because the patient's condition is so bad, no treatment will make them better. Or because the hospital where the doctor is working does not have enough resources to allow the doctor to treat the patient well. For example, consider:

Incubators. A hospital has six incubators where premature babies can be placed and looked after. All six are full when a seventh premature baby – Sally – is born in the hospital. You are the doctor in charge of the hospital, and therefore in charge of Sally's care. What should you/can you do in this situation? Should you/can you take one of the babies currently in the incubators out of their incubator and replace them with Sally?