

**DEATH AND ANTI-DEATH,
VOLUME 19:
One Year After
Judith Jarvis Thomson
(1929-2020)**

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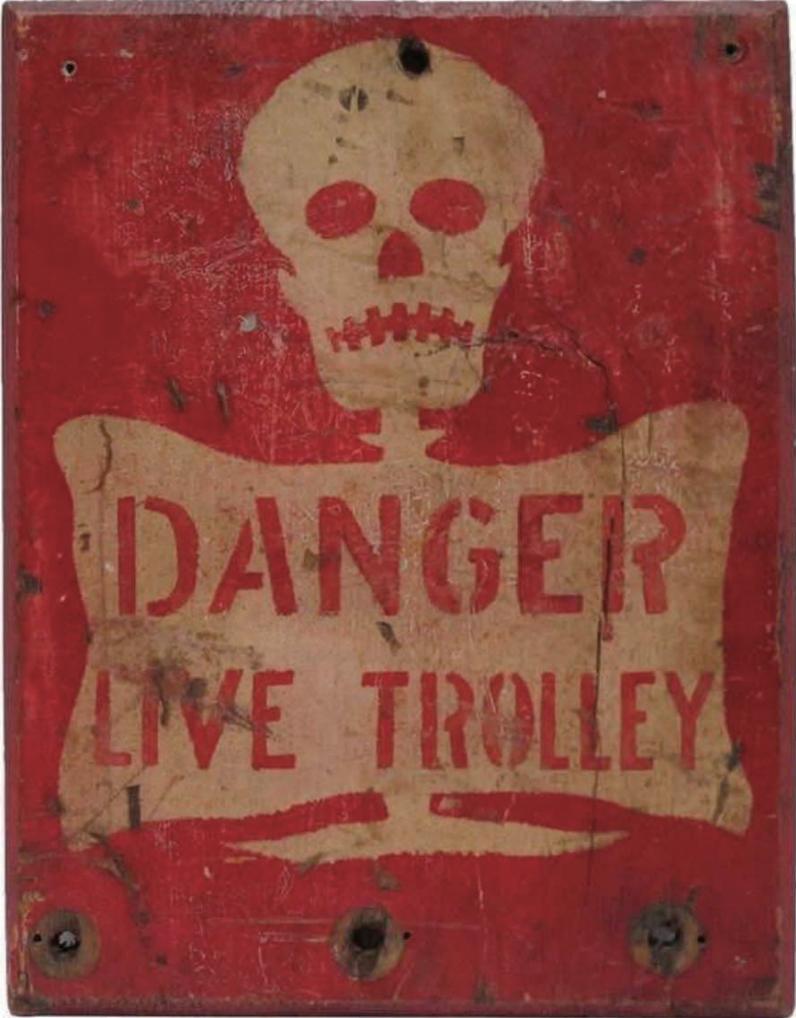
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CHAPTER SEVEN

**Murderer At The Switch:
Thomson, Kant, And The Trolley Problem**

James Edwin Mahon



In his book, *Kant*, Paul Guyer makes the claim that, with respect to the infamous trolley case found in the writings of Judith Jarvis Thomson, Kant's moral philosophy supports throwing the railroad switch and diverting a runaway train to a sidetrack so that it kills just one person, instead of not throwing the railroad switch and allowing the runaway train to continue on its track and kill five people.¹ As he writes:

The same reasoning may apply in the case of homicide as well (which Kant does not actually discuss). Again, we may initially regard the prohibition of homicide as absolute, but in fact we do recognize exceptions to this prohibition. Thus, we acknowledge that the right to self-defense may sometimes license killing an attacker, and that means that we cannot think of the inviolability of each human life as if it were independent of all others, but rather recognize that sometimes one life can be preserved only at the cost of another, and that in certain circumstances one may have the right to preserve his or her own life rather than that of another. In this case, the reason for that right may be that one is innocent of any crime while one's attacker is not. But there will be other cases in which all the parties involved are equally innocent of any crime and yet they still cannot all be saved. To take one well-worn example, imagine that an out-of-control train is racing toward a switch where you just happen to be standing, and that a van with a family of six is stuck on the track to which the train will switch if you do nothing while a car with just one occupant is stuck on the other track. You might well think that it is not merely permissible but even obligatory for you to throw the switch so that only one person is killed by the train rather than six – your intervention will cause the death of the one, to be sure, but your decision to leave the switch as it is will cause the death of the six, and that decision not to throw the switch would be just as much of an action on your part as your physical act of throwing the switch. If you accept this reasoning, you will be reasoning that if humanity is always an end, your duty is to preserve as many instances of humanity as

¹ In his rendering of the case, Guyer increases the number of people in the train's path to six and makes them a family.

possible, and that in unfortunate cases where for reasons beyond your own control not everyone can possibly be saved, then your duty is always to show your respect for humanity as an end in itself by saving more rather than fewer humans.²

Commenting on his own claim that abiding by Kant's Categorical Imperative makes it "not merely permissible but even obligatory" to throw the switch and kill the one person, Guyer says that "any plausible moral theory must justify and require" doing this, and that Kant's moral theory is no exception:

Some philosophers seems [sic] to think these sorts of cases are very difficult, arguing that since you were not the one who set the switch and sent the train careening down the track in the first place, you will not be responsible for any deaths if the train follows its predetermined course and kills the six, but if you intervene and reset the switch, then you will be responsible for one death and will therefore be blameworthy. That seems crazy. Life is surely unfair, for otherwise nobody would be stuck on the tracks and you would not be the one who has to decide between saving one and saving six; but given those circumstances, surely you must save six rather than one, and any plausible moral theory must justify and require that choice. I have suggested an interpretation of Kant's theory on which it does.³

I contend that Guyer is quite wrong here, both about moral theories in general and about Kant's moral theory. It is not the case that any plausible moral theory must justify and require throwing the railroad switch and killing the one person and saving the five (or six). Later in her career, Thomson changed her mind and decided that throwing the switch is prohibited. Kant's moral theory, meanwhile, does prohibit throwing the switch.

Before explaining why Kant's moral theory prohibits throwing the switch, it is worth examining in some detail Judith Jarvis Thomson's path to the same conclusion.

² Paul Guyer, *Kant* (NY: Routledge, 2006), 198.

³ *Ibid.*, 397, n. 21.

The Runaway Tram and Positive and Negative Duties

The runaway trolley case first appeared in Thomson's "Killing, Letting Die, and the Trolley Problem" in 1976.⁴ Importantly, the case is different to the case that inspired it, which was a case of a runaway *tram*.⁵ This runaway tram case will be discussed first.

The runaway tram case first appeared in Philippa Foot's "Abortion and the Doctrine of Double Effect" in 1967,⁶ in the following form:

[I]t may rather be supposed that he is the driver of a runaway tram which he can only steer from one narrow track on to another; five men are working on one track and one man on the other; anyone on the track he enters is bound to be killed.⁷

The runaway tram case is contrasted by Foot with a case of framing and executing an innocent person to prevent a riot – a case which was not original to Foot but which could be found in the literature on utilitarianism (Foot purged the case its racism, however⁸):

⁴ Judith Jarvis Thomson, "Killing, Letting Die, and the Trolley Problem," *Monist* (1976), 204-217.

⁵ As Thomson says, "Since trams are trolleys on this side of the Atlantic, I called this "the trolley problem." (Besides, that is more euphonious than "the tram problem.")" ("Turning the Trolley", *Philosophy and Public Affairs* 36 (2008), 363). Note that it is often discussed in terms of a runaway *train* (e.g., Guyer, *op cit.*), even if people still refer to it as the "trolley problem."

⁶ Philippa Foot, "Abortion and the Doctrine of Double Effect," *The Oxford Review* 5 (1967), reprinted in *Virtues and Vices and Other Essays in Moral Philosophy* (California: University of California Press, 1978), 19-32.

⁷ *Ibid.*, 23.

