

WE DON'T TORTURE:
MORAL RESOLVE AND THE DOCTRINE OF DOUBLE EFFECT

RICHARD HOLTON, CAMBRIDGE

WE DON'T TORTURE

Bush: 'We don't torture.' (2005)

Obama: 'We believe we can abide by a rule that says, We don't torture, but we can effectively obtain the intelligence we need.' (2009)

INTENTION

Mental states that embed decisions and curtail further deliberation. Allow for economy, coordination and action in the face of uncertainty. Needed for limited creatures like us. Good use of intentions involves a balancing act between flexibility and weakness. But cannot be something decided each time: requires a brute disposition. (Something like a System One – System Two distinction.) It is rational not to re-open the question.

RESOLUTION

Again, needed for creatures like us. Under temptation, and strain more generally, judgment is corrupted, self-deception always lurks. Mischel; Karniol & Miller; Gollwitzer. Again, this involves balancing act between flexibility and weakness; and again it needs a brute disposition.

MORAL RESOLUTION

Moral commitments have similar structure to other cases of resolve. Moral rules are rules of thumb: justifiable exceptions are always possible. (Whether particularism is ultimately true, we are confronted with something that *looks* like it.) But very often what looks like a special case really involves mere rationalization. So agents need to resolve to avoid certain behaviour. That is, they need to resolve to make their specific intentions conform to a general rule, a rule that has sufficient extensional strength. Not just against temptation for personal gain; also against the temptation to get something apparently worthwhile done. Back to our example: torture in wartime. Rumsfeld opened the question exactly at the moment he shouldn't have.

Can't this be captured with an entirely outward gaze: to moral rules? No, because if all we have are the rules, creating exceptions will be too easy: 'torture is wrong unless...'. We need the commitment, and that comes as a resolution, which is essentially inwardly directed.

In general when human agents (though perhaps not gods) deliberate they need to look, amongst other things to their resolutions. These are inaccessible from a direct focus on the world. This sounds rather like rule consequentialism. But it needn't be consequentialist; and it isn't based on the idea that the truth is too complicated for normal agents to deal with. We all suffer from self-deception. So there need be no whiff of Government House.

SHORT DIGRESSION ON A LARGE TOPIC

Intentions are effective, given proper implementation plans. But how much better would it be if moral resolutions—and similar but less explicit moral states—were accompanied by an emotional response that turned the agent away from potentially violating actions. Thought of in that way, emotional responses wouldn't seem opposed to rationality. Rozin studies on vegetarians.

DOUBLE EFFECT

Scanlon argues that in deliberating whether an action is permissible, an agent should look outward, to the action and its consequences, rather than inward to their own intentions; and that this undermines the plausibility of the doctrine of double effect. But if resolutions work as outlined here, we have an argument against Scanlon's criticism. Does this give us a *defence* of double effect though? One possibility: we require people to form the relevant resolutions and then to act on them. But that seems much too strong. It's surely fine if people just do the right thing. Perhaps Scanlon has just mis-stated his position: the point should be that a resolution won't *make* an action right. There may be grounds here though for questioning Scanlon more comprehensively.

RESOLUTIONS AND INTENTIONALITY

How should the resolutions be phrased? In terms of resolutions not to perform certain actions non-intentionally described—e.g. 'We do not inflict pain'? No: that would be too broad (we inflict pain every time we give an injection), and so would require constantly opening the question, which would defeat the purpose. 'Torture', like many verbs that are used in moral assessment, build in intentions: 'to murder'; 'to steal', 'to mock'; 'to cheat'; 'to humiliate'. Contrast non-intentional verbs 'to drop'; 'to kill'. As a first approximation, think of the non-intentional verbs as those that we can sensibly prefix with modifiers like 'unintentionally' or 'inadvertently'. Equally, adding the modifier 'intentionally' to a non-intentional verb adds content: to say that someone intentionally killed is to say more than that they killed. Is there a non-intentional analogue to each intentional verb? In general, where we have an intentional action, to ϕ , will there be a equivalent description, to intentionally ψ , where ' ψ ' is a non-intentional verb? No reason to suppose so.

We need to phrase the resolution, and hence the rule from which it derives, in intentional terms. And that is how our central moral terms—torture, murder, theft, cheating—work. In fact people try for 'lower-level' (non-intentional) descriptions when they are failing; when friends do a bad thing; when enemies do a good thing (Kozak, Marsh and Wegner); plausibly when they themselves do a bad thing. It is a feature of moving away from evaluative notions altogether.

FAULTY PRESUPPOSITION IN BOTH THE DEFENDERS AND THE CRITICS OF THE DOCTRINE

Scanlon assumes that we can factor the action into the *actus reus* and the *mens rea*. Common to much discussion of double effect has been the assumption that the *same* action can be performed with different intentions. But if the right characterization of the relevant categories essentially involves an intentional element, then we cannot do that. Of course, any particular action will involve a certain bodily movement, and one could perform that same movement in the context of a different action. But in the context of moral thought we don't individuate actions by such movements.