Against the ‘Bare Difference’ Argument
(Thomson and Kagan)

1. Thomson’s Objection: Recall James Rachels’ ‘Bare Difference’ argument against the distinction between killing and letting die:

1. If killing is morally much worse than letting die, then what Smith does (namely, drown his cousin) is morally much worse than what Jones does (namely, watch his cousin drown without intervening). (Alternatively: Pushing the button in Tooley’s Button case is much worse morally than doing nothing.)
2. What Smith does is NOT morally much worse than what Jones does.
3. Therefore, killing is not morally much worse than letting die.

Judith Thomson thinks this sort of argument is a bad one. She says it is no better than the following one that “proves” that cutting off someone’s head is no worse than punching someone. Consider two cases:

Decapitation  Alfrieda knows that if she cuts off Alfred’s head he will die, and, wanting him to die, cuts it off.

Nose Punch  Bertha knows that if she punches Bert in the nose he will die—Bert has a rare health condition—and, wanting him to die, punches him in the nose.

What Alfrieda does is just as wrong as what Bertha does. So, have we proved that there is no moral difference between cutting off someone’s head and punching someone in the nose? Not at all, Thomson says. At best, all we have shown is that decapitating someone CAN BE as bad as punching someone in the nose. But obviously, in many (nearly all?) cases, the former is still worse than the latter.

So, though Rachels’s Smith-Jones case MAY have proved that allowing harm is SOMETIMES just as bad as doing harm, has he proved that it is ALWAYS just as bad?

One explanation for why the Smith and Jones cases both seem equally bad is that, in BOTH cases, the harm is done (or allowed) INTENTIONALLY, FOR PERSONAL GAIN, and WITHOUT THE VICTIM’S CONSENT. Perhaps these factors have what Trammell called a “sledgehammer effect”. He writes, “The fact that one cannot distinguish the taste of two wines when both are mixed with green persimmon juice does not imply that there is no distinction between the wines.”
2. **The Additive Fallacy (Kagan):** The mistake, as Shelly Kagan points out, is in the assumption that “if variation in a given factor makes a difference anywhere, it makes a difference everywhere.” (He calls this the **ubiquity thesis**.) Specifically, if there is ever a moral difference between doing and allowing harm, then there is ALWAYS a moral difference between them. But, as Trammell pointed out, two wines will both taste the same if they are both spiked with persimmon juice (their differences will be MASKED by the added juice). But perhaps the difference can even be completely NULLIFIED in some cases. To demonstrate, Kagan uses both a chemical and a mathematical analogy:

- **In chemistry:** The presence of oxygen SOMETIMES makes a difference as to whether something burns (e.g., when dry paper and a flame are also present), but sometimes it does not (e.g., when the paper is wet). Yet, this does not entail that the role of oxygen in the laws of chemistry is not universal; i.e., always true.

- **In mathematics:** In the formula \( S = x \cdot y + z \), the value of \( x \) SOMETIMES makes a difference to the value of \( S \), but sometimes it does not (e.g., when \( y=0 \)).

In ethics, it does seem that the distinction between killing and letting die at least SOMETIMES makes a difference (e.g., in Crowded Cliff), but sometimes it does not: For instance, pushing an attacker into a pit in self-defense as well as failing to save or warn an attacker from falling into a pit both seem to be permissible / morally equivalent. (Imagine that ‘\( y \)’ stands for ‘self-defense’ and can have a value of either zero or one.)

**The Lesson:** So, as we move forward, we must keep in mind that, if we DO accept that the difference between doing and allowing harm (or intending and foreseeing harm) makes a moral difference in some instances, this does not commit us to the conclusion that it makes a moral difference in ALL instances. In short, the ubiquity thesis is false. (Those who disagree are guilty of committing what Kagan calls **The Additive Fallacy**.)

### Killing and Letting Die
*(Foot)*

1. **Killing vs. Letting Die:** Philippa Foot presents two cases:

   **Rescue I** You are alerted by radio that 5 people are about to drown a mile away, trapped by a quickly incoming tide. If you hurry, you’ll have just enough time to drive there and save them. You jump into your jeep and take off. On the way there, you see that one person is drowning in a pond on the side of the road. If you stop to save her, you will not be able to get to the 5 in time to save them. You step on the gas, passing by the one, but saving the 5.
Rescue II The same as Rescue I, but note that the road which leads to the drowning 5 is a very narrow cliffside road with no room to maneuver. On the way there, you see that one person is unconscious in the middle of the road. If you stop to move her to safety, you will not be able to get to the 5 in time to save them. You step on the gas, running over the one, but saving the 5.

Are either of these actions permissible? Most people have the intuition that your action is permissible in Rescue I, but not in Rescue II. Foot takes this to be evidence that there is a moral difference between doing and allowing harm (or killing and letting die).