⁸ The original case of framing and executing an innocent person to prevent a riot was explicitly set in a racist context. The Australian philosopher H. J. McCloskey, in an article rejecting restricted (or rule-) utilitarianism, came up with the following case: "Suppose that a sheriff were faced with the choice either of framing a Negro for a rape that had aroused hostility to the Negroes (a particular Negro generally being believed to be guilty but whom the sheriff knows not to be guilty) – and thus preventing serious anti-Negro riots which would probably lead to some loss of life and increased hatred of each other by whites and

Suppose that a judge or magistrate is faced with rioters demanding that a culprit be found for a certain crime and threatening otherwise to take their own bloody revenge on a particular section of the community. The real culprit being unknown, the judge sees himself as being able to prevent the bloodshed only by framing some innocent person and having him executed.⁹

In the case of the runaway tram, Foot says that “we should say, without hesitation, that the driver should steer for the less occupied track,”¹⁰ whereas “most of us would be appalled at the idea that the innocent man could be framed.”¹¹

Foot resolves the problem of reconciling these two different responses to two seemingly similar cases by appealing to a distinction between negative and positive duties:

Let us speak of negative duties when thinking of the obligation to refrain from such things as killing or robbing, and of the positive duty, e.g., to look after children or aged parents. It will be useful, however, to extend the notion of positive duty beyond the range of things that are strictly called duties, bringing acts of charity under this heading.¹²

Foot argued that these two cases were importantly different when understood in terms of negative and positive duties. In the case of the runaway tram, there was merely a conflict between two negative duties (do not kill one person versus do not kill five people):

Negroes – or of hunting for the guilty person and thereby allowing the anti-Negro riots to occur, while doing the best he can to combat them” (“Restricted Utilitarianism,” *Philosophical Review* (1957), 468). With its sheriff” and “Negro” references, the case is clearly set in the racist U.S. The entire history of the U.S. is a history of slavery and racism – see, for example, *The 1619 Project* from *The New York Times* [<https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>] accessed 10/29/2021).

⁹ Foot, *ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*, 27.

The steering driver faces a conflict of negative duties, since it is his duty to avoid injuring five men and also his duty to avoid injuring one. In the circumstances he is not able to avoid both, and it seems clear that he should do the least injury he can.¹³

As Thomson summarizes Foot's conclusion (giving the name 'Edward' to the runaway tram driver): "Whichever Edward does, turn or not turn, he kills. There is, for Edward, then, not a conflict between a positive duty to save five and a negative duty to refrain from killing one; there is, for Edward, a conflict between a negative duty to refrain from killing five and a negative duty to refrain from killing one. But this is no real conflict: a negative duty to refrain from killing five is surely more stringent than a negative duty to refrain from killing one. So Edward may, indeed must, turn that trolley."¹⁴

In the case of framing and executing the innocent person to prevent a riot, by contrast, there was a conflict between a negative duty and a positive duty (do not kill one person versus rescue many people), with the negative duty winning out over the positive duty, because the negative duty is more stringent:

The judge, however, is weighing the duty of not inflicting injury against the duty of bringing aid. He wants to rescue the innocent people threatened with death but he can do so only by inflicting injury himself. Since one does not in general have the same duty to help people as to refrain from injuring them, it is not possible to argue to a conclusion about what he should do from the steering driver case.... So it is not inconsistent of us to think that the driver must steer for the road on which only one man stands while the judge (or his equivalent) may not kill the innocent person in order to stop the riots.¹⁵

Foot solves the problem of reconciling the two different responses to two seemingly similar cases, then, by arguing that they are importantly different cases when understood in terms of negative

¹³ Ibid.

¹⁴ Thomson, 1976, 206.

¹⁵ Ibid., 27-28.

and positive duties. Since they are importantly different cases, different responses are appropriate.

Thomson's own conclusion about the runaway tram case is weaker than Foot's. She says that "my intuition tells me that it is not required that he [the tram driver] turn it, but only that it is permissible for him to do so."¹⁶ Nevertheless, she agrees that there is a difference between these two cases, which merits a different response. However, ultimately, she is not interested in these two cases.

Instead, she turns to a different case provided by Foot, similar to the case of framing and executing of an innocent person, and contrasts this case with her entirely new case involving a runaway trolley.

The different case is a case of a killing one person to make a serum from that person's body that can save the lives of five other people: "We can suppose, similarly, that several dangerously ill people can be saved only if we kill a certain individual and make a serum from his dead body."¹⁷ Thomson's own rendering of Foot's case is more elaborate:

David is a great transplant surgeon. Five of his patients need new parts – one needs a heart, the others need, respectively, liver, stomach, spleen, and spinal cord – but all are of the same, relatively rare, blood-type. By chance, David leans of a healthy specimen with that very blood-type. David can take the healthy specimen's parts, killing him, and install them in his patients, saving them. Or he can refrain from taking the healthy specimen's parts, letting his patients die.^{18,19}

¹⁶ Ibid., 207.

¹⁷ Ibid., 24. As can be imagined, Foot says about this case that the negative duty not to kill is more stringent than the positive duty to save lives: "if we consider killing a man in order to use his body to save others, we are thinking of doing him an injury to bring others aid" (ibid., 28).

¹⁸ Thomson, 1976, 206.

¹⁹ One of my most brilliant former students, Elizabeth Brassfield, currently completing a MD/PhD at UNC Chapel Hill, made the following comment to me about this case in an e-mail many years ago: "While I was reading and thinking about the three paper topics, I thought of something that seemed interesting to me about the Transplant case. If the

Foot never directly contrasts this case with her runaway tram case. Thomson, however, does contrast these two cases from Foot's article, and indeed labels this very contrast the original "trolley problem"²⁰ of Philippa Foot:

it's a lovely, nasty difficulty: why is it that Edward may turn that trolley to save his five, but David may not cut up his healthy specimen to save his five? I like to call this the trolley problem, in honor of Mrs. Foot's example.²¹

Even though Foot never contrasted the runaway tram case with the surgeon case, it is clear that this is the contrast that she had in mind when she compared the runaway tram case with framing and executing the innocent person to prevent a riot case. Or, at least, this contrast may be extracted from Foot's article.

Importantly, however, Thomson is not as interested in contrasting these two cases. As it were, she is not as interested in Foot's trolley problem. She is interested in comparing (her version of) Foot's surgeon case with her own, entirely original, runaway trolley case, which is merely inspired by Foot's tram case:

Frank is a passenger on a trolley whose driver has just shouted that the trolley's brakes have failed, and who then died of the shock. On the track are five people; the banks are so steep that they will not be able to get off the track in time. The track has a spur leading off to the right, and Frank can turn the trolley onto it. Unfortunately, there is one person on the right-hand

five patients in need of organ transplants all only need one organ to live, then the rest of their organs must be functioning properly. If the healthy patient is a perfect match for all five of the dying patients, then all five of the dying patients must be matches for each other. Each one of the dying patients has all four of the healthy organs required to save the other four dying patients. So the doctor could chop up one of the patients dying of organ failure to save the four other patients also dying of organ failure. I don't know if this has any further implications for the problem, but it at least eliminates the need of killing someone completely random to save the patients in need of organ transplants."

²⁰ This name is somewhat ironic since Foot never talked about a trolley. Her example involved a tram.

²¹ Thomson, *ibid.*, 206.

track. Frank can turn the trolley, killing the one, or he can refrain from turning the trolley, letting the five die.²²

Thomson's runaway trolley case is importantly different from Foot's runaway tram case. In the tram case, the tram driver either *kills* one or *kills* five. There is not a genuine conflict between duties, since there is a negative duty to refrain from killing five, and a negative duty to refrain from killing one. Hence, the tram driver may steer the tram for the road in which he kills only one person.

In Thomson's runaway trolley case, by contrast, if the passenger Frank "does nothing", then "he kills no one. He at worst lets the trolley kill the five; he does not himself kill them, but only lets them die."²³ Hence, in the trolley case, the trolley passenger either *kills* one or *lets die* five. There is a genuine conflict between duties, since there is a negative duty to refrain from killing one, and a positive duty to save five lives.

According to Foot's argument, Thomson reasons, the passenger on the runaway trolley must *not* turn the trolley on to the sidetrack²⁴ and kill the one; he must 'do nothing', and let the trolley continue on the track and kill the five; he must 'let die' the five people in the path of the trolley. This is because the negative duty to refrain from killing one is more stringent than a positive duty to save five lives:

by Mrs. Foot's principles, the conflict for Frank [the trolley passenger] is between the negative duty to refrain from killing one, and the positive duty to save five, just as it was for David [the transplant surgeon]. On her view, the former duty is the more stringent: its being more stringent was supposed to explain why David could not cut up his healthy specimen. So by her principles, Frank may no more turn that trolley than David may cut up his healthy specimen.²⁵

However, Thomson disagrees with Foot about her own runaway trolley case. She holds that it is *permissible* for the

²² Ibid., 207.

²³ Ibid.

²⁴ I use 'sidetrack' rather than 'spur' for clarity.

²⁵ Ibid.

passenger on the runaway trolley to turn the trolley on to the sidetrack and kill the one person:

Yet I take it that anyone who thinks that Edward may turn his trolley will also think that Frank may turn his. Certainly the fact that Edward is driver, and Frank only passenger could not explain so large a difference.²⁶

In creating this new case, Thomson created a *new* trolley problem, different from the original trolley problem of Foot. Her trolley problem is that it is permissible for both the driver and the passenger to turn the trolley, and it is impermissible for the transplant surgeon to cut up the healthy person and distribute his organs. Foot, by contrast, would argue that it is impermissible for the passenger to turn the trolley, as well as it being impermissible for the transplant surgeon to cut up the healthy person and distribute his organs.

Because Thomson holds that it is permissible for the passenger on the runaway trolley to turn the trolley on to the sidetrack and kill the one person, she rejects Foot's explanation of why the tram driver may kill the one, and the transplant surgeon may not kill the one, in terms of negative and positive duties. After all, the passenger on the runaway trolley has a negative duty not to kill the one, just like the transplant surgeon, and yet he *may* kill the one, whereas the transplant surgeon may *not* kill the one. As she says, "I am inclined to think that Mrs. Foot is mistaken."²⁷ There is a need for a new explanation of why both the tram driver and the trolley driver may kill the one, and the transplant surgeon may not kill the one: "So we stand in need, still, of a solution: why can Edward [tram driver] and Frank [trolley passenger] turn their trolleys, whereas David cannot cut up his healthy specimen?"²⁸

This is the trolley problem that Thomson's article sets out to solve.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

The Runaway Trolley and Deflecting a Threat

In her effort to find the correct explanation of why both the tram driver and the trolley driver may kill the one, and the transplant surgeon may not kill the one, Thomson does not simply consider the two trolley cases²⁹ and the transplant case. She comes up with a third trolley case. This is the case of the person on the footbridge watching trolleys³⁰:

George is on a footbridge over the trolley tracks. He knows trolleys, and can see that the one approaching the bridge is out of control. On the track back of the bridge there are five people; the banks are so steep that they will not be able to get off the track in time. George knows that the only way to stop an out-of-control trolley is to drop a very heavy weight into its path. But the only available, sufficiently heavy weight is a fat man, also watching the trolley from the footbridge. George can shove the fat man onto the track in the path of the trolley, killing the fat man; or he can refrain from doing this, letting the five die.³¹

Thomson believes that it is not permissible for George to shove the other person off the footbridge to the track below, where he will get killed by the trolley, and stop the trolley. Instead, he must 'do nothing', and let the five people on the track get killed by the trolley: "Presumably George may not shove the fat man into the path of the trolley; he must let the five die."³²

This third trolley case is the only trolley case of the three Thomson considers (the driver case, the passenger case, and the footbridge case) in which she holds that the one person may not be killed and the five people must be let die. The question of the explanation of the difference between the two trolley cases and the

²⁹ For the sake of clarity, I shall group the runaway tram case and the runaway trolley case together as 'trolley' cases.

³⁰ I refer to this case as the person on the footbridge watching trolleys instead of the "fat man" on the footbridge because I wish to avoid being complicit in any possible fat shaming (see Matthew Hutson, "Trolleys, Ethics, and Obesity", *ConscienHealth* 2013 [<https://conscienhealth.org/2013/04/trolleys-ethics-and-obesity/> accessed 10/30/2021]).

³¹ *Ibid.*, 207-208.

³² *Ibid.*, 208.

transplant case is now a question of the difference between the first two trolley cases and the third trolley case.

As Thomson says, it seems that there must be a way in which the third trolley case is like the transplant case and unlike the first two trolley cases: “Why may Edward and Frank turn their trolleys to save their fives, whereas George must let his five die? George’s shoving the fat man into the path of the trolley seems to be very like David’s cutting up his healthy specimen. But what is the relevant likeness?”³³

The explanation that Thomson offers in this article is that in the first two trolley cases what is involved is diverting an existing threat from a larger to a smaller group of people, which is permissible, whereas in the third trolley case (and the transplant case) what is involved is creating a threat to a smaller group, which is impermissible: “Perhaps the most striking difference between the cases I mentioned in which the agent may act, and the cases I mentioned in which he may not, is this: in the former what is in question is deflecting a threat from a larger group on to a smaller group, in the latter what is in question is bringing a different threat to bear on a smaller group.”³⁴

Strictly speaking, however, according to Thomson, this is not a sufficient explanation of the difference. It must *also* be true that the person against whom the trolley is directed, in the first two trolley examples, is someone who has no more a claim against being killed by the trolley than any of the five has: “Edward (or Frank) may deflect his trolley if and only if the one has no more claim against the trolley than any of the five has”.³⁵ Thomson imagines several scenarios in which the person on the sidetrack has a greater claim against being killed by the trolley than the five on the track. For example, if the person on the sidetrack is a convalescent from the City Hospital having his lunch there because he has been invited to do so by the Mayor, and the five on the track are employees who have been warned of the dangers of working on the trolley track and are paid higher salaries to compensate for this danger, then it is *impermissible* to deflect the

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid., 210.

threat to the sidetrack.³⁶ In such a case, the convalescent on the sidetrack has a greater claim against being killed by the trolley than the five workmen on the track. Thomson also imagines the opposite scenario, in which the person on the sidetrack has a lesser claim against being killed by the trolley than the other five. For example, if the person on the sidetrack is a schoolboy who knows that he should not be there and who climbed over the fence and ignored all of the warning signs, and the five on the track are all regular track workmen repairing the track, then turning the trolley so that it kills the schoolboy is *obligatory*, because the schoolboy on the sidetrack has a lesser claim against being killed by the trolley than the five workmen on the track: “At the risk of seeming hardhearted about schoolboys, I have to say I think that... the trolley not only may be, but must be turned.”³⁷

Another way of explaining *redirecting an existing threat* is *distributing a bad thing*. Thomson provides greater clarity about the difference between the first two trolley cases and the third trolley case in talking about distributing a bad thing.

In the case of the first two trolley cases, the driver, Edward, and the passenger, Frank, are distributing something bad, namely, a runaway trolley:

Here is something bad, up for distribution, a speeding trolley. If nothing is done, five will get it, and one will not; so five will die and one will live. It strikes us that it would be better for five to live and one die than for one to live and five die, and therefore that a better distribution of the bad thing would be for the one to get it, and the five not to. If the one has no more claim against the bad thing than any of the five has, he cannot complain if we do something to *it* in order to bring about that it is better distributed: i.e., it is permissible for Edward and Frank to turn their trolleys.³⁸

In the first two trolley cases, they are doing something to *it*, the runaway trolley. However, this is not true of the third case in which George, on the footbridge, shoves the other person onto the

³⁶ Ibid.

³⁷ Ibid., 211.