2. Foot’s ‘Sequence Initiation’ Proposal: But, what EXACTLY is it that we find morally objectionable in Rescue II? Killing? No, for it seems like ordering an innocent person’s execution is just as wrong as carrying it out—and for the same reason. She writes,

“It makes all the difference whether those who are going to die if we act in a certain way will die as a result of a sequence that we originate or one that we allow to continue …”

In short, Foot’s proposal is as follows:

**Doing Harm** =df Originating or sustaining a harmful sequence

For instance, in Rescue I, any of the 6 who die would die as the result of a sequence which you did NOT originate. But, in Rescue II, if you run over the one, then she will die as a result of a sequence which you DO originate. In short, your choices are:

Rescue I – Allow 1 to die or allow 5 to die
Rescue II – Kill 1 or allow 5 to die

3. Positive vs. Negative Duties: What GROUNDS this moral distinction? Foot appeals to a distinction between positive and negative rights and duties:

**Negative Right** – A right to not be interfered with; i.e., a right to NOT be treated in a certain way. For instance, a right to life amounts to a right to NOT be killed; a right to liberty amounts to a right to NOT have our freedom restricted; and so on.

**Positive Right** – A right to (be given) goods and services. For instance, a right to the aid of others, or to an education, health care, or a fair trial all amount to rights to be GIVEN various goods, services, or benefits.
In short, rights are moral CLAIMS that we have on others. Furthermore, plausibly, these in turn give rise to moral DUTIES in others. For instance, if I have a right to life, this generates a corresponding in you a DUTY to not deprive me of it (i.e., not kill me); if I have a right to your aid, then you have a DUTY to aid me; and so on.

But, we often have negative rights/duties to certain things, but no corresponding positive rights/duties. For instance, you have negative duty to not TAKE my wallet and throw it in the river. However, you do NOT have a positive duty to help me RECOVER my wallet if I've lost it in the river.

So, Foot notes, it follows that, in some cases, we may have a negative duty that is not overridden, but either (a) no positive duties at all, or (b) positive duties that ARE overridden. And this seems to be true of Rescue II.

Summary: Foot thinks all negative rights boil down to a basic right to non-interference. We have a right to not be interfered with; i.e., a right against others to not initiate sequences which interfere with us without our consent. This is the basis of the do-allow distinction. A moral difference occurs in cases where victims have only negative rights against others, but no positive ones. For instance, the one victim in Rescue II has a right not to be killed, but the one in Rescue I has no right to be saved by you.

4. Objections: But the following cases seem to be counter-examples:

(a) Rachels’ Bathtub Cases: But, then, what Smith does is still much worse than what Jones does, since Smith IS harmfully interfering (initiating a harmful sequence) by drowning his cousin, while Jones is not.

Reply: That’s true, but BOTH Smith and Jones act wrongly because they both DO have positive duties to their cousins in those two cases. For instance, plausibly, they both DO have duties of beneficence in those cases; they’ve also agreed care for their cousins; we may also have special duties to protect children; and so on. (Keep in mind that Foot has only claimed that a moral difference will occur when there is a non-overridden negative duty, but an OVERRIDDEN (or non-existent) POSITIVE duty. This is not true in Bathtub.)

(b) Trolley: Diverting an oncoming trolley away from 5 and onto 1 seems permissible. But, here you are DOING harm to the one (rather than allowing harm to the five). Shouldn’t Foot conclude that it is WRONG to divert the trolley?

Reply: Foot says that you don’t really INITIATE the harmful sequence which kills the one here. You merely DIVERT a PRE-EXISTING fatal sequence, writing, “this is a special case, in that we have here the diverting of a fatal sequence and not the starting of a new one.”
Worry: Is she suggesting that you merely ALLOW the 1 to die in Trolley when you pull the lever? If so, doesn’t that seem to be a highly irregular/revisionary usage of the term? Imagine that the 5 are NOT present and you divert the trolley onto one. It would be absurd to say that you merely ‘allowed’ the one to die, wouldn’t it?

(c) Allowed Organ Harvest: Allowing a patient to die on the operating table in order to use his organs to save 5 seems wrong. Yet, you didn’t initiate the sequence which killed him. So, you merely ALLOWED 1 to die in order to save 5 (as in Rescue I). Shouldn’t Foot conclude that it is PERMISSIBLE to allow the patient to die?

Reply: Foot says that this is wrong because of the INTENTIONS behind the act. Here, the doctor INTENDS evil (as a means to an end).

Note that Foot is admitting that the do-allow distinction cannot do all of the work by itself. Some distinction between intending vs. not intending seems to be needed as well. We’ll discuss this at length in unit 3.

5. On Abortion: Foot points out that her account is a problem for Thomson’s argument in defense of abortion. Thomson’s argument is that, since it is permissible to detach from a sick violinist who needs to use your kidneys for 9 months, it is also permissible for a pregnant woman to “detach from” (i.e., abort) a fetus.

Foot’s criticism is that detaching from the violinist does not initiate a fatal sequence (the violinist merely dies as a result of the fatal sequence which was already in place—namely, his illness), whereas abortion DOES initiate a fatal sequence.

Is that right? Imagine that abortion procedures merely involved failing to continue to provide nutrients to the fetus via the umbilical cord. Foot counts this as a killing? If so, then, is it also the case that if I stop feeding a toddler, I KILL the toddler rather than let her die? That probably seems intuitive to you, but it has odd implications for causation. (Namely, killing seems to mean that I CAUSE a death, and Foot is suggesting that I can CAUSE something by DOING NOTHING; i.e., omissions can be causes.)