³⁸ Ibid., 215.

track in front of the runaway trolley. In the third case, George does something to *the person*, and not merely to the runaway trolley:

But even if the one has no more claim against the bad thing than any of the five has, he can complain if we do something to *him* in order to bring about that the bad thing is better distributed: i.e., it is not permissible for George to shove his fat man off the bridge into the path of the trolley.³⁹

There is, then, a difference between what is done in the first two trolley cases and what is done in the third. In the first two cases, turning the trolley is distributing the bad of the runaway trolley (or deflecting the threat). One is not killing the one person in order to distribute the bad of the runaway trolley (or deflect the threat). But in the third trolley case, one is killing the one person in order to distribute the bad of the runaway trolley (or deflect the threat):

By contrast George, if he acts, does something to the fat man (shoves him off the bridge into the path of the trolley) to bring about the better distribution of the trolley, viz., that the one (the fat man) gets it instead of the five.⁴⁰

What matters in these three cases in which a threat is to be distributed (or deflected) is whether the agent distributes it by doing something *to the threat* to distribute (or deflect) it, or by doing something *to the one person* in order to distribute (or deflect) the threat:

what matters in these cases in which a threat is to be distributed is whether the agent distributes it by doing something to it, or whether he distributes it by doing something to a person.⁴¹

In the case in which George, on the footbridge, shoves the other person onto the track in front of the runaway trolley, in order to distribute the (or deflect) threat of the runaway trolley, in such a

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

way as to have a better distribution of the threat, he does indeed do something to the one person: he *shoves the one person onto the track in front of the runaway trolley*.

This is what makes the third trolley case similar to the transplant case (involving the surgeon, David), and different to the first two trolley cases. In the transplant case, the surgeon does something to the one person in order to distribute the threat, namely, he cuts him up:

And then the special nastiness in David, if he acts, lies in this: in the first place, he gives to five what belongs to the one (viz., bodily parts), *and* in the second place, in order to bring about a better distribution of the ailments threatening his five – i.e., in order to bring about that instead of the five patients getting killed by them, nobody is – he does something to the one (viz., cuts him up).⁴²

Thomson's final explanation of the difference between the two trolley cases and the third trolley case (and the transplant case) is, thus, as follows: in the first two trolley cases, the threat (or the bad) is diverted (or distributed) to the one person, and away from the five, *without anything being done to the one person* in order to divert the threat (or distribute the bad), whereas, in the third trolley case (and the transplant case), *something is done to the one person* in order to divert the threat (or distribute the bad) to the one person, and away from the five.

The fact that something is done to the one person in both the third trolley case and the transplant case makes those cases different to the first two trolley cases. Hence, different responses to these cases are appropriate.

Deflecting a Threat by Means that Infringe a Stringent Right

Thomson returned to these cases in her later article, "The Trolley Problem," in 1985.⁴³ Here she presented the original trolley problem of Foot, as she had conceived it, once again:

⁴² Ibid.

⁴³ Judith Jarvis Thomson, "The Trolley Problem," *The Yale Law Journal* 94 (1985), 1395-1415.

Here then is Mrs. Foot's problem: *Why* is it that the trolley driver⁴⁴ may turn his trolley, though the surgeon may not remove the young man's lungs, kidneys, and heart? In both cases, one will die if the agent acts, but five will live who would otherwise die – a net saving of four lives. What difference in the other facts of these cases explains the moral difference between them?⁴⁵

Thomson provides Foot's solution to her original trolley problem in terms of killing one versus letting five die. The trolley driver must choose between killing five and killing one; since there is not a genuine conflict here (either way, he kills), he may turn the trolley and kill one. The surgeon, however, must choose between killing one and letting five die; since there is a genuine conflict here (he must either kill or let die), and since "killing is surely worse than letting die"⁴⁶, the doctor may not kill one, i.e., may not cut up the patient.⁴⁷

Once again, Thomson says that "there is good reason to think that this problem is not so easily solved as that."⁴⁸

In this article, Thomson decides to adapt her passenger case so that the passenger on the trolley is now a bystander at a track switch:

let us now consider a case I will call Bystander at the Switch. In that case you have been strolling by the trolley track, and you can see the situation at a glance: The driver saw the five on the track ahead, he stamped on the breaks, the brakes failed, so he fainted. What to do? Well, here is the switch, which you can throw, thereby turning the trolley yourself. Of course you will kill one if you do.⁴⁹

⁴⁴ Importantly, Thomson is talking about the original runaway tram case, in which a driver kills people whatever he does.

⁴⁵ Thomson, 1985, 1396.

⁴⁶ Ibid.

⁴⁷ Thomson confines Foot's explanation of the difference between the two cases in terms of a "negative duty to refrain from causing injury" versus "the positive duty to provide aid" to a footnote (ibid., n. 4)

⁴⁸ Ibid.

⁴⁹ Ibid., 1397.

In this new case, if the bystander throws the switch, he kills one person. If he does not throw the switch, he lets five people die. According to the solution provided by Foot, the bystander may not throw the switch. He must choose between killing one and letting five die, and since killing is worse than letting die, he must avoid killing one and let five die.

Thomson, however, believes that it is permissible to throw the switch and turn the trolley: “I should think you may turn it”⁵⁰; “my own feeling is that an ordinary person, a mere bystander, may intervene in such a case”⁵¹; “my own feeling is that the bystander *may* intervene”⁵²; “I shall take it that he *may*.”⁵³ Foot’s solution therefore will not work:

It is plain that if the bystander throws the switch, he causes the trolley to hit the one, and thus he kills the one. It is equally plain that if the bystander does not throw the switch, he does not cause the trolley to hit the five, he does not kill the five, he merely fails to save them – he lets them die. His choice therefore is between throwing the switch, in which case he kills one, and not throwing the switch, in which case he lets five die. If thesis (I) [“Killing one is worse than letting five die”] were true, it would follow that the bystander may not throw the switch, and that I am taking to be false.⁵⁴

As Thomson says, in introducing the bystander at the switch case (a variant on her own second trolley case from her first article), and comparing it with the transplant case, she is not concerned with Foot’s trolley problem, but with her *own* trolley problem:

What I shall be concerned with is a first cousin of Mrs. Foot’s problem, viz.: Why is it that the bystander may turn his trolley, though the surgeon may not remove the young man’s lungs, kidneys, and heart? Since *I* find it particularly puzzling

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., 1398.

⁵³ Ibid.

⁵⁴ Ibid., 1398-1399.

that the bystander may turn his trolley, I am inclined to call this The Trolley Problem.⁵⁵

It should be noted that this trolley problem is the same trolley problem that can be found in her earlier article, where she had to explain the difference between two trolley cases and the third trolley case involving the person on the footbridge (as well as the transplant case).

In providing her solution to her own trolley problem, Thomson provides an explanation of the difference between the bystander case, on the one hand, and the transplant case, on the other (as well as the trolley case involving the person on the footbridge):

Suppose the bystander at the switch proceeds: He throws the switch, thereby turning the trolley onto the right-hand track, thereby causing the one to be hit by the trolley, thereby killing him – but saving the five on the straight track. There are two facts about what he does and what the agent in *Transplant* would be doing if *he* proceeded. In the first place, the bystander saves his five by making something that threatens them instead threaten one. Second, the bystander does not do that by means which themselves constitute an infringement of any right of the one's.⁵⁶

In providing this explanation, Thomson appeals to the concept of a right, which she does not explicate, except to agree with Ronald Dworkin⁵⁷ that rights are things that trump utilities: “Rights “trump” utilities. That is, if one would infringe a right in or by acting, then it is not sufficient justification for acting that

⁵⁵ Ibid., 1401.

⁵⁶ Ibid., 1403.

⁵⁷ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977). Note that, as my former advisor Alasdair MacIntyre has pointed out, Dworkin himself concedes that the existence of rights cannot be demonstrated (*After Virtue* (Notre Dame, IN: University of Notre Dame Press, 2007 (3rd ed.), 70). (MacIntyre himself considers such natural rights or human rights to be “fictions” (ibid.))

one would thereby maximize utility. It seems to be that something like this must be correct.”⁵⁸

The first solution that presents itself to explaining the difference between the two cases is that in the bystander case, the bystander does not infringe any right in pulling the switch and turning the trolley, whereas in the transplant case, the surgeon infringes a right in cutting up the person’s body and removing his organs:

That is, it might be said (i) The reason why the surgeon may not proceed in *Transplant* is that if he proceeds, he maximizes utility, for he brings about a net saving of four lives, but in so doing he would infringe a right of the young man’s. ... So it might be said (ii) The reason why the bystander may proceed is that if he proceeds, he maximizes utility, for he brings about a net saving of four lives, and in so doing he does *not* infringe any right of the one track workman’s.⁵⁹

Thomson, however, does not accept this “very simple solution”⁶⁰ to her trolley problem, because she does not believe that it is “clear that the bystander would infringe no right of the one track workman’s if he turned the trolley”, and indeed believes “that there is *some* reason to think that the bystander will infringe a right of the one if he throws the switch, even though it is permissible for him to do so.”⁶¹ This is because, “if the bystander throws the switch, then he does what will kill the one”, and “the one did not volunteer his life so that the five might live; the bystander volunteered it for him.”⁶² Indeed, Thomson holds that this lends “some weight to the idea that the bystander did do him a wrong” because “he infringes a right of the one track workman’s which is in that cluster of rights which the workman has in having a right to

⁵⁸ Ibid., 1404.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid., 1404-1405.

⁶² Ibid., 1405.

life.”⁶³ There is, then, “some reason to think that the bystander would infringe a right of the one’s.”⁶⁴

Thomson’s conclusion, rather, is that “if the bystander does infringe a right of the one’s if he proceeds, and may nevertheless proceed,”⁶⁵ then the solution to her trolley problem is not that the transplant case involves a rights infringement, and the bystander case does not. Instead, she proposes granting that “both the bystander and the surgeon would infringe a right of their ones”, and that “some other difference between the cases”⁶⁶ be found.

In order to find this new difference, Thomson invokes the third trolley case from her original article, now named after the person who is shoved off the footbridge:

Consider a case – which I shall call *Fat Man* – in which you are standing on a footbridge over the trolley track. You can see a trolley hurtling down the track, out of control. You turn around to see where the trolley is headed, and there are five workmen on the track where it exits from under the footbridge. What to do? Being an expert on trolleys, you know of one certain way to stop an out-of-control trolley: Drop a really heavy weight in its path. But where to find one? It just so happens that standing next to you on the footbridge is a fat man, a really fat man. He is leaning over the railing, watching the trolley; all you have to do is to give him a little shove, and over the railing he will go, onto the track in the path of the trolley.⁶⁷

About this case, as before, Thomson says that it would *not* be permissible to shove the person off the footbridge onto the track in front of the trolley (“Would it be permissible for you to do this? Everybody to whom I have put this case says it would not be.”⁶⁸) Thomson contrasts this third trolley case, the footbridge case, with

⁶³ Ibid., 1406.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid., 1409.

⁶⁸ Ibid.

the bystander case, and places it in the same category as the transplant case. The question is why it should be placed in the same category as the transplant case (“But why?”⁶⁹). What is the difference between the footbridge case and the bystander case that makes it permissible to throw the switch, but impermissible to shove the person off the footbridge?

It will not do to say that in killing this person on the footbridge, one would infringe the right of person on the footbridge not to be killed (and do him a wrong), since that is also true of the workman on the sidetrack whom one kills in the bystander case, and Thomson believes that one may throw the switch and kill the workman in the bystander case. One may do this, as Thomson says, because in this case one is making “something which threatens them threaten one instead,”⁷⁰ and this is permissible.

The difference between the two cases, Thomson claims, lies in the means that are taken. In the footbridge case, the means that are taken (to divert the threat) “themselves constitute an infringement of a right of the one’s.”⁷¹ By contrast, in the bystander case, the means that are taken (to divert the threat) do *not* themselves constitute an infringement of a right.

In the footbridge case, shoving a person, and toppling him off a footbridge, is, all by itself, an infringement of a right of that person:

For shoving a person is infringing a right of his. So also is toppling a person off a footbridge. I should stress that doing these things is infringing a person’s rights even if doing them does not cause his death – even if doing them causes no harm at all. As I shall put it, shoving a person, toppling a person off a footbridge, are *themselves* infringements of rights of his.⁷²

In the bystander case, by contrast, throwing the switch is not, all by itself, an infringement of a right of anyone:

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷²

Consider by contrast the agent in Bystander at the Switch. He too, if he proceeds, saves five by making something that threatens them instead threaten one. But the means he takes to make that be the case are these: Turn the trolley onto the right-hand track. And turning the trolley onto the right-hand track is not *itself* an infringement of a right of anybody's. The agent would do the one no wrong at all if he turned the trolley onto the right-hand track, and by some miracle the trolley did not hit him.⁷³

Throwing the switch in the bystander case is permissible, even if it involves killing the one workman, because "In the first place, he saves his five by making something that threatens them instead threaten the one. And second, he does not do that by means which themselves constitute infringements of any right of the one's."⁷⁴ He does not infringe the right of the workman, or anybody else, by throwing the switch, and turning the trolley. Shoving the person and toppling him off the footbridge onto the track in front of the train, by contrast, is impermissible, because, while it also involves killing one person, by making something that threatens five threaten just one, it involves shoving someone and toppling him off a footbridge, which themselves constitute infringements of a right, or rights, of the person. One would be infringing the person's right, and doing the person a wrong, if one shoved the person, or toppled the person off the footbridge, even if one did not kill the person.

Indeed, as Thomson argues, shoving a person, and toppling a person off a footbridge, each constitutes an infringement of a *stringent* right of the person: "By contrast, the right not to be toppled off a footbridge onto a trolley track is on any view a stringent right."⁷⁵

The conclusion that she reaches is that:

If the agent must infringe a stringent right of the one's in order to get something that threatens five to threaten the one (as in Fat Man), then he may not proceed, whereas if the agent need

⁷³ Ibid.

⁷⁴ Ibid., 1407.

⁷⁵ Ibid., 1411.

infringe no right of the one's (as in Bystander at the Switch), or only a more or less trivial right of the one's... in order to get something that threatens five to threaten one, then one may proceed.⁷⁶

Coming Full Circle

In both of her articles, Thomson defended the permissibility of throwing a railroad switch (or its equivalent) and diverting a runaway train to a sidetrack so that it kills just one person, instead of not throwing the railroad switch and allowing the runaway train to continue on its track and kill five people. She did so despite knowing that Philippa Foot would prohibit such an action. In both articles, Thomson had to find an explanation for why, if doing this was permissible, it was still impermissible to shove a person off a footbridge and topple him onto the track in front of the runaway train, so that it kills just that person, instead of not shoving the person off the footbridge, and allowing the runaway train to continue on its track and kill five people. This was her problem.

In her original article, she argued that one does not do anything to a person in the first, permissible, case of throwing a railroad switch, whereas one does do something to person in the second, impermissible, case – namely, one shoves a person off a footbridge onto a railroad track. In her follow-up article, she argued that one does not use means that are themselves infringements of someone's stringent rights in the first, permissible, case of throwing a railroad switch, whereas one does use means that are themselves infringements of someone's stringent rights in the second, impermissible, case – namely, shoving a person and toppling him off a footbridge onto a railroad track.

Both of Thomson's explanations of the difference between the permissible throwing of the switch and the impermissible shoving of the person off the footbridge seem, on the face of it, extremely weak. It seems possible to object to both explanations rather easily, such as objecting to the second explanation that it hardly matters that in the footbridge case one is infringing a stringent right of the person on the footbridge not to be shoved and dropped, and in the bystander case one is not, if in both cases one

⁷⁶ Ibid.

“infringes a right ... which is in that cluster of rights [he] has in having a right to life.” What does it matter to the one workman on the sidetrack that one is not infringing his stringent right not to be shoved, or not to be toppled off a bridge, if one is infringing his (stringent) right not to be killed?⁷⁷

As Thomson said later about her own solutions to her trolley problem, “nobody produced a solution that anyone else thought satisfactory.”⁷⁸ This is perhaps best explained by the fact that Foot was right, and Thomson was wrong, all along. Thomson’s new problem was a pseudo-problem.⁷⁹ It is in fact impermissible to throw a railroad switch and divert a runaway train to a sidetrack so that it kills just one person, instead of not throwing the railroad switch and allowing the runaway train to continue on its track and kill five people, just as it is impermissible to shove a person off a footbridge and topple him onto the track in front of a runaway train, so that it kills just one person, instead of not shoving the person off the footbridge, and allowing the runaway train to continue on its track and kill five people.

Thankfully, it is not necessary to mount an argument as to why Thomson was wrong and Foot was right. This is because, in her final article on the trolley problem, Thomson conceded that she was wrong, and Foot was right, all along.

In her 2008 article “Turning the Trolley”, Thomson tells the story of how a graduate student of hers, Alex Friedman, analyzed all of the putative solutions to her trolley problem (including her own), and “showed clearly that none of them worked.”⁸⁰ His conclusion was simple: “it just isn’t true that the bystander may”⁸¹ throw the railroad switch divert a runaway train to a sidetrack so that it kills just one person. One of the premises for his conclusion was that “it just is intuitively plausible that

⁷⁷ See my “Foot, Thomson, and the Trolley Problem” (unpublished manuscript), presented at a meeting of the Virginia Philosophical Association on October 27, 2007.

⁷⁸ Thomson, 2008, 363.

⁷⁹ I argued for this conclusion before Thomson’s final article on the matter. See for, example, my “Foot, Thomson, and the Trolley Problem”, note 77 above.

⁸⁰ Thomson, 2008, 363.

⁸¹ *Ibid.*

negative duties really are weightier than positive duties”,⁸² exactly as Foot had said. Thomson’s trolley problem, he concluded, was a “non-problem.”⁸³

Thomson agreed with her student: “the (so-called) trolley problem is therefore... a nonproblem... the bystander must not turn the trolley.”⁸⁴ She says, about the “the very difference in weight between positive and negative duties that Foot said we should bring to bear on the cases she drew attention to, and that Friedman said was so plausible”, that, “I find myself strongly inclined to believe they were right.”⁸⁵

As it were, everything came full circle. Thomson accepted the conclusion of Foot’s original article.⁸⁶

This should not come as a complete surprise, however, to a reader of Thomson. In her original article on the trolley problem, Thomson finished the article by admitting that “More generally, I suspect that Mrs. Foot and others may be right to say that negative duties are more stringent than positive duties.”⁸⁷ The issue, it seems, was simply that “we shan’t be able to decide until we get clearer what these things come to.”⁸⁸ Thomson had no explanation for the for the difference in weight between the two types of duties. In her final article on the trolley problem, thirty-two years later, Thomson still had not explanation for the difference in weight between the two types of duties, even as she embraced the distinction between them:

It is one thing to say that there is a difference in weight between positive and negative duties, and quite another to say

⁸² Ibid.

⁸³ Ibid., 364.

⁸⁴ Ibid., 368. The full sentence reads, “But even if the (so-called) trolley problem is therefore in one way a nonproblem, it is therefore in another way a real problem, for if the bystander must not turn the trolley in Bystander’s Two Options, then we need to ask why so many people who are presented with that case think it obvious that he may” (368).

⁸⁵ Ibid., 372.

⁸⁶ In a footnote to her second article, Thomson says about her first article, “Mrs. Thomson seems to me to have been blundering around in the dark in that paper” (Thomson, 1985, 1412, n. 14).

⁸⁷ Thomson, 1985, 217.

⁸⁸ Ibid.

what the source of that difference is. I know of no thoroughly convincing account of its source, and regard the need for one as among the most pressing in all of moral theory.⁸⁹

Murderer at the Switch

As I stated at the beginning of this article, contrary to what Guyer has said, it is not the case that any plausible moral theory must justify and require throwing the railroad switch and killing the one person and saving the five (or six). It is perfectly possible to defend a plausible moral theory according to which throwing a railroad switch and diverting a runaway train to a sidetrack so that it kills just one person, instead of not throwing the railroad switch and allowing the runaway train to continue on its track and kill five people, is prohibited. Foot's moral theory, and indeed Thomson's settled moral theory, are just such plausible theories. However, it is important to understand that Kant's moral theory also prohibits throwing the switch.

In her second article on the trolley problem, in attempting to find a solution to her trolley problem, Thomson suggests that Kant would support throwing the switch:

It would be no surprise, I think, if a Kantian idea occurred to us at this point. Kant said: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only." It is striking, after all, that the surgeon who proceeds in *Transplant* treats the young man he cuts up "as a means only": He literally uses the young man's body to save his five, and does so without the young man's consent. And perhaps we may say that the agent in *Bystander at the Switch* does not use his victim to save his five, or (more generally) treat his victim as a means only, and that that is why he (unlike the surgeon) may proceed.⁹⁰

This first part of what Thomson says here is correct. If the surgeon cuts up the healthy person and distributes his organs (without his consent), then he is acting contrary to the Categorical

⁸⁹ Ibid., 372.

⁹⁰ Thomson, 1985, 1401.

Imperative, in all of its formulae, but in particular, the formula of humanity: “*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*”⁹¹ If the surgeon cuts up the healthy person and distributes his organs (without his consent), then he is using him merely as a means, and this is prohibited. The second part of what Thomson says here, however, is incorrect. If the bystander throws a railroad switch and diverts a runaway train to a sidetrack so that it kills one innocent workman, in order to save the five on the track, then he is using the workman merely as a means, and this is prohibited.

As other commentators have pointed out, “little if anything is said in Kant’s ethics about the more violent forms of immoral action.”⁹² No doubt, this is because violence is dealt with in Kant’s legal philosophy rather than his ethics.⁹³ It can safely be assumed that Kant holds that if the surgeon cuts up the healthy person and distributes his organs, he commits the crime of murder.⁹⁴ The motive for the crime (saving the lives of dying others by distributing the organs⁹⁵) would be irrelevant.⁹⁶ If Kant had to provide an argument in his ethics against murder, what would it look like? Guyer has said, about the argument in Kant’s ethics against committing suicide, “presumably the same argument [against suicide] applies in the case of homicide as well.”⁹⁷ It is therefore worth considering Kant’s ethical argument against

⁹¹ Immanuel Kant, *Groundwork of the Metaphysics of Morals* (*Grundlegung zur Metaphysik der Sitten*) [1785], translated by Mary J. Gregor, in *Practical Philosophy*, edited and translated by Mary J. Gregor and Allen W. Wood (Cambridge: Cambridge University Press, 1996), 80. Italics in original.

⁹² Barbara Herman, “Murder and Mayhem: Violence and Kantian Casuistry”, *The Monist* 72 (1989), 411.

⁹³ See Herman, *ibid.*, 412-413.

⁹⁴ I say crime because this is a matter of law.

⁹⁵ For a fictional version of this case, see Robin Cook, *Coma* (Little, Brown & Co., 1977).

⁹⁶ This is a point that has been made by numerous writers on criminal law: “For hardly any rule of penal law is more definitely settled than that motive is irrelevant” (Jerome Hall, *General Principles of Criminal Law* (Indianapolis: The Bobbs-Merrill Company, 1947), 153-54).

⁹⁷ Guyer, 2006, 196.

suicide in order to consider a hypothetical ethical argument against murder.

The ethical argument against committing suicide given in the *Groundwork of the Metaphysics of Morals* is that in committing suicide one “makes use of a person”, namely, oneself, “*merely as a means* to maintain a tolerable condition up to the end of life.”⁹⁸ In other words, in committing suicide, one elevates maintaining a life in which one is in at least a tolerable condition (not suffering, etc.) above one’s humanity. One makes maintaining a life in which one is in a tolerable condition (not suffering, etc.) one’s end, and one treats humanity in oneself – or mere simply, one treats oneself – as a mere means towards that end. When one believes that one cannot maintain a life in which one is in a tolerable condition – when it is inevitable that one will suffer, say – then one will use humanity in oneself to commit suicide (one will decide on a way to successfully commit suicide, and then do it). However, according to the Categorical Imperative, one must always have humanity, in oneself and in others, as one’s end. One may never use humanity in oneself as a mere means to some other end. Therefore, it is impermissible to commit suicide in order to avoid suffering. As Kant says in the later *The Metaphysics of Morals*, one has a “negative” duty to oneself not to commit suicide that is a “perfect” duty to oneself as an animal being.⁹⁹

Contrary to what Guyer says about Kant on suicide, this perfect duty to oneself, like all perfect duties, is absolute.

Kant is generally inclined to treat the prohibition of suicide as absolute, but in pursuing the topic with his students he allows that certain exceptions may at least be possible. [...] Although Kant does not himself draw such a conclusion unequivocally, we can take this example to suggest that the (freely chosen) destruction of one free being in order to save many more free

⁹⁸ Kant, *Groundwork of the Metaphysics of Morals*, 80. Italics in original.

⁹⁹ Immanuel Kant, *The Metaphysics of Morals (Die Metaphysik der Sitten)*, comprising the *Metaphysical First Principles of the Doctrine of Right (Metaphysische Anfangsgünde der Rechtslehre)* [1797] and the *Metaphysical First Principles of the Doctrine of Virtue (Metaphysische Anfangsgünde der Tugendlehre)* [1797], translated by Mary J. Gregor, in *Practical Philosophy*, edited and translated by Mary J. Gregor and Allen W. Wood (Cambridge: Cambridge University Press, 1996), 546.

beings may be permissible, or even mandatory, because making humanity in both our own person and that of all others an end and never merely a means might well require preserving as many instances of humanity as possible; and in cases in which all instances cannot be preserved, even if it is our own instance of humanity that may have to be sacrificed in order to preserve others. Humanity is not just an abstraction, but something that exists *in* its instances, and so in making humanity our end numbers not only can but in fact must count.¹⁰⁰

Space does not permit a complete reply to what Guyer says here, but it can be stated that Kant nowhere permits an exception to the perfect duty not to commit suicide. The casuistical questions concerning suicide in *The Metaphysics of Morals*, as well as in his lectures on ethics, are about whether certain acts are acts of suicide, and not whether acts of suicide are permissible. Kant never allows for exceptions to perfect duties.¹⁰¹ If ‘preserving as many instances of humanity as possible’ requires that ‘humanity... be sacrificed in order to preserve others’, then Kant’s response is that we may not preserve as many instances of humanity as possible. Humanity may never be sacrificed in order to preserve others.

In the *Groundwork*, a possible translation of Kant’s word for suicide, “*Selbstmorde*”, is “murdering himself.”¹⁰² In the later *Metaphysics of Morals*, Kant is explicit that suicide is a form of murder: “Willfully killing oneself can be called **murdering oneself** (*homocidium dolosum*)”¹⁰³ and “Killing oneself is a crime (murder).”¹⁰⁴ If Kant holds that suicide is a case of murder, then it can safely be assumed, as I have said, that Kant holds that if the

¹⁰⁰ Guyer, 2006,197.

¹⁰¹ See my “Kant and the Perfect Duty to Others Not to Lie,” *British Journal for the History of Philosophy* 14 (2006), 653-685. Indeed, Kant never allows for exceptions to imperfect duties, either, when one understands what it means to make an exception to a perfect duty. See my “The Duty of Beneficence in Kant” (unpublished manuscript).

¹⁰² *Ibid.*, 80, n. v.

¹⁰³ Kant, *The Metaphysics of Morals*, 546. Bold type and italics in the original.

¹⁰⁴ *Ibid.*

surgeon cuts up the healthy person and distributes his organs, then he commits murder. The ethical argument against murder would be that the surgeon, in cutting up the healthy person and distributing his organs (without his consent)¹⁰⁵ to those who will die without them, is elevating maintaining lives in which people are in at least a tolerable condition above the humanity of the person who is killed to ensure this end. This is contrary to the Categorical Imperative and is impermissible.

What, then, of Thomson's "*Bystander at Switch*" case?

Thomson's settled position on this case is that it is impermissible for the bystander to throw the switch because it violates a negative duty not to kill an innocent¹⁰⁶ person. As I have shown, she reversed course on this case over the course of her life. Does this mean that her original Kantian analysis of this case is incorrect? I believe that it does.

First, consider the case in terms of positive and negative duties. According to Kant, one has a duty to others to be beneficent¹⁰⁷: "To be beneficent, that is, to promote according to one's means the happiness of others in need, without hoping for something in return, is everyone's duty" (*MM*, 6: 453 (572)). This duty is an imperfect, positive duty. It is a duty to adopt the end of

¹⁰⁵ Of course, according to Kant's moral theory, the person may never consent to commit suicide.

¹⁰⁶ It is important to note that the negative duty not to kill an innocent person does not prohibit, e.g., killing people in self-defense or executing convicted murderers.

¹⁰⁷ Beneficence means helping *people other than oneself*; it does not mean helping *everyone*, since that would include oneself. For this reason, the duty of beneficence should not be confused with the universal benevolence that is expressed in consequentialist moral theories. J. J. C. Smart says: "The utilitarian's ultimate moral principle, let it be remembered, expresses the sentiment not of altruism but of benevolence, the agent counting himself neither more nor less than any other person. ... Altruism could hardly commend itself to those of a scientific, and hence universalistic, frame of mind" (J. J. C. Smart, "Outline of a System of Utilitarian Ethics", in *Utilitarianism: For and Against*, J. J. C. Smart and Bernard Williams (Cambridge: Cambridge University Press, 1973), 32). However, Smart's next sentence is highly misleading: "If you count in my calculations why should I not count in your calculations?" The question should be: If *you* count in my calculations, why should *I* not count in my calculations? This is no longer a rhetorical question.

the happiness of others who are in need. This means that one must promote the happiness of others who are in need, when one can, to some extent, and so long as it does not involve violating any of one's perfect duties or violating any of one's imperfect duties (i.e., giving up on other necessary ends).¹⁰⁸ Throwing a railroad switch and diverting a runaway train to a sidetrack so that it does not continue on its track and kill five people, if that was all that was involved in this case, would be consistent with the duty of beneficence.¹⁰⁹

Of course, that is not all that is involved in this case. Throwing a railroad switch and diverting a runaway train to a sidetrack involves killing one innocent workman. If that was all that was involved in this case, it would be a case of murder. Murder is prohibited by a negative legal duty in Kant's moral philosophy.

This case, therefore, involves a conflict between a negative (perfect)¹¹⁰ legal duty not to kill one innocent person (not to commit murder), and a positive imperfect ethical duty to save five innocent people from being killed (or to not let five people die). According to Kant's moral theory, the negative (perfect) legal duty is more stringent than the positive imperfect ethical duty; or rather, there is no conflict, since imperfect duties have perfect duties 'built in' them as exceptions. If, as Kant famously argued in his "On a Supposed Right to Lie from Philanthropy",¹¹¹ it would be a crime¹¹² to tell a lie to a murderer at one's door, even

¹⁰⁸ See my "The Duty of Beneficence in Kant", note 101.

¹⁰⁹ Importantly, however, no particular act of beneficence is ever required by the duty of beneficence. See my "The Duty of Beneficence in Kant", note 105 above.

¹¹⁰ Strictly speaking, legal duties are neither perfect nor imperfect since that distinction only applies to ethical duties in Kant's moral philosophy. But that is only because all legal duties are best understood as perfect duties.

¹¹¹ *On a Supposed Right to Lie from Philanthropy* (Über ein vermeintes Recht auf Menschenliebe zu lügen] (1797), translated by Mary J. Gregory, in in *Practical Philosophy*, 611-615.

¹¹² Kant's claim is that this lie would be a crime because the negative duty at issue in this essay is a legal duty, albeit a legal duty to humanity, and not an ethical duty. See my "The Truth about Kant on Lies", *The*

in order to save the life of one's innocent friend,¹¹³ and hence, that lying in this case is prohibited, then surely it is prohibited to kill one innocent person, even to save the lives of five other people, when it is crime to kill an innocent person.

Hence, throwing a railroad switch and diverting a runaway train to a sidetrack so that it kills just one person is prohibited by Kant's moral theory if the case is considered in terms of positive and negative duties.

Next, consider the case in terms of rights. About the bystander case, as I have pointed out, Thomson herself says, in her second article, that "if the bystander throws the switch, then he does what will kill the one", and "the one did not volunteer his life so that the five might live; the bystander volunteered it for him." Thomson herself says that this lends "some weight to the idea that the bystander did do him a wrong" because "he infringes a right of the one track workman's which is in that cluster of rights which the workman has in having a right to life." She accepts, then, that there is "some reason to think that the bystander would infringe a right of the one's."

Her conclusion about this infringement of the right to life of the workman on the sidetrack, as I have said, is that "if the bystander does infringe a right of the one's if he proceeds, and may nevertheless proceed."

By Thomson's own lights, therefore, throwing a railroad switch and diverting a runaway train to a sidetrack, so that it kills just one person, infringes a right of that one person, and does that person a wrong.

However, not throwing the railroad switch, and allowing the runaway train to continue on its track and kill five people, does not infringe the right of anyone, and does not do anyone a wrong. Even if there were no other person on the sidetrack, and one could save the five by throwing the railroad switch and diverting the runaway train, one would not be infringing the right of anyone if one did not throw the railroad switch. Those five people do not

Philosophy of Deception, ed. Clancy Martin (Oxford: Oxford University Press, 2009), 201-224.

¹¹³ See my "The Truth about Kant on Lies" in *The Philosophy of Deception*, ed. Clancy Martin (Oxford University Press, 2009), 201-224.

have a right against one to one's assistance. Elsewhere, Thomson is more explicit about this:

To deprive someone of what he has a right to is to treat him unjustly. Suppose a boy and his small brother are jointly given a box of chocolates for Christmas. If the older boy takes the box and refuses to give his brother any of the chocolates, he is unjust to him, for the brother has a right to half of them. [...] Suppose that the box of chocolates that I mentioned earlier had not been given to both boys jointly, but was given only to the older boy. There he sits, stolidly eating his way through the box, his small brother watching enviously. Here we are likely to say, 'You ought not to be so mean. You ought to give your brother some of those chocolates.' My own view is that it just does not follow from the truth of this that the brother has any right to any of the chocolates. If the boy refuses to give his brother any, he is greedy, stingy, callous – but not unjust. [...] self-centered and callous, indecent in fact, but not unjust.¹¹⁴

If there were no other person on the sidetrack, and one could save the five by throwing the railroad switch and diverting the runaway train, then one would be “indecent” in not throwing the railroad switch, but one would not be a rights-infringer.

The same is true of not cutting up the healthy patient and allowing the five people with failing organs to die, or not pushing the person off the footbridge and allowing the runaway train to continue on its track and kill five people. One is not infringing a right of anyone in either case.

The case, therefore, involves throwing a railroad switch and diverting a runaway train to a sidetrack, so that it kills just one person, which infringes a right of that one person, and not throwing the railroad switch, and allowing the runaway train to continue on its track and kill five people, which infringes the right of no-one.

It is clear that Kant would not uphold infringing a right of someone and doing someone a wrong. Hence, throwing a railroad

¹¹⁴ Judith Jarvis Thomson, “A Defense of Abortion”, *Philosophy and Public Affairs* 1 (1971), 60-61.

switch and diverting a runaway train to a sidetrack so that it kills just one person is prohibited by Kant's moral theory if the case is considered in terms of rights.

The correct analysis of this case according to Kant's moral theory, therefore, by Thomson's own lights, is that in throwing the switch, the bystander is indeed treating the workman on the sidetrack as a means only. That is why the bystander, just like the surgeon, and just like the person on the footbridge, may not proceed.

That is indeed what we should conclude about the bystander case. If the bystander were to knowingly throw the switch, diverting a runaway trolley to a sidetrack so that it killed just one innocent person, he would be committing murder.

Coda: Diverting a Runaway Train to an Area of Mostly Lower-Income Residents

Philosophers are often accused of coming up with far-fetched and improbable thought experiments that fail to connect with our everyday ethical lives. Plato's ring of Gyges¹¹⁵ and Robert Nozick's utility monster¹¹⁶ come to mind. Thomson herself has come up with such unrealistic thought experiments. Just think of the case of the people-seeds who can enter your house through your window, land on your rug and take root there and grow into person-plants.¹¹⁷ The various cases involving a runaway train might be thought of in the same light. But some years ago, there was an actual case of a runaway train with no driver on board that was headed towards a city, and a group of people who were not on the train who had to make a decision about diverting it.

In 2003, a runaway unmanned Union Pacific freight train carrying over 3,800 tons of lumber and building materials was barreling down its track towards the railway yards of downtown Los Angeles. The train was remotely switched to a sidetrack in the residential neighborhood of Commerce, California. As expected, the train derailed. According to Kathryn Blackwell, spokeswoman

¹¹⁵ Plato, Plato, *The Republic*, translated by R. E. Allen (New Haven: Yale University Press, 2006), 41.

¹¹⁶ Robert Nozick, *Anarchy, State, and Utopia* (NY: Basic Books, 1974), 41.

¹¹⁷ Thomson, "A Defense of Abortion", 59.

for Union Pacific, the railway “knew the maneuver was “likely” to cause a derailment.”¹¹⁸ Residents of the town were not warned. Four homes on one street were damaged, and two of them were destroyed. Thirteen people suffered minor injuries, including a pregnant woman asleep in one of the houses who managed to escape through a window.

The neighborhood of Commerce is a lower-density area with “mostly lower-income residents.”¹¹⁹ One of the homes destroyed belonged to Luis Vasquez. At the time of the derailment, he was in his backyard, and his sister was in his house. “There was wood everywhere. Train wheels landed right in front of me. For some reason we didn’t get hurt. I just thank God for that,” he said.¹²⁰ Then again, these were just lower-income people.¹²¹

¹¹⁸ “Runaway freight train derails near Los Angeles”, *CNN.com/U.S.*, Saturday, June 21, 2003. [<https://edition.cnn.com/2003/US/We st/06/20/train.derails/index.html>, accessed 11/01/2021]

¹¹⁹ “Trolley problem”, *Wikipedia* [https://en.wikipedia.org/wiki/Trolley_problem, accessed 11/01/2021]

¹²⁰ “Runaway freight train derails near Los Angeles”, *ibid.*

¹²¹ Earlier versions of parts of this paper were presented at the Canadian Society for the Study of Practical Ethics at the University of Saskatchewan in May 2007, at the Virginia Philosophical Association in October 2007, and at Texas Christian University in April 2008. My thanks to audiences on those occasions for their questions. To former students over the years who have discussed and written about The Trolley Problem for me, I thank you profusely. To the person – it may have been a student at Washington & Lee University – who alerted me to the existence of Thomson’s paper recanting her earlier position, *muchas gracias*. To Joseph Mahon, who read a final draft of this paper, *mile buiochas*. This article is dedicated to the late Marcia Lind, a graduate of Brooklyn College, CUNY, and MIT, and a former Assistant Professor of Philosophy at Duke University, who was the first person I met who knew Judith Jarvis Thomson and who talked to me about her when I was a first-year graduate student. Years later, I am happy to say, I finally got to meet Prof. Thomson at a meeting of the American Philosophical Association.